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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

HENRY L. JOHNSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 2:16-cv-02096-SLD**
	)	
COOKIE GALLOWAY, *et al.*,	)	
	)	
Defendants.	)	

SUMMARY JUDGMENT ORDER

Plaintiff, Henry L. Johnson, proceeding *pro se* and currently incarcerated at Federal Correctional Institution Pekin, filed suit under 42 U.S.C. § 1983, alleging deliberate indifference to a serious medical need while he was being held as a federal pretrial detainee at Vermilion County Jail. Before the Court is a motion for summary judgment filed by Defendants Cookie Galloway and Shelly Harding [29]. Plaintiff has filed a response in opposition [33]. Based on the parties' pleadings, depositions, affidavits, and other supporting documents, Defendants' motion for summary judgment is GRANTED.

I. LEGAL STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A dispute is 'genuine' 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.' " *Zaya v. Sood*, 836 F.3d 800, 804 (7th Cir. 2016) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The moving party has the burden of providing proper documentary evidence to show the absence of a genuine issue of

material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Once a properly supported motion for summary judgment is filed, the burden shifts to the non-moving party to demonstrate with specific evidence that a triable issue of fact remains for trial. *Gracia v. Volvo Europa Truck, N.V.*, 112 F.3d 291, 294 (7th Cir. 1997). All facts must be construed in the light most favorable to the non-moving party, and all reasonable inferences must be drawn in his favor. *Ogden v. Atterholt*, 606 F.3d 355, 358 (7th Cir. 2010). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248. A scintilla of evidence in support of the non-movant's position is insufficient to defeat a motion for summary judgment; "there must be evidence on which the jury could reasonably find for the [non-movant]." *Id*. at 252.

II. BACKGROUND

In September 2015, a Danville Police Department officer arrested Plaintiff. During his arrest, Plaintiff claimed that the officer tased him six times to the back of his head.[1] The controversy at issue concerns the subsequent medical care Defendants provided to Plaintiff.

III. MATERIAL FACTS

On September 13, 2015, Plaintiff arrived at the Vermilion jail. The following day, Plaintiff submitted a medical request form, complaining of "headaches and blurry vision" he was experiencing after being "tased to the back of [his] head six times …." (33, pp. 3, 8.) During his deposition, Plaintiff explained that his (1) headaches "would come and go every day" and lasted about 25 to 30 minutes (29-1, p. 38, 1) and (2) the blurry vision occurred "every day or two" and "would last for a few minutes" (29-1, p. 39, 11, 14). To alleviate his blurry vision, Plaintiff would "close [his] eyes for a while and keep on blinking" and it would "clear up." (29-1, p. 39,

[1] The arrest report stated that Plaintiff was "dry stun[ned]" one time "in the back of the neck." (29-7, p. 4.)

19-20.) On September 16, 2015, Plaintiff filed a second request for medical care, reiterating his medical complaints.

On September 18, 2015, Defendants, who were nurses at the Vermilion jail, evaluated Plaintiff's medical condition. Plaintiff asked that a magnetic resonance imaging (MRI) test be performed. Defendants did not observe any injuries to Plaintiff's head, and medical testing to determine how Plaintiff's pupils responded to light produced normal results. Based on their examination, Defendants opined that "it was not necessary at that time to refer [Plaintiff] to an outside medical professional or obtain additional X-rays, an MRI or a [CAT][2] scan because [he] had no visible injuries and his complaints were related only to sporadic headaches and blurry vision that could be controlled by over-the-counter medications." (29-5, p. 2, 9; 29-6, p. 2, 9.)

In response to Plaintiff's September 14, 2015, medical request form, Defendant Galloway provided Plaintiff a prescription for a single 800-milligram (mg) ibuprofen pill to be taken nightly for seven days. Galloway also advised Plaintiff to rest and submit a medical request form if he believed he required further evaluation. In response to Plaintiff's September 16, 2015, medical request form, Defendant Harding documented that Plaintiff did not have visible injuries, difficulty walking, or abnormal test results. Defendants provided Plaintiff an ibuprofen pill that day. Guards delivered Plaintiff's medication on September 19 and 20, 2015. (29-1, p. 87, 5-7.)

On September 20, 2015, Plaintiff stated that he saw Defendant Harding visiting another inmate, and he told Harding that his headaches and blurry vision persisted. Plaintiff claimed Harding responded that she would request his presence at the nurse's station. The next day—after Harding did not call—Plaintiff asked a guard to inquire. The guard relayed that Harding (1) did not recall telling Plaintiff she would call and (2) suggested Plaintiff submit a medical request form. That day, Plaintiff provided a medical request form to a guard for delivery to Harding, but

[2] CAT is an acronym for Computerized Axial Tomography

he did not receive a response. On September 24, 27, and October 5, 2015, Plaintiff submitted medical request forms addressed specifically to Defendants, reiterating his headache and blurry vision claims.[3] Plaintiff was not seen again by Defendants or anyone from the jail's medical department. Plaintiff admitted that despite his numerous unanswered medical requests, he did not ask the guards to call Defendants on his behalf. In her deposition, Harding stated that she did not see Plaintiff on September 20, 2015.

On October 10, 2015, Plaintiff filed a grievance against Defendants, claiming the denial of proper medical treatment. During his deposition, Plaintiff clarified that his grievance pertained to the last time he received medication for his headaches and blurry vision, which occurred on September 19, 2015.[4] The grievance officer responded to Plaintiff's grievance, as follows: "Apparently, they do not think your medical condition is serious enough to be seen about." (29-2, p. 9.) After receiving the response, Plaintiff decided to sue Defendants. Plaintiff confirmed that the extent and severity of his headaches and blurry vision remained constant throughout his incarceration at the Vermilion jail, which ended on November 13, 2015, when he was transferred to the DeWitt County jail.

At the DeWitt jail, Plaintiff renewed his complaints of headaches and blurry vision, and his request for an MRI. On November 25, 2015, a physician tested Plaintiff's pupils, which were normal, and after finding no evidence of a taser injury, the physician prescribed 600 mg of ibuprofen twice a day for 30 days. Plaintiff testified that about two months later, his headaches and blurry vision ceased. During Plaintiff's deposition, the following exchange occurred:

[3] During his deposition, Plaintiff provided a handwritten document summarizing the content of the medical request forms he submitted on September 21, 24, and 27, 2015. With regard to his October 5, 2015, medical request form, Plaintiff stated that he filled out two identical forms and kept one as a copy, which he provided to Defendants' counsel during his deposition.

[4] Earlier in his deposition, Plaintiff testified that the last time he received ibuprofen was on September 20, 2015.

> Q. Do you have any personal knowledge that … Galloway or … Harding did receive [your] medical requests?
> A. That's the protocol. It's not my duty or my job to make sure they get it, because that's the Vermilion … protocol to give the request slip to the security so it can get to their destination.
> Q. I … understand what you're saying.
> A. It's not my responsibility.
> Q. I'm just [asking] you don't have any direct knowledge that [Defendants] did receive it or not? Like, for example, … Harding never came out to you and said, Yeah, I received your request slip, but there's nothing I can do for you?
> A. I can't agree with that. I believe they got it; they just ignored it.

(29-1, p. 61, 2-20.)

In their respective affidavits, Defendants Galloway and Harding averred that they were not aware of Plaintiff's subsequent medical requests or his grievance until after he filed his lawsuit.

III. THE EIGHTH AMENDMENT STANDARD

Because Plaintiff was a pretrial detainee and not a convicted inmate at the time of the events at issue, his claims proceed under the Fourteenth Amendment instead of the Eighth Amendment. *See Smith v. Dart*, 803 F.3d 304, 309 (7th Cir. 2015) ("[C]onstitutional rights as a pretrial detainee are derived from the Due Process Clause of the Fourteenth Amendment.") "Although the Eighth Amendment does not apply to pretrial detainees, pretrial detainees are entitled to *at least* as much protection as the constitution provides convicted prisoners." *Board v. Farnham*, 394 F.3d 469, 477 (7th Cir. 2005) (emphasis in original). Thus, "the Seventh Circuit has "found it convenient and entirely appropriate to apply the same standard to claims arising under the Fourteenth Amendment (detainees) and Eighth Amendment (convicted prisoners) 'without differentiation.' " *Id*. at 478 (quoting *Henderson v. Sheahan,* 196 F.3d 839, 845 n.2 (7th Cir. 1999)). The Eighth Amendment's prohibition against cruel and unusual punishments requires that the government "'provide humane conditions of confinement' and 'ensure that inmates receive adequate food, clothing, shelter, and medical care.'" *Zentmyer v. Kendall*

County, Illinois, 220 F.3d 805, 810 (7th Cir. 2000) (quoting *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)).

IV. ANALYSIS

A. The Deliberate Indifference Standard

The deliberate indifference standard requires an inmate to satisfy a substantial threshold to maintain a claim for cruel and unusual punishment under the Eighth Amendment. *Dunigan ex rel. Nyman v. Winnebago County*, 165 F.3d 587, 590 (7th Cir. 1999). This type of claim requires a plaintiff to show an objectively serious risk of harm and a subjectively culpable state of mind. *Farmer*, 511 U.S. at 834. An objectively serious medical condition "is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention." *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005). To satisfy the subjective component, a plaintiff must show that "the official [knew] of and disregard[ed] an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference." *Farmer*, 511 U.S. at 837. The Seventh Circuit has characterized this subjective standard "as imposing a high hurdle on plaintiffs because it requires a showing as something approaching a total unconcern for the prisoner's welfare in the face of serious risks." *Rosario v. Brawn*, 670 F.3d 816, 821 (7th Cir. 2012) (internal quotation marks omitted).

B. Plaintiff's Objective Burden

Plaintiff's deliberate-indifference claim against Defendants fails because he has not satisfied his burden of showing that his headache and blurry vision were objectively serious medical conditions under the Eighth Amendment. *See Henderson v. Sheahan*, 196 F.3d 839, 846 (7th Cir. 1999) ("[B]reathing problems, chest pains, dizziness, sinus problems, headaches and a

loss of energy are objectively speaking, relatively minor … [and] not sufficiently serious to be constitutionally actionable.").

In *Bates v. Sullivan*, 6 Fed.Apx. 425, 426 (7th Cir. 2001), an asthmatic plaintiff raised a deliberate-indifference claim against defendant guard because the guard failed to provide the plaintiff his inhaler. In affirming the District Court's grant of summary judgment in the defendant's favor, the Seventh Circuit concluded that the plaintiff claimed only that "he was suffering breathing problems when he requested the inhaler and that he suffered shortness of breath and headaches from the incident," which were symptoms "not serious enough to implicate the Eighth Amendment." *Id*. at 428.

In this case, Plaintiff has alleged in his complaint and confirmed during his deposition that after being tased six times, he suffered from sporadic episodes of headaches and blurry vision, without elaboration. Although the Court does not doubt that Plaintiff's condition may have caused him discomfort, his concerns are on par with those considered in *Bates*, which the Seventh Circuit concluded did not present an objectively serious risk of harm under the Eighth Amendment. See *Oliver v. Dean*, 77 F.3d 156, 160-61 (7th Cir. 1996) (concluding at the summary judgment stage that an asthmatic prisoner failed to demonstrate that he had a serious medical need for a non-smoking environment even though his exposure to second-hand smoke aggravated his asthmatic condition causing him to suffer chest pains, difficulty in breathing, dizziness, nausea and other signs of discomfort).

The Court notes that in his response to Defendants' motion for summary judgment, Plaintiff contends that his medical condition "required more than one or two ibuprofen" pills, and Defendants should have referred him "to a doctor for further … medical treatments." (33-1, p. 4.) Under the Eighth Amendment, however, Plaintiff is not entitled to demand specific

medical care or entitled to the best possible care. *Forbes v. Edgar*, 112 F.3d 262, 267 (7th Cir. 1997). Instead, plaintiff is entitled to reasonable measures to meet a substantial risk of serious harm. *Forbes*, 112 F.3d at 267. Even if the Court agreed that Defendants should have referred Plaintiff to a physician for further treatment, their failure to do so would constitute, at best, negligence, which is insufficient. *See McDonald v. Hardy*, 821 F.3d 882, 888 (7th Cir. 2016) (to substantiate a violation of the Eighth Amendment, claims based on negligence, medical malpractice, or a disagreement with a prescribed course of medical treatment are not sufficient).

Furthermore, Plaintiff's claim that he required medical care in excess of Defendants' prescription for 800 mgs of ibuprofen is contradicted by his testimony. In this regard, Plaintiff recounted that after denying his request for an MRI, a DeWitt physician prescribed 600 mg of ibuprofen twice daily for 30 days. Plaintiff admitted that the treatment administered by the DeWitt physician, which was similar to the treatment Defendants opted to administer, stopped his headaches and blurry vision within two month, which confirmed the reasonableness of the treatment Defendants initially provided.

The Court also notes that in his response to Defendants motion for summary judgment, Plaintiff correctly states that "in a case where a[n] inmate claim[s] a delay in treatment as opposed to a total denial that plaintiff must offer some evidence that the delay caused lasting harm." (33-1, p. 4.) *See Conley v. Birch*, 796 F.3d 742, 749 (7th Cir. 2007) (Where a delay in receiving medical treatment is at issue, a "plaintiff must offer verifying medical evidence that the delay (rather than the underlying condition) caused some degree of harm.") (internal quotation marks omitted); *see also Jackson v. Pollion*, 733 F.3d 786, 790 (7th Cir. 2013) ("No matter how serious a medical condition is, the sufferer from it cannot prove tortious misconduct (including

misconduct constituting a constitutional tort) as a result of failure to treat the condition without providing evidence that the failure caused injury or a serious risk of injury.").

To the extent Plaintiff argues that Defendants delayed treating him during his two-month stay at the Vermilion jail, the Court rejects Plaintiff's inference that a genuine dispute arises because he has failed to "offer medical evidence that tends to confirm or corroborate … that the delay was detrimental." *Williams v. Liefer*, 491 F.3d 710, 715 (7th Cir. 2007).

C. Plaintiff's Subjective Burden

Even if this Court were to conclude that Plaintiff did have a serious medical need, his claim also fails because he does not satisfy his subjective burden of showing that Defendants disregarded an excessive risk to his health or safety.

The undisputed facts show that on September 18, 2015, Defendants timely responded to Plaintiff's first two medical requests. After considering Plaintiff's claims, Defendants examined Plaintiff's head, and after finding no visible injuries, they performed a test on Plaintiff's pupils before deciding to prescribe medication to address Plaintiff's headaches and blurry vision. Defendants then advised Plaintiff to return if he required additional care. Defendants' aforementioned acts in responding to Plaintiff's medical concerns represent the antithesis of deliberate indifference.

The crux of Plaintiff's deliberate-indifference allegation is that Defendants consciously disregarded an excessive risk to his health by not responding to his September 21, September 24, September 27, and October 5, 2015, medical request forms. If this Court were to deny Defendants' motion for summary judgment, at trial Plaintiff would be responsible for providing admissible evidence from which an inference could be drawn that a substantial risk of harm existed and Defendants drew that inference yet consciously chose to disregard that health risk.

See Cairel v. Alderen, 821 F.3d 823, 830 (7th Cir. 2016) (quoting *Wragg v. Village of Thornton*, 604 F.3d 464, 466 (7th Cir. 2010) ("To be considered on summary judgment, evidence must be admissible at trial, though 'the form produced at summary judgment need not be admissible.'")). As to Plaintiff's specific deliberate-indifference claim against Defendants, the Court concludes that no such admissible evidence can be gleaned from the record.

"As the [Seventh Circuit has] said before, summary judgment is the put up or shut up moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept his version of events." *Gekas v. Vasiliades*, 814 F.3d 890, 896 (7th Cir. 2016) (internal quotation marks omitted). Plaintiff concedes that the last time he saw or spoke with (1) Defendant Galloway was during her September 18, 2015, medical examination and (2) Defendant Harding was on September 20, 2015. Thereafter, Plaintiff provided his September 21, September 24, September 27, and October 5, 2015, medical request forms to guards for delivery to Defendants.

Plaintiff's deliberate-indifference allegation is premised solely on his "belief" that Defendants had knowledge of those specific medical requests because of the procedures employed at Vermilion regarding the handling of such requests. Plaintiff's conclusory belief, however, is insufficient to create a genuine dispute. *See Thomas v. Christ Hospital and Medical Center*, 328 F.3d 890, 894 (7th Cir. 2003) (conclusory assertions unsupported by specific facts are not sufficient to defeat a motion for summary judgment).

Because the Court concludes that given this record, no jury could reasonably find Plaintiff has alleged sufficient facts that demonstrate Defendants were was deliberately indifferent to a serious medical condition, summary judgment is granted in Defendants' favor.

V. QUALIFIED IMMUNITY

Because the Court has granted summary judgment in Defendants' favor, the Court need not address their claims regarding entitlement to qualified immunity. *Van den Bosch v. Raemisch*, 658 F.3d 778, 787, n.9 (7th Cir. 2011).

IT IS THEREFORE ORDERED:

1) Defendants' motion for summary judgment [29] is GRANTED pursuant to Fed. R. Civ. P. 56. The Clerk of the Court is directed to enter judgment in favor of Defendants and against Plaintiff. The case is terminated, with the parties to bear their own costs. All deadlines and internal settings are vacated. All pending motions not addressed in this Order are denied as moot. Plaintiff remains responsible for the $350 filing fee.

2) If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal *in forma pauperis* MUST identify the issues the Plaintiff will present on appeal to assist the court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *See also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999) (an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith."); *Walker v O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000) (providing that a good faith appeal is an appeal that "a reasonable person could suppose…has some merit" from a legal perspective). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

Entered January 8, 2018.

s/ Sara Darrow

SARA DARROW
UNITED STATES DISTRICT JUDGE