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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

KEVIN ANTENUCCI, Plaintiff, vs. RUSS VINCENT and LEANN HILFMAN, Defendants.	)))))))))	Civil No. 4:01-cv-30122 FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

Plaintiff Kevin Antenucci, formerly an inmate at the Iowa Medical and Classification Center (IMCC) in Oakdale, Iowa, brought this lawsuit on May 2, 2001, making claims for relief under 42 U.S.C. § 1983. The defendants are Russ Vincent and Leann Hilfman, correctional officers at IMCC. Antenucci claims defendants were deliberately indifferent to his physical condition when they made him perform work in excess of medical restrictions, in violation of his rights under the Eighth Amendment to the U.S. Constitution.[1] Plaintiff seeks compensatory damages.

Jurisdiction is predicated on 28 U.S.C. §§ 1331, 1343(a)(3), (4). The case was referred to the undersigned pursuant to 28 U.S.C. § 636(c) and came on for bench trial on August 27, 2002.

[1] Antenucci also advanced a Fourteenth Amendment due process claim based on an alleged deprivation of a liberty interest. At trial Antenucci withdrew the due process claim.

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The Court has carefully considered the record evidence, the arguments and statements of counsel, and now finds and concludes as set forth below on the issues presented. At the outset, the Court commends plaintiff's appointed counsel, Ms. Jennifer Jaskolka-Brown, for her work in representing plaintiff. On both sides the case was thoroughly prepared and ably presented. The work of counsel was of material assistance in the fact-finding process and the Court appreciates it.

FINDINGS OF FACT

Antenucci entered the Iowa prison system in 1997 following convictions for theft and forgery. He was incarcerated at IMCC. Antenucci had injured his right knee in early 1996 when a chair he was seated in at a county jail collapsed. He experienced periodic knee pain afterward as evidenced by Limited Activity Notices given to him by prison health service officials in May and November 1997. (Ex. 5; Ex. A at 9-12). A Limited Activity Notice (LAN) was the means used by prison health officials to document a prisoner's physical limitations and inability to participate in listed activities, including work assignments.

Antenucci was paroled in January 1998. (Ex. 15). He testified his parole was revoked in August 1998, though prison records in evidence show he was returned to IMCC on December 29, 1998. (Id.) He was in that facility in March 1999 when the events in issue occurred.

On January 18, 1999 an LAN was issued to Antenucci restricting certain physical activities and providing that he be assigned a lower bunk because of his history of right knee trauma. (Ex. A at 14). His work assignment was not restricted. On February 1, 1999, Antenucci was seen by the Health Services Unit ("health services") at IMCC for a complaint of right knee pain. A prison doctor issued an LAN which, in addition to continuing his prior restrictions, limited his work assignments to "light work only (20 lbs. max.)." (Ex. 6). The LAN was effective until May 1, 1999. A copy was sent to his living unit (then LU-S), the Work Supervisor, Recreation and Antenucci's counselor. On February 10, 1999, Antenucci asked for and was provided with a copy of the LAN. (Ex. A at 16).

On February 22, 1999, Antenucci lacerated his left hand while moving his bed. He received stitches and was given an additional LAN which restricted his work level to "sedentary work only (10 lbs. max)." (Ex. 7). The LAN expired on March 8, 1999. Antenucci's stitches were removed on March 3, 1999 at which time it was noted by health services staff that the laceration had healed. (Ex. 11; Ex. A at 20).

Under normal procedures copies of both LAN's would have been sent to Antenucci's living unit, where they would have been kept in a three-ring binder behind a desk in the unit control

center. Expired LAN's were removed from the binder by shift officers.

On March 9, 1999 Vincent was the senior correctional officer assigned to supervise several hundred inmates in three living units on the 6-2 day shift, including Antenucci's LU-S. Antenucci testified he had just been transferred from another unit and that the defendants had substituted in that unit from time to time and would have had contact with him. Though it is probable Antenucci and Vincent had contact with each other prior to March 9, and Vincent may have given Antenucci work assignments before, the record does not establish that Vincent had any particular knowledge about Mr. Antenucci, his history of knee problems, or that he was aware Antenucci had been given an LAN because of the condition of his knee.

Vincent's duties were to supervise safety in the units, maintain order and make work assignments. Inmates were expected to perform a work assignment at least once a week. Because there had been some amount of snow prior to March 9, work assignments that date included snow removal and yard clean-up. Vincent assigned these duties on a random basis by choosing bed numbers. Antenucci's bed number was one of the four chosen for snow removal duties. After breakfast was served, at approximately 6:30 a.m. Vincent used the PA system to call inmates to the desk at the control center for their work assignments. Inmates assigned to snow removal did not

need to show up for their work assignment until just before yard time.

At the scheduled hour, the other three inmates showed up for their assignment, but Antenucci did not. Defendant Hilfman, an activities correctional officer, took the three inmates out to the yard. Antenucci was asleep. Vincent went to his room, woke him up, told him to get dressed and that he had a work assignment to shovel snow in the yard.

At this point the testimony of Antenucci and Vincent diverges. Antenucci testified at trial he went to the front desk where Vincent was and told him he had just had the stitches in his hand out, that his hand had been draining, and that he had an LAN for his right knee and his hand. In his deposition, also in evidence, Antenucci said he told Vincent he was on limited activity and "I just told him I had stitches taken out of my hand the night before because I had them taken out the night before and I had problems with my knee." (Ex. 24 at 7, 9). According to Antenucci, Vincent did not ask to see a copy of an LAN and did not do anything while Antenucci was there to verify that he had an LAN, but ordered him out to the yard to shovel snow. Fearful he would be written up if he disobeyed an order, Antenucci complied.

Vincent testified that after he told Antenucci about the job assignment, Antenucci told him that he had an LAN.[2] Vincent did not recall if Antenucci told him what the LAN was for, his knee or hand. Vincent asked Antenucci if he had a copy of the LAN and Antenucci said he did. Vincent told him to find and bring it to the front desk. Vincent looked in the binder at the front desk for an LAN. He could not find an LAN for Antenucci. When Antenucci came to the front desk Vincent told him he was unable to find the LAN, and Antenucci said he could not find his copy. While Antenucci had been looking in his room for the LAN, Vincent called health services to verify whether Antenucci had an LAN. Health services did not respond immediately. When Antenucci reported he could not find his copy, Vincent ordered Antenucci out to the yard, telling him to do what he could, while he waited to hear from health services. About ten minutes later health services called and informed Vincent of the LAN for the hand condition which had expired the day before. Vincent was not told about the LAN for the knee. When Vincent learned of the just-expired LAN for the hand, he decided to switch Antenucci's work assignment, and was on his way to get him when

[2] Vincent was unclear about whether Antenucci's statement that he had an LAN was made in Antenucci's room when he went to wake him up, or at the front desk.

Antenucci and the other inmates came in from their snow shoveling job.[3]

Though the interactions between Antenucci and Vincent are not clear in several details, the Court finds Vincent's version more plausible overall. Antenucci had been given a copy of the LAN for his knee and it is likely he would have told Vincent he had it when he was given the job assignment. If Antenucci claimed to have an LAN it is equally likely Vincent would have checked the binder where a copy should have been kept. The hand LAN had expired and it is understandable that it would have been removed. The Court can only speculate what happened to the knee LAN which should have been in the binder, perhaps it was inadvertently removed or Vincent overlooked it. The Court does not believe, however, that Vincent would lie about the presence of the knee LAN in the binder. With the LAN in neither Antenucci's possession or the cellhouse binder, the logical next step was for Vincent to call health services as he said he did. The hand LAN was the most recent and it is possible the person checking the records did not go back further. Here also the Court does not believe Vincent lied about what he was told. The Court therefore finds that at the time Vincent told Antenucci to go to the yard to shovel snow Vincent had not been able to verify the existence of either LAN and, more specifically, he was not aware of

[3] Vincent's deposition was also received in evidence, as was Hilfman's. (Exs. 1, 2).

facts about Antenucci's knee condition from which he knew, or would have known, that the snow shoveling job posed a risk to Antenucci's health.

The Court has difficulty crediting key points in Antenucci's version for a number of reasons. First, it requires the Court to believe Vincent simply ignored Antenucci's claim to have an LAN and fabricated his testimony about his efforts to verify the claim. Having seen and heard Vincent, an experienced correctional officer, the Court is reluctant to believe he would have abdicated his responsibilities in the manner described by Antenucci and then lied about it. Though Vincent was no doubt irritated at having to get Antenucci out of bed, ignoring a medical limitation on Antenucci's activities would have been an extreme reaction in violation of prison policy and Vincent's job duties which the Court finds improbable. Second, one of Vincent's jobs was to make work assignments within the limitations of individual inmates. His testimony is consistent with the ordinary course of events which would be expected to occur if an inmate claimed a work assignment was beyond medical restrictions. Third, and finally, some elements in Antenucci's testimony detract from its overall credibility. What he says he told Vincent about his hand, that he had the stitches out the night before and that it was draining, is inconsistent with the medical record. He further testified that had he disobeyed Vincent he would have been locked up for four or five

weeks before seeing an administrative law judge, clearly an exaggeration. On cross-examination Antenucci admitted he would have been seen by an administrative law judge within seven days. Antenucci testified he complained to a correctional officer named "Chad" after he slipped and fell in the yard on March 9, but no accident report was generated as would ordinarily be the case had he complained of injury. A correctional officer named "Chad" filled out the accident report for Antenucci's hand injury on February 22, 1999. Moreover, while Antenucci's knee was strained or "popped" in some fashion on March 9, the preponderance of the evidence, including his statements to health staff on March 10, do not support a finding that he fell.

After going outside, Antenucci reported to Hilfman. Antenucci told her he had an LAN for his knee and hand and did not think he could do the shoveling. Hilfman asked Antenucci if he had the LAN with him and he told her he could not find it. Hilfman assumed from Antenucci's presence that he had been cleared to work as he would not have been sent outside if he had an LAN which kept him from shoveling snow. Hilfman told Antenucci it "wouldn't kill you to shovel" or words to that effect. Antenucci took a shovel and started scooping.

After a brief period Antenucci felt a popping sensation in his knee followed by knee pain. He did not tell Hilfman. At about the same time, trucks with snow blades pulled up and the

inmates were sent back inside. Hilfman and the inmates had been outside for about fifteen minutes, Antenucci, who arrived late, something less.

Antenucci put in a sick call request and was seen by health services the next day. The medical records indicate he told the health services staff his knee had "popped out" while shoveling snow the day before, he had gotten it back in place, but it was hurting. (Ex. 11; Ex. A at 20).

Antenucci continued to complain of knee pain and was eventually seen at the University of Iowa Hospitals and Clinics. Chronic ACL tear/insufficiency with frequent right knee instability was diagnosed. ACL reconstructive surgery was recommended. It cannot be ascertained from the medical record and deposition testimony of Dr. Buckwalter whether the March 9, 1999 incident caused the ACL tear, but it is probable that it aggravated it and made it painful.

Antenucci underwent surgical repair of his right knee at the University of Iowa on July 14, 1999. He underwent arthroscopic debridement surgery on the knee in April 2000 to remove degenerated tissue. In approximately March 2001 Antenucci was released from prison. The ACL reconstruction has not been a success. Antenucci's right knee continues to be painful and unstable. Knee replacement surgery is an option, but has not been recommended at this point and Antenucci is reluctant to undergo further surgery.

DISCUSSION INCLUDING ADDITIONAL FINDINGS OF FACT

Antenucci's claim is under the Eighth Amendment to the U.S. Constitution which prohibits the infliction of "cruel and unusual" punishment on those convicted of crimes. U.S. Const. Amend. VIII. "To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety . . . . It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause . . . ." Whitley v. Albers, 475 U.S. 312, 319 (1986)(quoted in Wilson v. Seiter, 501 U.S. 294, 298-99 (1991)). The Eighth Amendment does not, therefore, provide a basis for a cause of action based on the negligent, accidental or inadvertent failures of prison officials. Helling v. McKinney, 509 U.S. 25, 32 (1993); Estelle v. Gamble, 429 U.S. 97, 103 (1976); see Blades v. Schuetzle, 302 F.3d 801, 804 (8th Cir. 2002)(lack of coordination in failure-to-protect case might be negligence but was not Eighth Amendment violation).

The plaintiff must satisfy both an objective and a subjective standard to make out an Eighth Amendment violation. Wilson, 501 U.S. at 298-99; Hudson v. McMillian, 503 U.S. 1, 8-9 (1992). The proof required is influenced by the type of claim, here that Antenucci was given a work assignment dangerous to him because of a medical condition.

> In order to prevail on his claim that his work assignment was inappropriate because of his existing medical condition, he must show that the prison officials were deliberately indifferent to a serious medical need. Aswegan v. Henry, 49 F.3d 461, 464 (8th Cir. 1995). The deliberate indifference standard requires a showing that the defendants had actual knowledge of a substantial risk to an inmate's health or safety, which is a question for the trier of fact and may be inferred from circumstantial evidence. Farmer v. Brennan, 511 U.S. 825, 842-43 & n. 8, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). In this type of case, the plaintiff must prove that the defendants knowingly compelled him "to perform labor that is beyond an inmate's strength, dangerous to his or her life or health, or unduly painful." Sanchez v. Taggart, 144 F.3d 1154, 1156 (8th Cir.1998) (citing Madewell [v. Roberts], 909 F.2d [1203], at 1207 [(8th Cir. 1990)]).

Williams v. Norris, 148 F.3d 983, 987 (8th Cir. 1998); see Mays v. Rhodes, 255 F.3d 644, 649 (8th Cir. 2001).

Antenucci's knee condition and its limitations were not obvious, but dependent on medical evidence. See Moore v. Jackson, 123 F.3d 1082, 1086 (8th Cir. 1997). He had been diagnosed with "right knee problems" including pain and had been limited by a prison doctor to performing "light work," essentially a twenty-pound lifting restriction. The Court concludes from the medical record that Antenucci had a serious medical need to limit his physical activity to that consistent with the LAN. It is undisputed that the LAN was in effect on March 9, 1999. It is also undisputed that shoveling snow was inconsistent with the light work restriction. The fighting issues boil down to defendants' actual

knowledge of Antenucci's medically-related limitations and deliberate disregard of them.

Antenucci told Vincent and Hilfman he had an LAN because of his knee.[4] The evidence does not establish that he told them what his specific limitations were, or what the problem with his knee was, though it was apparent to Vincent and Hilfman that Antenucci was claiming he could not do the snow shoveling job. Antenucci's condition was not obvious, therefore, proof of defendants' knowledge of the LAN is central to establishing their actual knowledge.

Vincent, as supervisor, made the job assignment. He was not required to accept Antenucci's bare assertions about his medical condition, Aswegan, 49 F.3d at 464 (citing Kayser v. Caspari, 16 F.3d 280, 281 (8th Cir. 1994)), but where an inmate contends that a medical record documents his claim of a physical limitation, a failure to attempt to verify the inmate's assertion may be sufficient to charge a prison official with actual knowledge of a condition truthfully claimed by the inmate. See Williams, 148 F.3d at 987-88.

Vincent credibly testified that after Antenucci told him about the LAN, he asked Antenucci if he had a copy and Antenucci

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[4] Antenucci also complained about the condition of his hand. The hand condition could not be a basis for a deliberate indifference claim. The LAN pertaining to it had expired and the medical records indicate the hand had healed. Antenucci did not injure his hand while shoveling snow.

said he did but then was unable to find it. Vincent also checked the binder in the control center but was not able to locate the LAN. He then called health services to check but health services did not respond immediately. In the meantime, because Antenucci had slept in and the work had started, Vincent directed Antenucci to go outside and begin working. When health services called back in a few minutes, Vincent was told only about the expired LAN for Antenucci's hand injury but not about the knee LAN. His attempts to verify what should ordinarily have been readily verifiable had been unsuccessful. In these circumstances, and crediting Vincent's testimony that he was unaware of a knee LAN, neither before nor after Vincent sent Antenucci out to work did Vincent have actual knowledge of the medical condition of Antenucci's knee, or that the snow shoveling job was beyond his physical limitations and risked injury.

Beyond the question of knowledge, Vincent's efforts to verify the existence of an LAN and decision to change Antenucci's work assignment after he learned of the hand LAN are against a finding of deliberate indifference. The culpability standard in Eighth Amendment cases is borrowed from the subjective recklessness standard in criminal law -- conscious disregard of a substantial risk of harm. Farmer v. Brennan, 511 U.S. 825, 839-40 (1994). Vincent's conduct in response to Antenucci's claimed medical

restriction was considerably short of anything which could be characterized as reckless disregard.

Hilfman took no action to verify whether Antenucci had an LAN other than to ask if he had a copy. She was outside in the snow supervising the inmates. She relied on Vincent as the supervisor making the work assignments to send those who were able to work. Her failure to independently attempt to verify Antenucci's claim does not support a finding of actual knowledge on her part of his knee condition or the risk. See Choate v. Lockhart, 7 F.3d 1370, 1375 (8th Cir. 1993)(supervisors of inmate work crew could assume only inmates who could do the work were assigned to crew). The Court does not believe Hilfman knew or believed Antenucci was at risk. Further, had she attempted to verify the LAN with health services over her radio she presumably would have been given the same incomplete response as Vincent.

For the reasons described the Court finds that the preponderance of the evidence does not establish the subjective component of an Eighth Amendment violation in the case of either defendant.

Antenucci believes defendants would have known about his knee LAN from previous contact with them in the prison, specifically prior work assignments and his placement in a lower bunk with an extra pillow. What defendants "should have known" is not the governing standard; circumstantial evidence of this kind

must permit an inference of "actual knowledge." Williams, 148 F.3d at 987. In March 1999 there were approximately 850 to 1100 inmates housed at IMCC. Officers were assigned to living units on a rotating basis. It is not surprising a correctional officer would not recall an individual inmate's status from day to day and would tend to rely on written verification. Vincent may have assigned Antenucci work previously during the period of the knee LAN, and both Vincent and Hilfman may have had contact with him during the course of their duties, though the evidence is inconclusive on both points. These facts, however, even if true are not compelling on the subject of defendants' actual knowledge of Antenucci's medical condition. The Court credits the testimony of defendants (at trial and by deposition) to the effect that they had no recollection of Mr. Antenucci before March 9.

CONCLUSIONS OF LAW

Plaintiff has failed to prove defendants Vincent and Hilfman violated his rights under the Eighth Amendment to the U.S. Constitution and the claims against said defendants should dismissed.[5]

[5] This conclusion makes it unnecessary to consider defendants' claim of qualified immunity.

ORDER FOR JUDGMENT

The Clerk shall enter judgment substantially as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of defendants Russ Vincent and Leann Hilfman and against plaintiff Kevin Antenucci and the complaint is dismissed.

IT IS SO ORDERED.

Dated this 6th day of February, 2003.

ROSS A. WALTERS
CHIEF UNITED STATES MAGISTRATE JUDGE