

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARTIN ANDES,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	No. 04-3405-MLB
)	
OFFICER LEWIS, CSI,)	
)	
Defendant.)	
_____)	

ORDER

By its order of June 8, 2005 (Doc. 15), this court denied plaintiff's motion for appointment of counsel without prejudice. In doing so, the court noted that the only apparent dispute is whether defendant injured plaintiff by slamming his hand/arm in the food access door of plaintiff's cell. Plaintiff does not contend that he did not receive medical treatment for his alleged injury.

A Martinez report was filed on April 28, 2005 (Doc. 12). Defendant then filed his motion to dismiss on July 12, 2005 (Doc. 18). When plaintiff did not respond to the motion, the court issued a minute order on August 25, 2005 (Doc. 21) directing plaintiff to show cause why his case should not be dismissed for failure to respond to the motion and/or failure to prosecute. Plaintiff has now filed what appears to be a response which states that he is ignorant of the law and must rely on other inmates. Plaintiff states: "I do want for this case to go forward, but I need help if you can't grant me help then will you please dismiss it without prejudice."

This is a straight forward case. Plaintiff contends that his Eighth and Fourteenth Amendment rights were violated when defendant

slammed his hand/arm in a food access door. Defendant denies ever having done this and provides prison records to refute plaintiff's claims of injury. Defendant also asserts that plaintiff has a history of self-injury.

The court finds that plaintiff's claims, even if true, fail to state a claim upon which relief may be granted. Even if defendant slammed plaintiff's arm/hand in the food access door, plaintiff suffered no demonstrable injury. These facts do not state an Eighth Amendment claim.

Defendant's motion to dismiss (Doc. 18) is granted. This case is dismissed, with prejudice.

IT IS SO ORDERED.

Dated this 14th day of September 2005, at Wichita, Kansas.

s/ Monti Belot
Monti L. Belot
UNITED STATES DISTRICT JUDGE