

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 94-20753  
Summary Calendar

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CHARLES DEGAR,

Plaintiff-Appellant,

VERSUS

E. W. BROCK and R. A. STAUBER,

Defendants-Appellees.

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Appeal from the United States District Court  
For the Southern District of Texas

(CA H 84 13)

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( June 30, 1995 )

Before WISDOM, KING, and GARWOOD, Circuit Judges.

WISDOM, Circuit Judge.\*

In this action filed in accordance with 42 U.S.C. § 1983, the plaintiff/appellant, Charles Degar, contends that his conditions of confinement in prison violated the Eighth Amendment

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\* Local Rule 47.5.1 provides:  
"The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession."  
Pursuant to that Rule, the Court has determined that this opinion should not be published.

and that he was denied procedural due process at his disciplinary hearings. The district court granted summary judgment in favor of the defendants. We affirm.

## I

Degar filed this civil rights action against Field Major E.W.Brock and Dr. R.A. Stauber challenging his conditions of confinement while incarcerated at the Texas Department of Corrections facility at Huntsville. Degar seeks compensatory and punitive damages, alleging that he was denied procedural due process at his disciplinary hearings and that the officials were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. The defendants were aware that Degar suffers from two medical conditions, narcolepsy and hydrocele.<sup>1</sup>

The defendants filed a motion for summary judgment, contending that Degar had not alleged violations of his constitutional rights and that they were entitled to qualified immunity. The district court granted the defendant's motion. Degar appeals from the decision of the district court, contending that there is a genuine issue of fact (1) that he was deprived of procedural due process at his disciplinary hearings, and (2) that the defendants were deliberately indifferent to his serious medical needs.

## II

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<sup>1</sup> Narcolepsy is a condition of frequent and uncontrollable desire for sleep. Hydrocele is a collection of watery fluid in a body cavity, especially in the scrotum or along the spermatic cord. Webster's New World Dictionary (2d ed. 1972).

We review a grant of summary judgment de novo.<sup>2</sup> Summary judgment is appropriate if, after reviewing the record in the light most favorable to the nonmoving party, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.<sup>3</sup>

Qualified immunity shields public officers from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.<sup>4</sup> Before we reach the question of whether an officer is immune from suit, we first determine whether the plaintiff has asserted a constitutional violation.<sup>5</sup>

A

Degan's first argument on appeal contends that his right to procedural due process was violated when, at his May 16, 1983 disciplinary hearing, the hearing committee excluded one of the witnesses Degan wished to call. He also contends that he was denied due process at any disciplinary hearing which was initiated by Major Brock. The results of Degan's disciplinary hearings for rule violations and failing to work were solitary confinement and a loss of good time.

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<sup>2</sup> Berry v. Armstrong Rubber Co., 989 F.2d 822, 824 (5th Cir. 1993), cert. denied, 114 S. Ct. 1067 (1994).

<sup>3</sup> Fed. R. Civ. P. 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Russ v. Int'l Paper Co., 943 F.2d 589, 590 (5th Cir. 1991), cert. denied, 112 S. Ct. 1675 (1992).

<sup>4</sup> Young v. Biggers, 938 F.2d 565, 570 (5th Cir. 1991).

<sup>5</sup> Siegert v. Gilley, 500 U.S. 226, 233 (1991); see also Quires v. Campbell, 934 F.2d 668, 669 (5th Cir. 1991).

To comport with due process, a prisoner punished by solitary confinement and loss of good-time credits must receive: (1) written notice of the charges against him at least 24 hours before the hearing, (2) a written statement of the factfinders as to the evidence relied on and the reasons for the disciplinary action taken, and (3) the opportunity to call witnesses and present documentary evidence in his defense, unless it would create a security risk.<sup>6</sup>

Degar argues that at his May 16, 1983 disciplinary proceeding, the hearing committee denied him due process by excluding a witness he wished to call. We agree with the district court that Degar's due process rights were not infringed. The committee's notes reveal that the witness' testimony would be repetitive and consistent with a written statement already in the record. The committee excluded the testimony of the witness on the ground that it would be cumulative. Viewing this evidence in the light most favorable to Degar, we find that the district court correctly concluded that there is no genuine issue of fact that the committee's decision to exclude the witness violated Degar's right to due process.

Degar also makes the general assertion that he was denied due process at all disciplinary proceedings that were initiated by Brock because, Degar alleges, Brock both initiated the disciplinary actions against Degar and sat on the disciplinary hearing committee

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<sup>6</sup> Jackson v. Cain, 864 F.2d 1235, 1252 (5th Cir. 1989) (quoting Wolff v. McDonnell, 418 U.S. 539, 563-66 (1974)).

that heard the action. By acting as both accuser and judge, Degar contends that Brock violated his due process right to a neutral and detached hearing body.

In support of their motion for summary judgment, the defendants offered evidence that whenever Brock initiated disciplinary proceedings against Degar, he did not sit on the committee that heard the action. In response, Degar contends that even if Brock did not sit on the committee, Brock held such a position of authority at the facility that he influenced those sitting on the committees that judged Degar.

Degar's attempt to raise an issue of fact that he was denied a neutral and detached hearing body is without merit. The district court correctly concluded that no genuine issue of fact exists that Major Brock violated his right to procedural due process.

B

Degar's second argument on appeal challenges his conditions of confinement in prison. To state a cognizable claim of a violation of the Eighth Amendment, a prisoner must allege acts or omissions sufficiently harmful to demonstrate deliberate indifference to serious medical needs.<sup>7</sup> Neither inadvertent failure to provide adequate medical care nor mere negligence violates the Eighth Amendment.<sup>8</sup> It is deliberate indifference that

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<sup>7</sup> Estelle v. Gamble, 429 U.S. 97, 105-06 (1976).

<sup>8</sup> Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989).

the Amendment prohibits.<sup>9</sup> To demonstrate deliberate indifference, a plaintiff must show that prison officials were subjectively aware of the risk to the prisoner; a prison official acts with deliberate indifference "only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it".<sup>10</sup>

Degar contends that Major Brock was deliberately indifferent to Degar's serious medical needs by assigning Degar to the 16 Hoe Squad because, Degar alleges, Brock knew of Degar's medical condition and knew that the work assignment would aggravate his condition. Degar also contends that Dr. Stauber was deliberately indifferent to his medical needs in approving Degar's assignment to the hoe squad.

In support of the motion for summary judgment, the defendants presented evidence that prisoners at the facility are assigned one of three medical classifications: Class I inmates have no limitations on their job assignments; Class II inmates perform the same work as Class I inmates, but for shorter periods of time and at a slower pace; and Class III inmates have serious medical conditions and can perform only limited work. The defendants also presented evidence that inmates assigned to hoeing fields are required to work at a pace that is consistent with their medical classification.

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<sup>9</sup> Id.

<sup>10</sup> Farmer v. Brennan, 114 S. Ct. 1970, 1984 (1994); Reeves v. Collins, 27 F.3d 174, 176 (5th Cir. 1994).

Degar offers no evidence to raise a genuine issue of fact that his assignment to the hoe squad constituted deliberate indifference to a serious medical need. Indeed, Degar's argument on appeal concedes that he was allowed to work at a slower pace because of his Class II work status. Further, Degar's medical evidence reveals that he was permitted to stay in his cell on days when his condition precluded physical exertion. Nothing in the record indicates that Brock was deliberately indifferent to Degar's medical needs in assigning Degar to the hoe squad, nor does any evidence suggest that Dr. Stauber's approval of the assignment constituted wanton disregard of Degar's medical needs.

Degar's final argument on appeal contends that Dr. Stauber "refused to treat Degar with adequate medical care"<sup>11</sup>, and that Dr. Stauber's substandard medical services violated Degar's Eighth Amendment rights.

To constitute deliberate indifference, the pleadings must allege facts showing that the acts or omissions of the defendants are wanton or reckless; mere negligence or neglect does not violate the Eighth Amendment.<sup>12</sup> Nothing in the record indicates that Dr. Stauber deliberately or wantonly disregarded Degar's medical condition. The defendants' summary judgment evidence shows that Degar frequently was treated for his condition. We reject Degar's argument that the district court "confuse[d] quantity of treatment with quality". There is nothing in the record indicating that Dr.

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<sup>11</sup> Appellant's Brief at 10.

<sup>12</sup> Jackson, 864 F.2d at 1246.

Stauber's treatment fell to the level of wanton disregard of Degar's serious medical needs. Indeed, there is no indication from the record that Dr. Stauber's medical attention fell below a reasonable standard of care. Degar's general dissatisfaction with Dr. Stauber's treatment does not constitute a violation of the Eighth Amendment.

We agree with the district court that there is no genuine issue of material fact that Degar's constitutional rights were violated, and we affirm the decision of the district court granting summary judgment for the defendants.