

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ACTORA MECONN BANKHEAD,)
)
Plaintiff,)
)
v.) No. 1:23-cv-02267-JPH-CSW
)
D. REAGLE,)
J. ERNEST,)
J. JACKSON,)
BROWN,)
)
Defendants.)

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff Actora Bankhead alleges that Warden Dennis Reagle, Lt. Johnathan Jackson, Captain Jason Ernest, and Sgt. Ashley Brown violated his Eighth Amendment rights by depriving him of regular out-of-cell recreation while he was in restricted housing at Pendleton Correctional Facility ("Pendleton"). Dkt. 1. Lt. Jackson, Cpt. Ernest, and Sgt. Brown ("Defendants") have moved for summary judgment. Dkt. [58].¹ For the reasons below, summary judgment is **DENIED**.

I. Preliminary Motions

A. Mr. Bankhead's Motion to Strike

On May 23, 2025, Mr. Bankhead filed a "Motion to Strike Defendants' Preliminary Witness List Naming Trent Allen as a Witness and Defendants' Motion for Summary Judgment's Exhibit A: Affidavit of Trent Allen." Dkt. 82. Mr.

¹ Warden Reagle has not moved for summary judgment.

Bankhead argues that Trent Allen, the current warden of Pendleton, is an improper witness because he was not the warden during the events in this lawsuit, which took place from June 2023 to December 2023. *Id.* at 2; dkt. 87-1 at 2–833 (G Cellhouse Logbooks). Mr. Bankhead contends that Warden Allen's affidavit is therefore also improper because it is not based on his personal knowledge. *Id.* Defendants respond that Warden Allen is competent to testify as a witness about events from 2023 because he has access to all the records maintained at Pendleton, including the logbooks for G Cellhouse, the restricted housing dorm where Mr. Bankhead resided. Dkt. 83; *see also* dkt. 83-1 (Allen Aff.). Defendants have also filed a motion for leave to file an amended witness list, which clarifies the topics of each witnesses' testimony. Dkt. 84; dkt. 84-1.

Affidavits in support of a motion for summary judgment "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Fed. R. Civ. P. 56(e). "[A]lthough personal knowledge may include reasonable inferences, those inferences must be grounded in observation or other first-hand personal experience. They must not be flights of fancy, speculations, hunches, intuitions, or rumors about matters remote from that experience." *Weaver v. Speedway, LLC*, 28 F.4th 816, 825 (7th Cir. 2022); *see also* Fed. R. Evid. 602.

Portions of Warden Allen's affidavit testify about events without explaining a basis for his personal knowledge. Specifically, paragraphs 13 through 24 describe the issues with staffing at Pendleton as they related to recreation in G

Cellhouse during the "relevant timeframe" in 2023. Dkt. 58-1 (Allen Aff.). The affidavit, however, states that "[a]t all times relevant, Defendant Dennis Reagle [] was Warden of Pendleton . . . I took over as Warden in January of 2024." *Id.* at 1 ¶ 2. And while Warden Allen says that he "[is] qualified to discuss and evaluate IDOC and Pendleton policies regarding prisoner out-of-cell recreation time [] including those pertaining to G cell house at Pendleton," that does not explain his qualifications from before he was warden. *Id.* at ¶ 3.

Warden Allen's supplemental affidavit adds that "[t]he statements made in my Affidavit signed on March 12, 2025, filed with Defendants' Motion for Summary Judgment as Exhibit A, were based on my review of records and policies available to me and on my personal knowledge as Warden of Pendleton." Dkt. 83-1 at 2 ¶ 5. Knowledge of general processes and policies supports Warden Allen's testimony in paragraphs 14, 15, 16, and 18 because those paragraphs describe general practices in escorting inmates during recreation time, and correctional officer assignments.

The supplemental affidavit does not explain, however, what personal knowledge—rather than speculation—could support the information in paragraphs 13, 17, and 19 through 24. These paragraphs address actual conditions in G Cellhouse in 2023 and draw conclusions about whether each Defendant followed policy and acted for the well-being of inmates housed in G Cellhouse. Thus, the Court **GRANTS** Mr. Bankhead's motion to strike, dkt. [82], to the extent that **the Court strikes paragraphs 13, 17, and 19 through 24 from Warden Allen's affidavit at Docket No. 58-1.**

The Court **DENIES** Mr. Bankhead's motion to strike Warden Trent Allen from the Defendants' preliminary witness list, dkt. [82], and **GRANTS** the Defendants' motion to file the amended preliminary witness list, dkt. [84]. The **clerk is directed** to re-docket the proposed amended witness list, dkt. [84-1], as the amended witness list.

B. Mr. Bankhead's Motion to Establish Damages and Defendants' Motion to Strike

On June 9, 2025, Mr. Bankhead filed a "motion to establish damages" describing his injuries and clarifying the kinds of damages he seeks. Dkt. 93. The Defendants responded by moving to strike Mr. Bankhead's motion as irrelevant and improper. Dkt. [99]. Mr. Bankhead's motion, dkt. [93], is **DENIED as unnecessary**. Mr. Bankhead is not required to file a motion to establish damages to clarify what he is seeking. Fed. R. Civ. P. 54(c); *see Joski v. Brown Cnty. Jail*, 2018 WL 4078388, at *5 (E.D. Wis. Aug. 27, 2018).

Defendants also moved to strike Mr. Bankhead's declaration regarding Warden Reagle's military service, which he filed in support of his motion for default judgment against Warden Reagle. Dkts. 91, 92, 99. Because Mr. Bankhead's motions regarding default have been denied, dkt. 105, Defendants' motion to strike, dkt. [99], is **GRANTED to the extent** that the **clerk is directed to strike dkt. [92]**. Mr. Bankhead's motion in opposition to the motion to strike is **DENIED**. Dkt. [101].

II. Motion for Summary Judgment

A motion for summary judgment asks the Court to find that a trial is unnecessary because there is no genuine dispute as to any material fact and,

instead, the movant is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(a). When reviewing a motion for summary judgment, the Court views the record and draws all reasonable inferences from it in the light most favorable to the nonmoving party. *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572–73 (7th Cir. 2021). It cannot weigh evidence or make credibility determinations on summary judgment because those tasks are left to the factfinder. *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014). A court only has to consider the materials cited by the parties, see Fed. R. Civ. P. 56(c)(3); it need not "scour the record" for evidence that might be relevant. *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 573–74 (7th Cir. 2017) (cleaned up).

A party seeking summary judgment must inform the district court of the basis for its motion and identify the record evidence it contends demonstrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Whether a party asserts that a fact is undisputed or genuinely disputed, the party must support the asserted fact by citing to particular parts of the record, including depositions, documents, or affidavits. Fed. R. Civ. P. 56(c)(1)(A). Failure to properly support a fact in opposition to a movant's factual assertion can result in the movant's fact being considered undisputed, and potentially in the grant of summary judgment. Fed. R. Civ. P. 56(e).

A. Factual Background

Because Defendants Lt. Jackson, Cpt. Ernest, and Sgt. Brown have moved for summary judgment under Rule 56(a), the Court views and recites the evidence in the light most favorable to the Plaintiff, Mr. Bankhead, and draws all

reasonable inferences in his favor. *Khungar*, 985 F.3d at 572–73. All facts are undisputed unless noted.

Mr. Bankhead was placed in restricted housing in G Cellhouse at the end of May 2023. See dkt. 58-2 (Bankhead Bed History). Cpt. Ernest, Lt. Jackson, and Sgt. Brown were assigned to G Cellhouse during this time. Dkt. 58-1 ¶¶ 10–12 (Allen Aff.). Cpt. Ernest was the Zone Captain, Lt. Jackson was housing unit Lieutenant, and Sgt. Brown was the Correctional Sergeant. Dkts. 58-5, 58-6. The cells in G Cellhouse do not have windows, air flow, or fans, and smell strongly of feces. Dkt. 87-1 at 906–07 (Bankhead Dep. at 27–28). Mr. Bankhead often did not have cleaning supplies to clean his cell. *Id.* at 920–25, 986 (Bankhead Dep. 4–46, 108).

During the events in this lawsuit, IDOC Policy and Administrative Procedure 01-03-105 provided that "[t]hose offenders in restrictive status housing or detention shall receive a minimum of one hour of exercise per day outside their cells, five days a week" and "[o]utdoor and covered/enclosed exercise areas are to be available to offenders in restrictive housing or detention units." Dkt. 58-3. Correctional officers in G Cellhouse must escort inmates to the outside designated areas and monitor them during recreation. Dkt. 58-1 ¶ 15 (Allen Aff.). At the same time, correctional officers must divide their time between multiple tasks, such as escorting inmates to and from showers. *Id.* at 3 ¶ 16. Thus, staff shortages interfere with correctional officers' ability to escort inmates to the recreation area. *Id.* at 4 ¶ 17. Lt. Jackson, Cpt. Ernest, and Sgt. Brown did not have control over scheduling staff in G Cellhouse. *Id.* at ¶ 18. Mr.

Bankhead disputes that staff shortages alone kept the Defendants from providing recreation on a regular basis. See dkt. 85; dkt. 87-1.

Between June and December of 2023, Mr. Bankhead did not have regular recreation under the IDOC policy. Mr. Bankhead testified that he "had words" with Cpt. Ernest three times about not receiving recreation and Cpt. Ernest told him to stop "crying" and being a "bitch." *Id.* at 933, 936, 940 (Bankhead Dep. at 54, 57, 61). Lt. Jackson was also present on the days that Mr. Bankhead did not receive recreation and he complained to him when no one else was available. *Id.* at 941-42 (Bankhead Dep. at 62-63). According to Mr. Bankhead, Lt. Jackson was "nonchalant." *Id.* at 942 (Bankhead Dep. at 63). Sgt. Brown did not work five days a week like Cpt. Ernest and Lt. Jackson, but she was the officer-in-charge of the cellhouse on the days she worked. *Id.* at 948, 957-60 (Bankhead Dep. at 69, 78-81). When Mr. Bankhead complained to Sgt. Brown about not having recreation, she told him that they were short of staff, that she had other things to deal with, or that she did not feel like it. *Id.* at 949, 964-65 (Bankhead Dep. at 70, 85-86). At times she would open the recreation door for herself but would not allow Mr. Bankhead and other inmates to access recreation. *Id.* at 951-52 (Bankhead Dep. at 72-73).

The daily logbooks designated by Mr. Bankhead document roughly when he had recreation and how many staff were on duty during that time. See dkt. 87-1 at 2-833 (G Cellhouse Logbooks). In June of 2023, Mr. Bankhead had recreation three times: on June 1, when six officers were working, *id.* at 3, on June 21, when seven officers were working, *id.* at 158, and on June 28, when

six officers were working, *id.* at 214. He did not have recreation on days when as few as four officers were working or as many as eight officers. *See e.g., id.* at 64, 102, 150. Sgt. Brown appears as staff on nine days in June, including June 21 and June 28 when Mr. Bankhead had recreation. *Id.* at 158, 214. Lt. Jackson appears four times under the "Visitors, Tours, Supervisors, Inspections, Etc." section. *Id.* at 89, 169, 201, 233. On June 20, a note indicates that Lt. Jackson cancelled recreation due to staffing. *Id.* at 150. On June 30, a day that Lt. Jackson appeared in "Visitors," recreation was marked as cancelled as well. *Id.* at 233–34.

In July, Mr. Bankhead had recreation three times: on July 7, when six officers were working, *id.* at 286, July 17, when seven officers were working, *id.* at 367, and July 26, when six officers were working, *id.* at 441. He did not have recreation on days where as few as three officers were working or as many as six officers. *See e.g., id.* at 254, 343, 429. Sgt. Brown worked seven days in July, including July 7 and July 17. *Id.* at 286, 369. Cpt. Ernest appears in the "Visitors" section on July 20. *Id.* at 400.

Only some August logbook entries are in the record. Mr. Bankhead may have had recreation on August 9 when five officers worked but did not have recreation on any of the other days in the record. *Id.* at 527. As many as seven officers worked on days that the inmates did not receive recreation. *See e.g., id.* at 563. Sgt. Brown worked on six of the days in the record and Lt. Jackson appears in the logbook on three days. *Id.* at 485–573.

In September, Mr. Bankhead had recreation three times: on September 2, when seven officers were working, *id.* at 579, September 6, when four officers were working *id.* at 592, and September 27, when five officers were working, *id.* at 658. He did not have recreation on days where as few as three officers were working or as many as seven officers. *See e.g., id.* at 610, 621, 631. Sgt. Brown worked on 12 days, including September 6. *Id.* at 592.

The record of the October logbook is incomplete and does not show any days where Mr. Bankhead had recreation. *Id.* at 669–718. As many as nine officers worked on the days that Mr. Bankhead did not receive recreation. *See, e.g., id.* at 693. Sgt. Brown is only marked as working four days. *Id.* at 679, 681, 693, 717.

There is no November logbook in the record. The December logbook does not show that Mr. Bankhead received recreation. *Id.* at 719–833. As many as nine officers worked on the days that Mr. Bankhead did not receive recreation. *See, e.g., id.* at 726. Sgt. Brown did not work in December. The logbook shows that "Captain Jackson" worked nine times.

In sum, Mr. Bankhead's evidence reflects that between June 1, 2023, and December 31, 2023, he had recreation 3 times per month in June, July, and September, and possibly once in August. The number of officers working on recreation days varied from four to seven.

Due to the lack of recreation, many of the inmates became suicidal and Mr. Bankhead's mental health deteriorated as the lack of exercise "did something to [him] inside," causing "dark thoughts." *See* dkt. 87-1 at 980 (Bankhead Dep.

at 101). The logbooks document multiple prisoner suicide attempts. Mr. Bankhead testified that nine inmates committed suicide during the time period. *Id.* at 967 (Bankhead Dep. at 88). Mr. Bankhead also testified that, in addition to mental anguish, the lack of exercise caused muscle weakness and pain, which he reported in August and September. Dkt. 86 at 5, 7 ¶¶ 34, 41–44; *see* dkt. 87-1 at 1034–47 (Grievances and Requests for Healthcare).

B. Analysis

Mr. Bankhead alleges that the Defendants violated his Eighth Amendment right against cruel and unusual punishment by depriving him of regular out-of-cell recreation from June 1, 2023, until December 31, 2023. The moving Defendants, Lt. Jackson, Cpt. Ernest, and Sgt. Brown, argue that they are entitled to summary judgment because (1) they are entitled to qualified immunity; (2) they were not personally involved in depriving Mr. Bankhead of recreation, and (3) Mr. Bankhead did not suffer any physical injuries.

1. Qualified Immunity

"[Q]ualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (quoting *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)). Although qualified immunity is an affirmative defense, plaintiffs have the burden of defeating it once defendants raise it. *Archer v. Chisolm*, 870 F.3d 603, 613 (7th Cir. 2017). To overcome qualified immunity, Mr. Bankhead "must show (1) that the official violated a statutory or constitutional right, and (2) that the right was

'clearly established' at the time of the challenged conduct." *Sabo v. Erickson*, 128 F.4th 836, 843 (7th Cir. 2025).

a. Violation of Constitutional Right

Eighth Amendment claims have both an objective and a subjective component. *Henderson v. Sheahan*, 196 F.3d 839, 845 (7th Cir. 1999) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). To satisfy the objective component, "the deprivation alleged must be, objectively, 'sufficiently serious.'" *Id.* Prison conditions are sufficiently serious when they "deprive inmates of the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). The Seventh Circuit has found that "a lack of exercise can rise to a constitutional violation." *Delaney v. DeTella*, 256 F.3d 679, 683 (7th Cir. 2001); *see also Wilson v. Seiter*, 501 U.S. 294, 304 (1991). This is especially true when the denial of recreation and exercise is prolonged and contributes to health issues. *See Delaney*, 256 F.3d at 683 (6-month deprivation of out-of-cell recreation could show Eighth Amendment violation); *Antonelli v. Sheahan*, 81 F.3d 1422, 1432 (7th Cir. 1996) ("Lack of exercise may rise to a constitutional violation in extreme and prolonged situations where movement is denied to the point that the inmate's health is threatened."); *French v. Owens*, 777 F.2d 1250, 1255 (7th Cir. 1985) (explaining that lack of exercise may rise to a constitutional violation in certain limited circumstances "where movement is denied and muscles are allowed to atrophy [and] the health of the individual is threatened").

Here, Mr. Bankhead has designated evidence that the deprivation was prolonged over six months and that it was extreme because the G Cellhouse

conditions made it so that the lack of out-of-cell recreation harmed his health. See dkt. 87-1 at 2–833. His cell did not have windows, air flow, or fans, and it smelled heavily of feces. See dkt. 87-1 at 906–07, 920–25, 986 (Bankhead Dep. at 4–46, 108). He also did not have adequate cleaning supplies to clean his cell. See *id.* Also, even though he was not completely deprived of *all* out-of-cell recreation in June, July, and September, his mental and physical health deteriorated, and he suffered muscle weakness and kept "having dark thoughts." *Id.* at 980; see dkt. 86 ¶¶ 34, 41–44; dkt. 87-1 at 1034–1047. There is therefore a triable issue of fact on the objective component.

To satisfy the subjective component, Mr. Bankhead must designate evidence that each defendant "was subjectively aware of and deliberately indifferent to" his serious need. *Munson v. Newbold*, 46 F.4th 678, 681 (7th Cir. 2022) ("The defendant must . . . have ignored a known risk."). Mr. Bankhead has designated evidence he told each Defendant that he needed recreation, see dkt. 87-1 at 933, 936–65 (Bankhead Dep. at 54, 57, 61–86), and that each Defendant worked consistently in G cellhouse, where they could see the serious adverse effects on inmates, including inmates becoming suicidal. See *id.* He has also designated evidence that each Defendant responded to his complaints without concern, or by calling him a "bitch," or by saying they would provide recreation when they felt like it. See *id.* There is therefore a triable issue of fact on the subjective component. See *Munson*, 46 F.4th at 681.

b. Whether the Right Was Clearly Defined

To overcome the qualified immunity defense, Mr. Bankhead must also show that the right was "clearly established" at the time the conduct occurred. *Sabo*, 128 F.4th at 843. To be "clearly established," a constitutional right "must have a sufficiently clear foundation in then-existing precedent." *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018). "Existing precedent must place the constitutional or statutory question beyond debate" so that "every reasonable official would understand that what he is doing is unlawful." *Sabo*, 128 F.4th at 844.

Clearly established law cannot be framed at a "high level of generality." *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). Doing so evades the crucial question of "whether the official acted reasonably in the particular circumstances that he or she faced." *Plumhoff v. Rickard*, 572 U.S. 765, 779 (2014). The right has been defined "too generally if the unlawfulness of the officer's conduct does not follow immediately from the conclusion that [the rule] was firmly established." *Sabo*, 128 F.4th at 844. "The Supreme Court's message is unmistakable: Frame the constitutional right in terms granular enough to provide fair notice because qualified immunity protects all but the plainly incompetent or those who knowingly violate the law." *Campbell v. Kallas*, 936 F.3d 536, 546 (7th Cir. 2019) (cleaned up). Existing precedent does not have to be "directly on point" to clearly establish a right. *Id.* at 545. However, to meet his burden on this element, Mr. Bankhead must "show either a reasonably analogous case that has both articulated the right at issue and applied it to a

factual circumstance similar to the one at hand or that the violation was so obvious that a reasonable person necessarily would have recognized it as a violation of the law." *Leiser v. Kloth*, 933 F.3d 696, 701 (7th Cir. 2019).

Mr. Bankhead cites *Delaney*, which affirmed a district court's denial of qualified immunity at summary judgment in similar circumstances. Dkt. 87 at 3. *Delaney* in turn expressly relied on *Davenport v. DeRobertis*, 844 F.2d 1310 (7th Cir. 1988), *Antonelli*, and *French*. 256 F.3d at 686–87.

In *Delaney*—which the Defendants do not address—the Court affirmed the denial of qualified immunity at summary judgment when the defendants denied the plaintiff all out-of-cell recreation for six months while he was in restricted housing. *Delaney*, 256 F.3d at 686–87. While Mr. Bankhead had recreation sporadically during the six months at issue in this lawsuit, *Delaney* makes clear that a complete and total deprivation is not necessary to show a constitutional violation. Instead, *Delaney* explained that under precedent from the Seventh Circuit and other circuits, the "failure to provide inmates with the opportunity for at least 5 hours of exercise a week outside the cell raised serious constitutional concerns." *Id.* (citing, among other cases, *Davenport*, 844 F.2d 1310, which upheld "the district court's injunction requiring Stateville officials to provide segregated inmates 'with at least five hours of exercise time per week in order to comply with the Eighth Amendment'"); accord *French*, 777 F.2d at 1255.

In short, under *Delaney*, "the case law clearly established that extended denials of exercise privileges [to inmates in segregation] raised constitutional

concerns." 256 F.3d at 686–87. So, at the summary judgment stage, Defendants are not entitled to qualified immunity. See *Taylor v. City of Milford*, 10 F.4th 800, 808 (7th Cir. 2021).

2. Personal Involvement

"[I]ndividual liability under § 1983 . . . requires personal involvement in the alleged constitutional deprivation." *Colbert v. City of Chicago*, 851 F.3d 649, 657 (7th Cir. 2017). There is no vicarious liability under § 1983; "supervisors are responsible for their own acts but not for those of subordinates, or for failing to ensure that subordinates carry out their tasks correctly." *Horshaw v. Casper*, 910 F.3d 1027, 1029 (7th Cir. 2018).

Defendants argue that they were not personally involved in depriving Mr. Bankhead of recreation because they did not have control over scheduling staff in G Cellhouse. See dkt. 62 at 12 ("Indeed any recreation time deprivation was caused by understaffing in G cell house during the relevant time frame or, if not, by factors nonetheless outside the control of Defendants[.]"). Mr. Bankhead responds that the logbook entries show that the number of staff did not correlate with whether they allowed recreation. Dkt. 87.

The lack of connection between the number of correctional officers working and whether recreation was allowed allows a reasonable jury to find that understaffing outside Defendants' control was not the reason Mr. Bankhead did not receive recreation time. Other designated evidence also allows a reasonable jury to find that each Defendant had control over recreation. For example, the logbook shows Lt. Jackson's authority over recreation because someone noted

that he cancelled it on June 20. Dkt. 87-1 at 150. And Mr. Bankhead testified that Sgt. Brown had control over day-to-day operations of when recreation would occur. Dkt. 87-1 at 948, 957–60 (Bankhead Dep. at 69, 78–81). Similarly, Mr. Bankhead testified that Cpt. Ernest was in charge of the unit, was aware of the lack of recreation, and was in the unit on multiple occasions when Mr. Bankhead should have received recreation but did not. *Id.* at 935–50 (Bankhead Dep. at 56–61).

Defendants do not address any of that designated evidence. *See* dkt. 62 at 11–13; dkt. 80 at 3–5. While Defendants cannot be vicariously liable for their subordinates' decisions to not allow recreation, their positions of authority within G Cellhouse allow a reasonable inference that they had control over whether recreation would be offered to inmates in Mr. Bankhead's cell block. *See, e.g., Sanders v. Sheahan*, 198 F.3d 626, 629 (7th Cir. 1999) (citing *Antonelli*, 81 F.3d at 1428–29) (officers in positions of authority can reasonably be expected to know about or participate in creating systematic prison conditions); *Foust v. Indiana*, 175 F.3d 1019 (7th Cir. 1999).

Lt. Jackson, Cpt. Ernest, and Sgt. Brown therefore are not entitled to summary judgment for lack of personal involvement.

3. Physical Injury

Last, Defendants argue that Mr. Bankhead is not entitled to compensatory damages because he has not shown that he was physically harmed by their conduct. Dkt. 62 at 13–14. The Prison Litigation Reform Act ("PLRA") bars a prisoner's recovery of compensatory damages for purely mental and emotional

injury that is not accompanied by any physical injury. 42 U.S.C. 1997e(e); see *Calhoun v. DeTella*, 319 F.3d 936, 940 (7th Cir. 2003). Though Mr. Bankhead testified that none of the Defendants physically hit him, he also testified that the lack of exercise caused his muscles to become weak and made him feel pain, see dkt. 86 ¶ 34, 41–44. Defendants do not address that designated evidence or provide any legal argument why it is insufficient to qualify for compensatory damages under the PLRA. There is therefore a dispute of fact as to whether Mr. Bankhead suffered a physical injury. See *Hacker v. Dart*, 62 F.4th 1073, 1079 (7th Cir. 2023) ("To satisfy § 1997e(e), prisoners must show an injury that is more than negligible but not necessarily significant.").²

III. Conclusion

The Court **GRANTS** Mr. Bankhead's motion to strike, dkt. [82], to the extent that **the Court strikes paragraphs 13 and 19 through 24 from Warden Allen's affidavit at Docket No. 58-1**. The motion is **DENIED** in all other respects. The Defendants' motion to file an amended witness list, dkt. [84], is **GRANTED**. The **clerk is directed** to re-docket the proposed amended witness list, dkt. 84-1. Mr. Bankhead's motion to establish damages, dkt. [93], is **DENIED as unnecessary**. The Defendants' motion to strike plaintiff's motion to establish damages and plaintiff's declaration as to military service, dkt. [99], is

² Defendants briefly argue that because they are entitled to summary judgment for lack of personal involvement, they also cannot be liable for punitive damages. Dkt. 62 at 14. Because Defendants are not entitled to summary judgment, the Court does not address punitive damages further at this stage.

GRANTED to the extent that the **clerk is directed to strike dkt. [92]**. Thus, Mr. Bankhead's motion in opposition to the motion to strike is **DENIED**, dkt. [101].

The Court **DENIES** Cpt. Ernest, Lt. Jackson, and Sgt. Brown's motion for summary judgment, dkt. [58]. Mr. Bankhead's Eighth Amendment claims against these Defendants and Warden Reagle will have to be resolved through settlement or trial.

The Court reconsiders its previous denial of Mr. Bankhead's motion to appoint counsel, dkt. [47]. This motion is now **GRANTED**. The Court will attempt to recruit counsel to represent Mr. Bankhead through final judgment. Once counsel has been recruited, **the Magistrate Judge is asked** to schedule a telephonic status conference to discuss further proceedings.

SO ORDERED.

Date: 3/23/2026



James Patrick Hanlon
United States District Judge
Southern District of Indiana

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