

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 22, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CLIFTON DODD,

Plaintiff,

v.

BRENT BORG and FRANK RIVERA,

Defendants.

No. 2:23-cv-00219-MKD

ORDER DISMISSING ACTION

1915(g)

BEFORE THE COURT is Plaintiff Clifton Dodd's First Amended Complaint, received on October 19, 2023. ECF No. 7. By Order entered September 19, 2023, the Court advised Plaintiff of the deficiencies of his initial complaint and directed him to amend or voluntarily dismiss. ECF No. 6. Plaintiff is currently incarcerated at the Airway Heights Corrections Center (AHCC) and is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

As a general rule, an amended complaint supersedes the original complaint and renders it without legal effect. *Lacey v. Maricopa County*, 693 F.3d 896, 927

1 (9th Cir. 2012). Therefore, “[a]ll causes of action alleged in an original complaint
2 which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814
3 F.2d 565, 567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811,
4 814 (9th Cir. 1981)), *overruled in part by Lacey*, 693 F.3d at 928 (any claims
5 voluntarily dismissed are considered to be waived if not repled). Reviewing the
6 First Amended Complaint in the light most favorable to Plaintiff, the Court finds that
7 Plaintiff has failed to cure the deficiencies of the initial complaint and the First
8 Amended Complaint does not state a claim upon which relief may be granted.

9 REVIEW OF FIRST AMENDED COMPLAINT

10 In his “Count I,” Plaintiff states that on February 9, 2023, Defendant SOTAP
11 Manager Borg “disseminated information to non-medical staff,” including a unit
12 officer, a counselor, and a hearing officer, allegedly in violation of Plaintiff’s
13 Fourteenth Amendment right to informational privacy. ECF No. 7 at 4. Plaintiff
14 contends that this caused his “wrongful termination from AHCC food factory,” as
15 well as “great emotional suffering,” humiliation, mental anguish, severe
16 embarrassment, and anxiety. *Id.* Plaintiff claims Defendant Borg made a
17 “misstatement of the ISRB recommendations in [Plaintiff’s] infraction report.” *Id.*
18 at 5. Plaintiff references several exhibits, but he does not state facts from which
19 the Court could infer that Defendant Borg violated his constitutionally protected
20 rights.

1 In “Count II,” Plaintiff accuses Defendant Associate Superintendent Frank
2 Rivera of violating his Fourteenth Amendment to equal protection. *Id.* at 10.
3 Plaintiff complains that at an Indeterminate Sentence Review Board meeting held
4 on May 23, 2023, Defendant Rivera failed to provide the board members with
5 “copies of the infraction report an non-confidential supporting documents[.]” *Id.*
6 (as written in original). Plaintiff states that this caused him “mental anguish,
7 anxiety and great emotional suffering and pain of the risk of penalty.” *Id.* at 11.

8 The Court can infer no constitutional violation from the facts presented. A
9 prisoner may not bring a civil action for emotional or mental injury that he suffered
10 while in custody without showing a physical injury. 42 U.S.C. § 1997e(e); *Oliver*
11 *v. Keller*, 289 F.3d 623, 630 (9th Cir. 2002). Although granted the opportunity to
12 do so, Plaintiff has presented no facts supporting such a showing.

13 Courts have generally found that prisoners’ rights to informational privacy in
14 their medical records, if any, arise under the Fourteenth Amendment. *See Seaton v.*
15 *Mayberg*, 610 F.3d 530, 537-39 (9th Cir. 2010) (recognizing an inmate’s limited
16 right to informational privacy of medical records under the Fourteenth rather than
17 the Fourth Amendment); *see also Birks v. Terhune*, 398 Fed. App’x 308, 309 (9th
18 Cir. 2010) (affirming dismissal of prisoner’s claim that a prison official breached a
19 duty of medical confidentiality, stating “prisoner’s privacy interest in medical
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1 treatment information yields to prisons’ interest in maintaining security”) (citing
2 *Seaton*, 610 F.3d at 534-35).

3 Here, Plaintiff does not assert a right to informational privacy in his medical
4 records. Rather, he asserts that on February 9, 2023, Defendant Borg “disseminated
5 information to non-medical staff,” allegedly in violation of Plaintiff’s Fourteenth
6 Amendment right to informational privacy, that resulted in Plaintiff’s termination
7 from his prisoner job and “great emotional suffering”. ECF No. 7 at 4. A prisoner,
8 however, has no federal constitutional liberty or property interest in prison
9 employment. *See Bauman v. Arizona Dep’t of Corrections*, 754 F.2d 841, 846 (9th
10 Cir. 1985) (denial of work and home furlough does not implicate constitutional
11 interests because there is no state created liberty interest).

12 In addition, state created liberty interests “will be generally limited to freedom
13 from restraint which, while not exceeding the sentence in such an unexpected
14 manner as to give rise to protection by the Due Process Clause . . . nonetheless
15 imposes atypical and significant hardship on the inmate in relation to the ordinary
16 incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995) (rejecting the
17 analysis set forth in *Hewitt v. Helms*, 459 U.S. 460 (1983), and holding that prisoner
18 has no liberty interest in avoiding thirty days of disciplinary segregation as
19 punishment for misconduct). The denial of a prison job does not “impose atypical
20 and significant hardship” on an inmate “in relation to the ordinary incidents of prison

1 life” and therefore under *Sandin* does not implicate a state created liberty interest.
2 Therefore, Plaintiff has failed to state a claim against Defendant Borg regarding the
3 dissemination of information that resulted in the termination of his prison
4 employment.

5 Further, Plaintiff’s assertion that Defendant Borg made a “misstatement of the
6 ISRB recommendations in [Plaintiff’s] infraction report” is insufficient to state a
7 cognizable claim. ECF No. 7 at 5. A prisoner has no constitutionally guaranteed
8 protection from being wrongly accused of conduct; rather, he has a constitutional
9 right not to be deprived of a protected liberty interest without due process. *See e.g.*,
10 *Freeman v. Rideout*, 808 F.2d 949, 951-52 (2d Cir. 1986). Again, the Court must
11 focus on the nature of the deprivation imposed when determining whether an inmate
12 is entitled to procedural due process protections. *Sandin*, 515 U.S. at 493. In other
13 words, it is not the false accusation, but rather the punishment, that could potentially
14 rise to the level of a constitutional violation.

15 The Due Process Clause is not implicated by every change in the conditions of
16 confinement, not even ones having a “substantial adverse impact” on the prisoners.
17 *Meachum v. Fano*, 427 U.S. 215, 224 (1976). Here, Plaintiff has alleged no facts
18 from which the Court could infer a due process claim against Defendant Borg under
19 *Sandin*, 515 U.S. at 493.

1 Finally, in the absence of any facts showing that Plaintiff was treated
2 differently than similarly situated persons, his conclusory assertion of an equal
3 protection violation against Defendant Rivera fails to state a claim upon which relief
4 may be granted. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439
5 (1985); *Fraley v. U.S. Bureau of Prisons*, 1 F.3d 924, 926 (9th Cir. 1993) (per
6 curiam); *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981). A failure to follow prison
7 policy does not establish a constitutional violation, *see Cousins v. Lockyer*, 568 F.3d
8 1063, 1070 (9th Cir. 2009), and state law claims do not confer federal subject matter
9 jurisdiction, *see Galen v. County of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007)
10 (“Section 1983 requires [plaintiff] to demonstrate a violation of federal law, not state
11 law.”).

12 The Court cautioned Plaintiff that if he chose to amend and the First Amended
13 Complaint failed to state a claim upon which relief may be granted then the First
14 Amended Complaint would be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2),
15 1915A(b)(1), and such dismissal would count as one of the dismissals under 28
16 U.S.C. § 1915(g). ECF No. 6 at 14. Having granted Plaintiff the opportunity to
17 amend or voluntarily dismiss this action and liberally construing his allegations in
18 the light most favorable to Plaintiff, the Court finds that the First Amended
19 Complaint, ECF No. 7, fails to state a claim upon which relief may be granted and
20 that further amendment would be futile.

1 Accordingly, this action is **DISMISSED** with prejudice for failure to state a
2 claim against Defendants upon which relief may be granted. 28 U.S.C. §§
3 1915A(b)(1) and 1915(e)(2).

4 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
5 brings three or more civil actions or appeals which are dismissed as frivolous or for
6 failure to state a claim will be precluded from bringing any other civil action or
7 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious
8 physical injury.” 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory**
9 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s action may**
10 **count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may**
11 **adversely affect his ability to file future claims *in forma pauperis*.**

12 Accordingly, **IT IS ORDERED:**

13 1. This action is **DISMISSED WITH PREJUDICE** for failure to state a
14 claim upon which relief may be granted under 28 U.S.C. §§ 1915A(b)(1) and
15 1915(e)(2).

16 2. The Court certifies that any appeal of this Order would not be taken in
17 good faith and would lack any arguable basis in law or fact.

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1 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
2 Order, enter judgment, provide copies to Plaintiff, and **CLOSE** the file. The
3 District Court Executive is further directed to provide a copy of this Order to the
4 Office of the Attorney General of Washington, Corrections Division.

5 **DATED** November 22, 2023.

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7 *s/Mary K. Dimke*
8 MARY K. DIMKE
9 UNITED STATES DISTRICT JUDGE
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