

**UNITED STATES DISTRICT COURT
for the
DISTRICT OF CONNECTICUT**

Keith HIGHSMITH,	:
Plaintiff,	:
	:
v.	: Civ. No. 3:98cv294 (PCD)
	:
Warden GOMEZ, et al.,	:
Defendants.	:

RULING ON DEFENDANTS' MOTION TO COMPEL

Defendants move to compel production of documents. (Dkt. No. 39.) The motion is granted.

I. STATEMENT OF JURISDICTION

Plaintiff brings his complaint against the United States under 42 U.S.C. § 1983. (Dkt. No. 2.) As such, there is subject matter jurisdiction pursuant to 26 U.S.C. § 1331.

II. BACKGROUND

A. Factual Background

This court assumes the facts alleged by Plaintiff in his Affidavit in Support of Plaintiff's Motion for Appointment of Counsel (Dkt. No. 34) and his Memorandum of Law in Support of Plaintiff[']s Motion for Appointment of Counsel (Dkt. No. 35).

Plaintiff, Keith Highsmith, was recently released from Northern Correctional Institution ("Northern") on or about September 3, 2000. (Id. at 1-2.) Defendants are the warden, various correctional officers, and a "maintenance man" of Northern. While a prisoner, Plaintiff initiated this suit for alleged "harsh and unlivable" conditions in Northern. (See id. at 1.) He states that he was forced to live in "freezing" conditions for approximately two years that caused him to be sick with colds, headcolds, nosebleeds,

sinus infections, and phlegm in his throat every morning which kept him “in an agitated mood and in a distressful mental state.” (Id.) Plaintiff specifically attributes this to Cell 105 3-West, where he alleges that the temperature was the lowest of any cell in which he was forced to live. (Id.) Plaintiff states that upon being moved to Cell 105 3-West, he immediately requested that Defendants either have the heat in the cell fixed or that he be moved to a different cell, but the heat was not fixed, and Plaintiff remained in the cell for almost a month before being moved. (Id.; Dkt. No. 11 at 3-4.)

B. Procedural History

Plaintiff filed his original claim on February 12, 1998. (Dkt. No. 2.) He amended his complaint on July 7, 1999. (Dkt. No. 11.) Plaintiff currently appears pro se.

Defendants file the current motion to compel on October 5, 2000. (Dkt. No. 39.) They also submit a memorandum of law (Dkt. No. 40) and an affidavit by Defendants’ counsel (Dkt. No. 41). Plaintiff has not submitted any opposition.

III. DISCUSSION

A. Legal Standard

The Rules authorize parties to “obtain discovery regarding any matter, not privileged, which is relevant to the subject matter [of] the pending [litigation].” FED. R. CIV. P. 26(b)(1). Rule 34(a) permits a party to “serve on any other party a request ... to produce and permit ... inspect[ion] and copy[ing of] any designated documents ... within the scope of Rule 26(b) and which are in the possession, custody, or control of the party upon whom the request is served.” FED. R. CIV. P. 34(a); see FED. R. CIV. P. 26(b) Pursuant to Rule 37(a)(2)(B), when a party fails to produce documents, the discovering

party may seek an order compelling discovery. See FED. R. CIV. P. 37(a)(2)(B).

B. Plaintiff Has Failed to Produce Documents

As pro se, Plaintiff is entitled to some deference in meeting pleading requirements. See Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam). Despite Plaintiff's failure to oppose the motion, the motion is examined with deference to Plaintiff.

The complaint recites grievances Plaintiff filed with Defendants. (Dkt. No. 11 at 3-4.) Defendants have searched their records and found no such grievances. (Dkt. No. 39 at 1.) On June 6, 2000, Defendants requested of Plaintiff "[a]ny and all grievances which [P]laintiff alleges he filed about the temperature in cell 105 and/or which are referenced in [P]laintiff's complaint." (Dkt. No. 41 ¶ 3, Ex. A.) On June 8, 2000, Plaintiff responded, stating that "Plaintiff objects because Defendants have all grievances and complaints that Plaintiff submitted." (Id. ¶ 4, Ex. B.) In a letter dated June 14, 2000, Defendants advised Plaintiff that they had searched their files and found no grievances filed by Plaintiff regarding the temperature in "cell 105." (Id. ¶ 5, Ex. C.) Plaintiff still has not produced the documents. (Id. ¶ 7.) Defendants request that Plaintiff either produce copies of the grievances or advise that he cannot locate any such grievances. (Dkt. No. 39 at 2.)

Any grievances filed by Plaintiff would be relevant. They would also be responsive to Defendants' discovery request. They appear to be discoverable.

Plaintiff's objection that Defendants already have the grievances is not determinative in the face of Defendants' claim that they do not. Plaintiff is thus required to produce them. See FED. R. CIV. P. 34(a), 34(b). Plaintiff's unwillingness to produce them is insufficient. (See Dkt. No. 41, Ex. C.) If he has no copies, he must so state

IV. CONCLUSION

Defendants' motion to compel (Dkt. No. 39) is **granted**. Plaintiff shall comply by November 22, 2000.

SO ORDERED.

Dated at New Haven, Connecticut, November __, 2000.

Peter C. Dorsey
Senior United States District Court Judge