

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted January 23, 2024*

Decided January 24, 2024

BeforeMICHAEL Y. SCUDDER, *Circuit Judge*THOMAS L. KIRSCH II, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 23-1642

ROBERT BRANDON,
*Plaintiff-Appellant,**v.*KIM HOBSON,
*Defendant-Appellee.*Appeal from the United States District
Court for the Southern District of
Indiana, Terre Haute Division.

No. 2:20-cv-00549-JRS-MJD

James R. Sweeney II,
*Judge.***ORDER**

Robert Brandon, an Indiana prisoner, was assigned to a top bunk after being moved to a new housing unit, although he previously had a lower bunk pass for medical reasons. He inquired about getting a lower bunk, but before any action was

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

taken, he fell from his top bunk in his sleep and incurred serious injuries. Brandon sued the prison's Health Services Administrator, claiming that she violated his Eighth Amendment rights when she "revoked" his bottom-bunk pass and ignored or denied his requests for its reissuance. The district court granted summary judgment for the administrator, and we affirm.

In an appeal of rulings on cross-motions for summary judgment, we construe all facts and inferences in favor of the party against whom the motion under consideration was filed—here, Brandon. *See Tripp v. Scholz*, 872 F.3d 857, 862 (7th Cir. 2017). Doctors at Wabash Valley Correctional Facility issued a bottom-bunk pass to Brandon sometime in 2013 because of his history of spinal conditions, including a spinal fusion surgery in 1999. At the end of May 2020, Brandon was moved to a different part of the prison, where he was assigned an upper bunk. He believed he still had a bottom-bunk pass, so he set out to learn what went wrong: First, he appealed his classification assignment and requested reassignment to a bottom bunk, but the classification department "confirmed with medical" that he did not have an active bottom-bunk pass. Next, Brandon submitted a Health Care Request Form asking about the status of his pass, and medical staff responded that he did not have an active order for a bottom bunk. In a second request form, he asked why his pass had been revoked and was told that he did "not meet qualifications for a bottom-bunk pass per MD."

Last, Brandon filed a grievance requesting the restoration of his pass, explaining that he had had a lower bunk pass since 2013 because his spinal injuries caused him difficulty when climbing down from the top bunk. The grievance specialist asked for a response from Kim Hobson, a licensed registered nurse and the Health Services Administrator for the prison. In that role, Hobson did not provide treatment to inmates; she oversaw the provision of medical services, served as a liaison between medical and prison staff, and responded on behalf of the medical team to prisoner grievances and requests for information. To Brandon's grievance, she responded: "I have reviewed your chart and see no diagnosis that would qualify you for a lower bunk."

In July 2020, Brandon, who alleges that his spinal condition and nerve pain can cause him to jerk and roll in his sleep, fell from the upper bunk and injured his cervical spine. In September, Brandon saw a doctor who noted that x-rays from 2008 showed spinal problems and records from 1999 showed that Brandon underwent a spinal fusion surgery. Brandon believes that Hobson had access to these same records when she answered his grievance. Brandon's pass was later restored.

This suit came next. The district court reviewed Brandon's amended complaint, *see* 28 U.S.C. § 1915A, and allowed Brandon to proceed on a claim that Hobson was deliberately indifferent to his medical condition in violation of the Eighth Amendment. *See* 42 U.S.C. § 1983. Both parties moved for summary judgment after discovery. The court entered judgment in favor of Hobson upon concluding that no reasonable jury could find that Hobson was deliberately indifferent to Brandon's serious medical needs. The court explained that Hobson could not instruct that Brandon be given a lower bunk because his records did not reflect an active bunk pass, and she lacked the authority to issue one herself. Further, Brandon pointed to no evidence showing she was aware that he had an unmet medical need for a bottom-bunk pass.

On appeal, Brandon argues that there is a genuine issue of material fact about whether Hobson was deliberately indifferent because it is undisputed that she did not relay his request for a bottom-bunk pass to a doctor. He argues that, even if Hobson could not issue a pass, her job requires her to contact doctors to arrange care for inmates, and she failed to do so. He points to two pieces of circumstantial evidence of her deliberate indifference: his submission of multiple forms about his need for a lower bunk pass (including documentation of a prior pass) and Hobson's access to his full medical record, which he argues should have put her on notice of his need for a pass.

Because Hobson does not dispute the seriousness of Brandon's medical condition, Brandon must point to evidence that Hobson was deliberately indifferent to his condition. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Brown v. Osmundson*, 38 F.4th 545, 550 (7th Cir. 2022). Deliberate indifference is more than negligence or even recklessness. *Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 763 (7th Cir. 2021). Instead, there must be evidence that Hobson actually knew of and disregarded a substantial risk of serious harm. *See Farmer v. Brennan*, 511 U.S. 825, 839 (1994).

Brandon points to no evidence that would allow a rational jury to conclude that Hobson was deliberately indifferent to the risk that he would incur an injury without a bottom-bunk pass. Although she is a nurse, Hobson acted in an administrative capacity by serving as a liaison between medical staff and the Indiana Department of Corrections, responding to prisoner grievances and requests for information on behalf of the medical team, and as a result, she lacked the authority to diagnose patients or order treatment. And it is undisputed that she had no role in examining Brandon or providing treatment. Therefore, she had no independent knowledge of whether Brandon needed a bottom-bunk pass, even if she were authorized to issue it. And, to the extent Brandon argues that Hobson blocked any review of his request by a doctor, the

evidence in the record shows otherwise. The response to his second Health Care Request Form states that an “MD” (which he agrees that he understood to mean a doctor) determined he did not qualify for the pass. Hobson might not have consulted a doctor after receiving Brandon’s grievance, but she did not prevent any consultation.

This leaves Brandon’s argument that a jury could infer that Hobson was aware of the risk of a fall from a top bunk because she had access to his full medical records and yet did not speak to a doctor about his need for the pass. But nothing in the record suggests that Hobson knew that Brandon’s spinal issues created a substantial risk of serious harm, which she consciously disregarded. Acting in her capacity as a non-treating administrator, Hobson was entitled to reasonably rely on the judgment of medical personnel. *See Eagan v. Dempsey*, 987 F.3d 667, 694 (7th Cir. 2021). Brandon cites no reason why Hobson, when responding to the grievance, could not rely on what she saw in his file. *See Stewart*, 14 F.4th at 767–68. Brandon’s most recent medical records indicated that at his last appointment, his doctor did not prescribe any treatment for spinal issues or reissue the bottom-bunk pass. And even if Hobson had been obliged to review the entirety of Brandon’s medical history to look for a qualifying diagnosis—though Brandon cites no support for such a duty—she would have seen only decades-old records of spinal problems for which Brandon was not receiving chronic care or active treatment. If that should have signaled the need for a bottom-bunk pass, the mistake would be, at most, negligence—which is not the same as deliberate indifference. *See Johnson v. Doughty*, 433 F.3d 1001, 1012–13 (7th Cir. 2006).

AFFIRMED