UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

HADDRICK BYRD, Plaintiff, v. SUPERINTENDENT BRITTAIN, et al., Defendants.	CIVIL ACTION NO. 3:20-CV-0164 (WILSON, J.) (MEHALCHICK, M.J.)

REPORT AND RECOMMENDATION

Plaintiff Haddrick Byrd, an inmate currently housed at the State Correctional Institution at Frackville ("SCI-Frackville"), commenced this action *pro se* on February 3, 2020, asserting violations of his federal civil rights for which he seeks injunctive and monetary relief under 42 U.S.C. § 1983. (Doc. 1). He asserts causes of action against various SCI-Frackville staff: Superintendent Kathy Brittain, Deputy Superintendents Lori White and J. Meintel, Major Nathan Wynder, Captain Robert Reese, and Corrections Officer ("CO") Cory Warford. (Doc. 1, at 1).

On June 12, 2020, Defendants moved to dismiss the complaint pursuant to Federal Rule of Procedure 12(b). (Doc. 19). For the reasons discussed herein, the Court recommends the motion be **GRANTED IN PART** and **DENIED IN PART**.

I. BACKGROUND AND PROCEDURAL HISTORY

Byrd's lawsuit arises from an allegation that CO Warford poisoned Byrd's food. The following facts are drawn from Byrd's Complaint, the allegations of which the Court must presume are true for purposes of recommending a disposition on Defendants' motion to dismiss. *See Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994).

Byrd asserts that in 2018, during the Department of Corrections' statewide lockdown on its correctional institutions, Byrd became ill after eating food provided by CO Warford. (Doc. 1, at 4). After he ate from the food tray provided by CO Warford, Byrd "started feeling an intense burning sensation inside of my stomach and upper-chest that was very painful." (Doc. 1, at 4). The next morning, Byrd informed a Lieutenant "that CO Warford had poisoned by food-tray through the unlawful use of some kind of chemical substance." (Doc. 1, at 4-5). Over the next three days, Byrd told two nurses that CO Warford had poisoned his food tray. (Doc. 1, at 4-5).

On September 8, 2018, Byrd signed up for sick call and told a facility nurse that CO Warford had poisoned his food tray with a chemical substance. (Doc. 1, at 5). The nurse indicated that Byrd would be seen by a doctor the next day, but on September 9, 2018, another nurse came and told Byrd to put in a sick-call slip. (Doc. 1, at 5). On September 10, 2018, Byrd sent in a sick-call slip, though he "believed that the staff was trying to cover-up how CO Warford had poisoned my food-tray and so I feared to follow-up on being seen by a doctor after what CO Warford did to me." (Doc. 1, at 5).

On September 21, 2018, having not received a response to his sick-call request slip, Byrd filed an official inmate grievance numbered 760230. (Doc. 1, at 5). The unit manager, Ms. Pawling, spoke with Captain Reese about the issue and said that Captain Reese could not identify CO Warford on video footage. (Doc. 1, at 7). On October 10, 2018, Byrd's initial grievance was denied, on October 17, 2018, his second level appeal to Superintendent Brittain was denied, and on November 2, 2018, his final appeal to the central office was denied. (Doc. 1, at 7).

In filing this lawsuit, Byrd seeks "to hold CO Cory Warford liable for subjecting the

Plaintiff to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution," and "to hold the prison administrators liable because they acquiesced and were deliberately indifferent to the Eighth Amendment Constitutional Violation of Plaintiff's right to be free from cruel and unusual punishment," because they "ignored and failed to follow and enforce the policies of the Department of Corrections with the knowledge that CO Warford stood accused of poisoning the Plaintiff's food-tray through the unlawful use of a chemical substance." (Doc. 1, at 8-9).

II. DISCUSSION

A. LEGAL STANDARDS

1. Rule 12(b)(6)

Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes a defendant to move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To assess the sufficiency of a complaint on a Rule 12(b)(6) motion, a court must first take note of the elements a plaintiff must plead to state a claim, then identify mere conclusions which are not entitled to the assumption of truth, and finally determine whether the complaint's factual allegations, taken as true, could plausibly satisfy the elements of the legal claim. *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 221 (3d Cir. 2011). In deciding a Rule 12(b)(6) motion, the court may consider the facts alleged on the face of the complaint, as well as "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

After recognizing the required elements which make up the legal claim, a court should "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The plaintiff

must provide some factual ground for relief, which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Thus, courts "need not credit a complaint's 'bald assertions' or 'legal conclusions' . . . ." *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (quoting *In re Burlington Coat Factory Securities Litigation*, 114 F.3d 1410, 1429-30 (3d Cir. 1997)). Nor need the court assume that a plaintiff can prove facts that the plaintiff has not alleged. *Associated Gen. Contractors of Cal. v. California State Council of Carpenters*, 459 U.S. 519, 526 (1983).

A court must then determine whether the well-pleaded factual allegations give rise to a plausible claim for relief. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Palakovic v. Wetzel*, 854 F.3d 209, 219-20 (3d Cir. 2017) (quoting *Iqbal*, 556 U.S. at 678) (internal quotation marks omitted); *see also Sheridan v. NGK Metals Corp.*, 609 F.3d 239, 262 n.27 (3d Cir. 2010). The court must accept as true all allegations in the complaint, and any reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. *Jordan*, 20 F.3d at 1261. This "presumption of truth attaches only to those allegations for which there is sufficient factual matter to render them plausible on their face." *Schuchardt v. President of the United States*, 839 F.3d 336, 347 (3d Cir. 2016) (internal quotation and citation omitted). The plausibility determination is context-specific and does not impose a heightened pleading requirement. *Schuchardt*, 839 F.3d at 347.

Additionally, Federal Rule of Civil Procedure 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Thus, a well-pleaded complaint must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation, set forth in a "short and plain" statement of a cause of action. There is no requirement that the pleading be specific or probable. *Schuchardt*, 839 F.3d at 347 (*citing Phillips v. County of Allegheny*, 515 F.3d at 224, 233-234 (3d Cir. 2008). Rule 8(a) requires a "showing that 'the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007) (quoting Fed. R. Civ. P. 8(a)(2)); *see also Phillips*, 515 F.3d at 233 (citing *Twombly*, 550 U.S. at 545).

With the aforementioned standards in mind, a document filed *pro se* is "to be liberally construed." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). A *pro se* complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). Further, the Third Circuit has instructed that if a complaint is vulnerable to dismissal for failure to state a claim, the district court must permit a curative amendment, unless an amendment would be inequitable or futile. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002).

2. Section 1983

Byrd brings his claims pursuant to 42 U.S.C. § 1983. (Doc. 1, at 1, 11). Section 1983 provides a private cause of action with respect to violations of federal constitutional rights. The statute provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .
>
> 42 U.S.C. § 1983.

Section 1983 does not create substantive rights, but instead provides remedies for rights established elsewhere. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985). To state a § 1983 claim, a plaintiff must demonstrate that the defendants, acting under color of state law, deprived the plaintiff of a right secured by the Constitution or laws of the United States. *Kach v. Hose,* 589 F.3d 626, 646 (3d Cir.2009). To show that a defendant acted under color of state law, the plaintiff must establish that the defendant is a "state actor" under the Fourteenth Amendment. *Benn v. Universal Health Systems, Inc.*, 271 F.3d 165, 169 n. 1 (3d Cir. 2004). Defendants do not contest that they are state actors, thus it is undisputed that they may be held liable pursuant to 42 U.S.C. § 1983 if Byrd sufficiently alleges that they deprived him of his Eighth Amendment rights.

B. BYRD STATES A VALID CLAIM THAT DEFENDANT WARFORD VIOLATED HIS EIGHTH AMENDMENT RIGHTS.

Byrd asserts that CO Warford poisoned his food tray in violation of his Eighth Amendment rights to be free from excessive force. Defendants submit that Byrd's claim against Warford should be dismissed because he fails to allege facts demonstrating Warford intentionally poisoned his food tray. (Doc. 24, at 6). Defendants state that Byrd alleges only that Warford served him food from the bottom of a stack of food trays, and that the food caused him injury. (Doc. 24, at 6-7). "His conclusory allegation that CO Warford

intentionally poisoned the food tray is bereft of any supporting factual allegations."[1] (Doc. 24, at 7) (quoting *Byrd v. Brittain*, 2019 WL 7597245, at *10 (M.D. Pa. 2019)).

The Eighth Amendment's prohibition on cruel and unusual punishment has been interpreted "both to bar prison officials from using excessive force against inmates . . . and to impose affirmative duties on prison officials to provide humane conditions of confinement." *Young v. Martin*, 801 F.3d 172, 177 (3d Cir. 2015) (internal quotations and citation omitted). Though courts generally apply the conditions-of-confinement legal framework to prisoners' allegations of inadvertent food poisoning, such as salmonella or inedible objects in food, *see, e.g.*, *Robinson v. Danberg*, 673 F. App'x 205, 213 (3d Cir. 2016); *Wesley v. Varand*, 505 F. App'x 91, 94 (3d Cir. 2012); *Ali v. Suchocki*, 254 F. App'x 143, 145 (3d Cir. 2007), allegations of intentional poisoning call for the excessive force framework. *Lisle v. Senor*-Moore, 2019 WL

[1] Defendants utilize a previous case before the Court in which Byrd brought claims which included ones arising from the same allegations as those underlying this lawsuit. (Doc. 24, at 1-2, 6-7) (citing *Byrd v. Brittain*, 2019 WL 7597245 (M.D. Pa. 2019)). According to the Defendants, the claim in the prior lawsuit was "identical" to the claim in this one. (Doc. 24, at 1-2). They submit that this claim should be dismissed for the same reasons that it was dismissed in the previous case, that is that Byrd's "conclusory allegation that CO Warford intentionally poisoned the food tray is bereft of any supporting factual allegations." (Doc. 24, at 1-2, 6-7) (quoting *Byrd*, 2019 WL 7597245 at *10).

However, Defendants' reasoning is flawed because they rely on a Report and Recommendation that was rejected in part by the District Court. (Doc. 24, at 1-2, 6-7) (citing *Byrd v. Brittain*, 2019 WL 7597245); *see Byrd v. Brittain*, 2020 WL 247172 (M.D. Pa. 2020). The District Court dismissed Byrd's poisoning claim not because of the inadequacy of his pleading (though the Court inferred that the allegations were not sufficiently detailed), but because it did not share a common set of facts or questions of law with his other claims. *Byrd*, 2020 WL 247172, at *3. The Court dismissed Byrd's poisoning claim "without prejudice to filing a *separate* lawsuit—alleging a more clear and factually-detailed claim—regarding his food poisoning complaint." *Byrd*, 2020 WL 247172, at *3. Additionally, the Court explained that if Byrd "is alleging someone intentionally poisoned him—and can allege adequate facts to support this theory—then his claim may survive 12(b)(6)." *Byrd*, 2020 WL 247172, at *3. The Court examines Byrd's instant complaint, therefore, independent and separate from the previous case.

1282000, at *2-3 (S.D. Ill. 2019); *Adams v. Tennessee Dept. of Corrections*, 2012 WL 3402174, at *4 (M.D. Tenn. 2012). When food has been inadvertently contaminated, even with substances such as glass or bullet fragments, the *conditions* of the prison environment are at issue and the inquiry is whether the defendant had a sufficiently culpable state of mind as to the nature of those conditions and took appropriate measures to remedy them. *See, e.g., Wesley*, 505 F. App'x at 94 (examining Eighth Amendment applicability upon bullet casings inadvertently tainting inmate's food). When the contamination is intentional, however, the affirmative conduct, or force, done unto the plaintiff calls for an analysis of excessive force.

The crux of an excessive force claim is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Brooks v. Kyler*, 204 F.3d 102, 106 (3d Cir. 2000). Courts consider five factors in analyzing the defendant's intent: "(1) the need for the application of force; (2) the relationship between the need and the amount of force that was used; (3) the extent of the injury inflicted; (4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by responsible officials on the basis of facts known to them; and (5) any efforts made to temper the severity of the forceful response." *Smith v. Mensinger*, 293 F.3d 641, 649 (3d Cir. 2002).

"When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated … whether or not significant injury is evident." *Hudson v. McMillian*, 503 U.S. 1, 6 (1992). Intentionally tampering with an inmate's food so as to cause injury upon the inmate eating it constitutes excessive force. *Adams,* 2012 WL 3402174, at *4. This Court has previously held that a correctional officer who one time spat in an inmate's food could be held liable for an Eighth Amendment violation. *Williams v. Klem*, 2011 WL 2970303, at *1, 4, 11 n. 2 (M.D. Pa. 2011); *see also*

v. Medden, 2006 WL 456274, at *24 (E.D. Pa. 2006) (holding that a plaintiff may be able to prove facts demonstrating unconstitutional conduct upon alleging that defendants placed something in his food to make him urinate).

The case at bar goes beyond spitting or placing diuretics in food. Byrd alleges that Warford poisoned his food, resulting in "an intense burning sensation inside of my stomach and upper-chest that was very painful." (Doc. 1, at 4). This pain allegedly lasted for ten days. (Doc. 1, at 5). Byrd's allegations that Warford took "about five to ten minutes when [he] only had to walk a short distance to the front of the wing to get the food-trays," that Warford "gave me the food-tray that he had placed on the bottom" of the food-tray stack, that he began feeling the burning sensation after having eaten the food on the tray that Warford had given him, and that Byrd informed multiple individuals that Warford "had poisoned my food-tray," are sufficiently specific to raise a reasonable implication that Warford intentionally poisoned Byrd's food. (Doc. 1, at 4-5); *see Jordan,* 20 F.3d at 1261 (any reasonable implications that can be drawn from the complaint's allegations are to be construed in the light most favorable to the plaintiff). According to the Complaint, there was no disciplinary need for such force, the extent of Byrd's injury was not insignificant, Byrd posed no threat to the prison community, and Warford made no efforts to temper the severity of Byrd's injury. (Doc. 1, at 4-5). Thus, the factors delineated in *Smith* clearly weigh in favor of Byrd. *See Smith*, 293 F.3d at 649.

For these reasons, it shall be recommended that Defendants' Motion to Dismiss be **DENIED** as to Defendant Warford. (Doc. 19).

C. BYRD FAILS TO STATE A CLAIM AGAINST THE SUPERVISORY DEFENDANTS.

Byrd's claim against Brittain, Meintel, Reese, White, and Wynder ("Supervisory Defendants") arise from their alleged failure "to follow and enforce the policies of the

Department of Corrections with the knowledge that CO Warford stood accused of poisoning the Plaintiff's food-tray through the unlawful use of a chemical substance." (Doc. 1, at 8-9). Byrd alleges that on September 21, 2018, he filed an official grievance regarding the alleged poisoning incident. (Doc. 1, at 5). He further contends that the facility manager must review every use of force incident and may go on to request that the office of the secretary conduct an investigation. (Doc. 1, at 6). Byrd alleges that after he filed his grievance, "all subsequent procedures [were] to be conducted at the initiative of the [Supervisory Defendants]." (Doc. 1, at 6). Byrd alleges that after he submitted his complaint of abuse, the Supervisory Defendants were required to investigate and compose a report per Department of Corrections policy. (Doc. 1, at 6-7). "However, the prison administrators never followed the required procedures in order to cover-up how their colleague has poisoned Plaintiff's food-tray…" (Doc. 1, at 7).

Defendants assert that Byrd's claim against the remaining Defendants should be dismissed because Byrd fails to allege facts indicating they were personally involved in an alleged Eighth Amendment violation. (Doc. 24, at 8). Defendants submit the Supervisory Defendants were allegedly involved only to the extent that they failed to "follow the required procedures" after Byrd filed a grievance pertaining to Warford's conduct. (Doc. 24, at 8) (quoting Doc. 1, at 7). Personal involvement which is limited to "participation in the 'after-the-fact' review of a grievance" is insufficient for § 1983 liability, according to Defendants. (Doc. 24, at 8). Additionally, Defendants assert that Byrd cannot allege an *ongoing* violation when he claims only an isolated incident of food poisoning. (Doc. 24, at 8).

It is well-established that inmates have no constitutionally protected right to a grievance procedure. *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 137-38 (1977). The right of inmates to seek investigation of their grievances is limited to their right of

access to the courts. *Hakala v. Klem*, 2009 WL 3852787, at *5 (M.D. Pa. 2009). "The failure to favorably address, respond to and/or investigate a grievance, as well as the denial of a grievance appeal do not implicate a constitutional right." *Hakala*, 2009 WL 3852787, at *5.

Taking his allegations as true, Byrd fails to state a claim that the Supervisory Defendants violated his constitutional rights. *See Jones*, 433 U.S. at 137-38. Byrd has no constitutional right to a grievance procedure; the Department of Corrections policy is in place as a threshold to accessing the courts. *See Jones*, 433 U.S. at 137-38. His claim against the Supervisory Defendants arises from their alleged failure to investigate his report of Warford conduct. (Doc. 1, at 5-7). Their failure to investigate or respond to Byrd's report does not implicate a constitutional right. *See Hakala*, 2009 WL 3852787, at *5. Therefore, it is recommended that Defendants' Motion to Dismiss be **GRANTED** as to the Supervisory Defendants. (Doc. 19).

A. LEAVE TO AMEND

The Third Circuit has instructed that if a complaint is vulnerable to dismissal for failure to state a claim, the district court must permit a curative amendment, unless an amendment would be inequitable or futile. *Grayson v. Mayview State Hosp*, 293 F.3d 103, 108 (3d Cir. 2002). Accordingly, it is recommended that Byrd be given the opportunity to submit a final pleading that is complete in all respects. The amended complaint must be a pleading that **stands by itself without reference to earlier pleadings.** *Young v. Keohane*, 809 F. Supp. 1185, 1198 (M.D. Pa. 1992). The amended complaint must also specify, in a coherent fashion, how each individual Defendant contributed to the allegations giving rise to the complaint. **Any previously-asserted claims that Byrd omits from the forthcoming amended complaint, including his Eighth Amendment claim against Defendant Warford, will be deemed**

abandoned. If he so chooses, Byrd may elect not to file an amended complaint, in which case the lawsuit will proceed according to the Court's disposition of the current complaint.

III. RECOMMENDATION

Based on the foregoing, it is recommended that Defendants' Motion to Dismiss is **GRANTED** as to Defendants Kathy Brittain, J. Meintel, Robert Reese, Lori White, and Nathan Wynder, and that Plaintiff's claim against the aforementioned Defendants be **DISMISSED WITHOUT PREJUDICE**. (Doc. 19). It is recommended that Defendants' Motion to Dismiss is **DENIED** as to Defendant Cory Warford. (Doc. 19). It is further recommended that Plaintiff be given **THIRTY (30) DAYS** leave to amend his complaint, and that the matter be remanded to the undersigned for further proceedings.

BY THE COURT:

Dated: December 2, 2020

s/ Karoline Mehalchick

KAROLINE MEHALCHICK
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

HADDRICK BYRD, Plaintiff, v. SUPERINTENDENT BRITTAIN, et al., Defendants.	CIVIL ACTION NO. 3:20-CV-0164 (RAMBO, J.) (MEHALCHICK, M.J.)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing **Report and Recommendation** dated **December 2, 2020**. Any party may obtain a review of the Report and Recommendation pursuant to Rule 72.3, which provides:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Dated: December 2, 2020

s/ Karoline Mehalchick
KAROLINE MEHALCHICK
United States Magistrate Judge