

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JOHNNIE D. COOK

Plaintiff

v.

MANSFIELD CORRECTIONAL
INSTITUTION

Defendant

Case No. 2007-06080-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Johnny D. Cook, an inmate incarcerated at defendant, Mansfield Correctional Institution (“ManCI”), filed this complaint alleging he was assaulted by ManCI employees on April 15, 2006, and suffered resulting personal injury. Plaintiff seeks damages in the amount of \$2,500.00 for “physical anguish, mental anguish,” and “sharp pain constantly in my elbow from the injury.”

{¶ 2} Plaintiff states he was struck in the elbow with a flashlight by ManCI employee, Correction Officer Wolford. According to plaintiff, the flashlight was given to Correction Officer Wolford by ManCI employee, Correction Officer Swank. Plaintiff recalls that after he was struck he was “seen by shift supervisor Lt. Minard who order that a incident report be filed and that I be clinic checked.” Plaintiff relates, “I was then admitted to the infirmary due from the injurys I substain during the assault.”

{¶ 3} Defendant disputes plaintiff’s recollection of the April 15, 2006 incident. Defendant asserts that on the day of the incident, plaintiff, “stuck his arm out of his cell through the food slot in the door, as the Officer Swank was passing by the cell.” Defendant maintains plaintiff stuck his arm out of the cell door food slot in an attempt to grab C/O Swank’s keys. In an Incident Report compiled on June 11, 2007, C/O Swank

noted, "I had used force on (inmate) Cook 368-359 due to his inappropriate behavior *** I put (plaintiff's) arm back in the food slot using a technique." Defendant relates that during the April 15, 2006 incident, plaintiff "had both arms out of the cell" and C/O Wolford had to help C/O Swank in "putting" plaintiff's arms "back into the cell and securing the food port." Defendant specifically denies any ManCI employee struck plaintiff with a flashlight at any time during the April 15, 2006 incident. Defendant acknowledges that after the described events plaintiff was taken to the ManCI infirmary "for a physical evaluation and screening for injuries." Defendant observes plaintiff's visible injuries were confined to three bruises on his left arm. According to the April 15, 2006 "Medical Exam Report" (copy submitted) a bruise on plaintiff's right arm was noted along with the three bruises on his left arm. Additionally, it was noted plaintiff claimed he could not move his left arm and he was placed in the infirmary for medical observation to evaluate any arm movement. The examining ManCI nurse who assessed plaintiff's condition recorded the "[b]ruises do not warrant inability to use arm."

{¶ 4} In his complaint plaintiff contended that defendant pursuant to institutional rule had a duty to follow certain procedures in reporting and investigating the use of force incidents such as the particular incident that occurred on April 15, 2006. Plaintiff further contended under the administrative rule procedure he should have been interviewed by defendant's Use of Force Committee regarding the April 15, 2006 use of force incident within twenty working days of such incident. Plaintiff explains he was never interviewed by a Use of Force Committee up to the time he filed this complaint. Plaintiff asserts defendant, by not following applicable administrative rules, has violated his rights and consequently caused him to suffer damages

{¶ 5} On April 28, 2006, defendant responded to a grievance filed by plaintiff on

April 20, 2006 regarding the April 15, 2006 use of force incident in which plaintiff alleged he was struck on the elbow with a flashlight, had his arm twisted and had his finger grabbed in an attempt to break it. In the April 28, 2006 Disposition of Grievance (copy submitted), defendant's Inspector of Institutional Services, Sharon Berry, advised plaintiff that the matter grieved "has been referred to a Use of Force Committee for further investigation." Berry further advised plaintiff that he would "be given the opportunity to talk to the committee and give them your evidence concerning the incident." Berry concluded defendant's internal administrative regulations had been followed in respect to the use of force matter in accordance with the provisions of the Ohio Administrative Code section 5120-9-02 (use of force report and investigations).

{¶ 6} Defendant points out the procedure for reporting and investigating use of force incidents involving inmates is outlined in Ohio Adm. Code 5120-9-02 (copy appended to this determination). In regard to the instant claim, defendant relates "use of force reports were apparently prepared and the matter referred for investigation," but the investigation was not completed. Defendant is unsure or unclear what happened to curtail the investigation. Defendant suggests the "materials pertaining to this investigation were misplaced or misfiled." Defendant contends plaintiff first complained about the failure to proceed with the use of force investigation in late May 2007 approximately fourteen months after the April 2006 incident. Defendant submitted two grievances from plaintiff dated April 18, 2006 and April 27, 2006 (copies filed) wherein plaintiff requested defendant review the use of force incident. The response to these grievances (dated April 28, 2006) was that the matter was being investigated. In May 2007, plaintiff again filed grievances (copies submitted) regarding the process of the investigation regarding the April 15, 2006 use of force incident. The June 7, 2007 response from ManCI inspector Berry advised plaintiff that ManCI Warden Stuart Hudson had authorized a new use of force investigation including interviews with all parties involved.

{¶ 7} In August 2007, a new investigation was completed and the conclusion of the Use of Force Committee was that the use of force against plaintiff on May 15, 2006 was "justified and not excessive." Although acknowledging plaintiff was delayed, defendant argues the delay did not result in any recoverable loss to plaintiff. Defendant

contends plaintiff has not “provided any basis for his claimed damages” in connection with a delayed investigation of the April 15, 2006 use of force incident.

{¶ 8} Defendant’s Use of Force Committee conducted an investigation of the April 15, 2006 incident, issued findings and an accompanying report (all documents submitted) on August 7, 2007. In the Use of Force Committee Report, the following narrative summary was recorded: “As C/O Swank was doing a security check inmate Cook popped his food slot open and put his hand and arm out of the slot. C/O Swank gave Cook direct orders to put his arm back into the food slot, but he would not. C/O Swank then tried a technique on Cooks’ arm to get it back into the food slot, but Cook fought him off. C/O Wolford came and assisted C/O Swank in getting Cooks’ arm back into the slot. Lt. Minard was called in and Cook was clinic checked.” Based on the investigation including obtaining statements from all involved parties, the Use of Force Committee concluded, “the least amount of force was used to contain this incident (and) [t]he force was not excessive and therefore justified in accordance with (internal rules and regulations).”

{¶ 9} The Use of Force Committee Report contained witness statements from plaintiff, C/O D. Swank, and C/O Roxanne Wolford. All of these written statements regarding the various parties recollection of the April 15, 2006 incident were part of the claim file. The statements were compiled on July 31, 2007 and August 1, 2007, respectively, more than fifteen months from the date of the incident forming the basis of this claim.

{¶ 10} In his statement, plaintiff recalled he had one arm sticking out of the food slot of his cell when C/O Swank walked by the cell. Plaintiff stated, “C/O Swank started twisting my left arm without giving a direct order to cuff up or pull my hands back in the cell.” At approximately the same time, according to plaintiff, his left little finger was grabbed by C/O Wolford and he was struck in the left elbow with a small flashlight. Plaintiff related that after being grabbed and struck he voluntarily pulled his arm back from the food slot into his cell.

{¶ 11} The recollection of C/O Swank regarding the events of April 15, 2006 differed from those of plaintiff. Swank noted that plaintiff was “trying to grab my keys through the food slot (and) I used a technique to place his arm back in the food slot.” Swank related, “[w]hen I got his (plaintiff’s) one arm in the slot he then stuck his other arm out.” Upon observing this behavior, Swank reported he called for Lt. Minard who came to the scene and got plaintiff to pull his arm back through the food slot into the cell.

{¶ 12} C/O Roxanne Wolford drafted a statement pointing out that she assisted C/O Swank in putting plaintiff’s arm back through the food slot. Wolford remembered observing plaintiff trying to grab C/O Swank’s keys and both she and Swank then “used a technique to get (plaintiff’s) arm back in the slot.”

{¶ 13} Plaintiff filed a response admitting he stuck his arm out of the cell food slot, but seemingly denied he was reaching for or was trying to grab C/O Swank’s keys. Plaintiff maintains all of defendant’s personnel lied about the April 15, 2006 incident and subsequent investigation. Plaintiff implies the use of force against him was not justified and he has not only suffered damages from his arm bruises, but has also suffered from the delayed investigation conducted by defendant. Plaintiff acknowledges he had his arm out of the food slot immediately before C/O Swank forced his arm back into his cell. Plaintiff states C/O Swank “was highly upset because other inmates (were) yelling and cursing at him and I was laughing.” Plaintiff asserted he was “attacked” due to the fact he was laughing at verbal abuse being directed at C/O Swank.

{¶ 14} In order for plaintiff to prevail upon his claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, 788 N.E. 2d 1088, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707. Additionally, Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners’ health, care and well-being. *Clements v. Heston* (1985), 20 Ohio App. 3d 132, 136, 20 OBR 166, 485 N.E. 2d 287. The Ohio Administrative Code sets forth the circumstances under which C/O’s are authorized to use force against an inmate. Ohio Adm. Code 5120-9-01 provides:

{¶ 15} “(A) As the legal custodians of a large number of inmates, some of whom are dangerous, prison officials and employees are confronted with situations in which it is necessary to use force to control inmates. This rule identifies the circumstances when force may be used lawfully.

{¶ 16} “(B) As used in this rule and rule 5120-9-02 of the Administrative Code:

{¶ 17} “(1) ‘Excessive force’ means an application of force which, either by the type of force employed, or the extent to which such force is employed, exceeds that force which is reasonably necessary under all the circumstances surrounding the incident.

{¶ 18} “(2) ‘Force’ means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

{¶ 19} ***

{¶ 20} “(C) There are six general situations in which a staff member may legally use force against an inmate:

{¶ 21} “(1) Self-defense from an assault by an inmate;

{¶ 22} “(2) Defense of third persons, such as other employees, inmates, or visitors, from an assault by an inmate;

{¶ 23} “(3) Controlling or subduing an inmate who refuses to obey prison rules and regulations;

{¶ 24} “(4) Prevention of crime, such as malicious destruction of state property or prison riot;

{¶ 25} “(5) Prevention of escape; and

{¶ 26} “(6) Controlling an inmate to prevent self-inflicted harm;

{¶ 27} ***

{¶ 28} “(D) Force or physical harm to persons shall not be used as prison punishment. This paragraph shall not be construed to affect or limit the disciplinary measures authorized in rules 5120-9-06 and 5120-9-07 of the Administrative Code.

{¶ 29} “(E) The superintendent, administrator, or staff member of a correctional institution is authorized to use force, other than deadly force, when and to the extent he reasonably believes that such force is necessary to enforce the lawful rules and regulations of the institution and to control violent behavior.”

{¶ 30} Ohio Adm. Code 5120-9-01(C)(3) authorizes defendant’s staff to control or subdue inmates who refuse to obey prison rules or regulations. Ohio Adm. Code 5120-9-01(C)(4) gives institution personnel the right to use force to prevent a crime, including the destruction of state property. This court has previously observed that “corrections officers have a privilege to use force upon inmates under certain conditions. *** However, such force must be used in the performance of official duties and cannot exceed the amount of force which is reasonably necessary under the circumstances. *** Force may be used to control or subdue an inmate in order to enforce the institution’s rules and regulations. *** Obviously, ‘the use of force is a reality of prison life’ and the precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer. ***” *Mason v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc. 2d 96, 101-102, 593 N.E. 2d 482. (Citations omitted.)

{¶ 31} It appears plaintiff did suffer minor injuries (three bruises) from the April 15, 2006 use of force incident which involved pushing his arm back through the cell food slot. The issue, however, is whether or not the use of force was lawful under the circumstances. Based on the evidence provided, the court determines there was adequate justification for the use of force against plaintiff. Evidence has shown plaintiff violated institution rules by sticking his arm through the cell food slot. Furthermore, evidence has shown defendant’s acts were justified due to plaintiff’s attempt to grab C/O Swank’s keys.

{¶ 32} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness’s testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. The court finds defendant’s statements more credible than plaintiff’s regarding the reasons that force was used.

{¶ 33} Additionally, the court finds plaintiff has failed to present any persuasive argument that he was damaged by the delay by defendant in investigation

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the April 15, 2006 use of force incident. Plaintiff has proven no basis for any entitlement to damages because of the delay. Plaintiff's claim is denied in its entirety.



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{¶ 39} JOHNNIE D. COOK

Case No. 2007-06080-AD

{¶ 40} Plaintiff

{¶ 45} Deputy Clerk Daniel R.
Borchert

{¶ 41} v.

{¶ 42} MANSFIELD
CORRECTIONAL INSTITUTION

{¶ 46} ENTRY OF
ADMINISTRATIVE
DETERMINATION

{¶ 43} Defendant

{¶ 44}

{¶ 47} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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ADDENDUM

Ohio Administrative Code Section 5120-9-02 - Use of force report and investigation.

(A) Following any reported use of force, the shift supervisor shall ensure that the following reports have been completed:

(1) Each staff member who used force or who witnessed any part of the use of force shall complete an incident report which accurately and completely describes what he or she observed, what led up to the incident and what was done to resolve the matter, and what force was used by the staff member. The report form shall list the inmates on whom force was used, the staff members who used force and any staff, inmate or other witnesses known. The report shall be completed prior to the end of the shift, unless the staff member, for good cause, is unable to do so.

(2) The shift supervisor shall obtain a written statement from each inmate against whom force was used describing the inmate's version of the event, and identifying any witnesses to the event. This statement shall be taken as soon as possible after the incident. The shift supervisor shall determine what additional witness statements are needed and, in making this determination, shall take into consideration both the nature of the incident and any injuries received. The inmate may refuse to make such a statement, but shall make his refusal in writing and shall acknowledge that he knowingly waived his opportunity to make a statement.

(3) In the event that the inmate is placed in isolation and suspected of committing a criminal offense, the warden, warden's designee, or highest ranking official on site shall consult with the Ohio state highway patrol prior to interviewing the inmate to coordinate the administrative investigation with any criminal investigation.

(4) Medical staff shall examine all individuals upon whom force was used, and any individual who used force on an inmate. Medical staff shall prepare a written assessment of each individual examined. Whenever a person is injured and needs medical care a shift supervisor shall collect and report the names of staff and inmate witnesses. If the shift supervisor was directly involved in the force incident, statements shall be obtained by another supervisor not directly involved in the incident.

(5) The shift supervisor shall consider making a videotape or photographic record of any individual, whether staff or inmate, who was or claims to have been injured during the incident. In deciding to make such a record, the shift supervisor shall consider:

(a) The extent of the injuries;

(b) The nature of the incident, even if the individual is uninjured; and

(c) Whether the injury is visible or capable of being photographed.

(6) The record of injuries may be made at the time of the medical assessment if doing so will not interfere with or delay the delivery of necessary medical care. Such record must not include any medical information apart from a description or depiction of the injury.

(B) The shift supervisor shall prepare a packet containing each of the documents listed in this rule together with any other witness statements or information considered relevant. The shift supervisor shall prepare a report on the appropriate form to attach to the relevant documents referenced above. The shift supervisor shall deliver this packet to the deputy warden of operations, and/or other designee, as soon as all reports are completed and prior to the end of the shift.

(C) The deputy warden of operations shall review the use of force packet prepared by the shift supervisor. The deputy warden of operations may order or collect additional statements or other information as needed. The deputy warden shall determine the following:

(1) Are the factual circumstances described sufficiently in the record to enable an evaluation of the amount of force used;

(2) Are the factual circumstances of the situation in dispute;

(3) Was the type and amount of force appropriate for the circumstances as the deputy warden of operations believes them to have occurred;

(4) Was the type and amount of force reasonable under the circumstances as the responding staff perceived them; and

(5) Were applicable administrative rules, departmental policies, institution policies and post orders followed.

(D) The deputy warden of operations shall send his or her determinations as described above to the warden for review or further action. The warden may:

(1) Accept the findings of the deputy warden of operations;

(2) Direct that the deputy warden of operations or other appropriate staff conduct further inquiry into the situation;

(3) Refer the matter to a use of force committee; or,

(4) Refer the matter to the chief inspector, pursuant to paragraph (K) of this rule, for investigation.

(E) The warden may refer any use of force to the use of force committee at any time. The warden is required to refer the use of force for further inquiry by the use of force committee or chief inspector if any of the following apply:

(1) The factual circumstances are not described sufficiently in the record to enable an evaluation of the propriety of the amount of force utilized;

(2) The incident involved serious physical harm to any person;

(3) The incident constituted a significant disruption to the normal operation of the institution; or

(4) Weapons, PR-24 strikes, or less-lethal munitions were used during the incident, whether by staff or by inmates.

(F) The use of force committee shall consist of two persons assigned by the warden or designee. The task of the use of force committee is to conduct a review of the use of force incident and an investigation into the matters surrounding the incident. The committee shall not include any person involved with the incident under investigation, nor such person's direct supervisor, nor any person who reviewed some other aspect of the incident, such as the hearing officer or a member of the rules infraction board. The person appointed to chair this panel must complete training for that position.

(G) The use of force committee shall review all materials in the use of force packet and any findings previously made. The committee shall also interview each inmate and staff member directly involved, and any other witness it considers relevant. These interviews shall be completed within twenty working days of the date the matter was referred to the committee. Any extensions must be approved by the warden. All interviews shall be electronically recorded. The committee shall review any other evidence that it considers relevant.

(H) The committee shall complete its interviews within twenty working days after being assigned. The committee shall prepare a report in which it shall state its findings of fact and conclusions as to whether the level and degree of force used was appropriate for the circumstances. The committee shall submit to the warden its report, a summary of the statements received by it, the use of force packet, and any other information received by the committee, within thirty working days after being assigned. The warden must approve any request for an extension of the deadline.

(I) The warden shall review the record and report presented by the committee. If the warden believes that further investigation or clarification is necessary the warden may return the matter to the committee, another committee or persons, or the chief inspector for additional investigation or review. When the warden is satisfied that the matter has been thoroughly investigated, the warden shall take such actions as he or she deems appropriate.

(J) The warden shall send completed investigatory reports of an institutional use of force committee to the appropriate regional security administrator, following the warden's review. The warden shall supplement the report with any relevant information about other actions taken as a consequence of the conclusions of the report. The warden shall also send a copy of every use of force report packet that did not result in an investigation to the appropriate regional security administrator. The complete investigative record shall be stored in a secure area designated by the warden. All electronically recorded interviews shall be retained for a period of three years. A copy of the cover sheet and report prepared by the committee, minus any attachments, shall be placed in the offender's unit file and in the designated employee file.

(K) The chief inspector may initiate an investigation of a use of force incident either upon his or her own initiative or upon the request of the director, assistant director, regional director, or the warden of the institution in which the incident took place. In such cases the chief inspector may utilize other departmental staff to assist with the investigation or hearing as may be necessary or appropriate, notwithstanding other provisions of this rule to the contrary.