

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WISCONSIN

Melvin Leon Kellam v. Jamie Barker, Virginia Trzebiatowski, and
Jered Kuehn

Kellam · No. 24-cv-454-jdp · Decided May 11, 2026

SUMMARY

The court reconsidered its prior ruling concerning exhaustion of administrative remedies under the Prison Litigation Reform Act. It held that the plaintiff’s 2024 grievance could not retroactively exhaust claims arising from a nurse practitioner’s 2021 conduct, granted reconsideration, and dismissed those claims without prejudice.

CASE DETAILS

COURT	United States District Court for the Western District of Wisconsin
WRITING FOR THE COURT	James D. Peterson
JURISDICTION	United States District Court for the Western District of Wisconsin
DECIDED	May 11, 2026
DOCKET	24-cv-454-jdp
DISPOSITION	other
PROCEDURAL POSTURE	On reconsideration of a prior order denying defendant Virginia Trzebiatowski's motion for summary judgment for failure to exhaust administrative remedies under the Prison Litigation Reform Act, the district court granted reconsideration and dismissed Kellam's claims against Trzebiatowski without prejudice.
STANDARD OF REVIEW	The court reconsidered its prior exhaustion ruling and reviewed whether Kellam's grievance satisfied the PLRA's administrative-exhaustion requirement for claims based on Trzebiatowski's 2021 conduct.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- motion for reconsideration
- prisoners rights
- civil procedure
- health law
- motions to dismiss

PRACTICE AREAS

prisoner litigation

civil procedure

civil rights

administrative exhaustion

medical-care claims

QUESTIONS PRESENTED

1. Whether the district court should reconsider its prior conclusion that Kellam's April 2024 grievance exhausted his claims against Trzebiatowski.
2. Whether the continuing violations doctrine permits a later grievance concerning an ongoing medical-care issue to retroactively exhaust claims based on an earlier, discrete interaction with a medical provider.
3. Whether dismissal for failure to exhaust administrative remedies should be without prejudice.

HOLDINGS

1. A grievance exhausts an ongoing course of events when the prisoner becomes aware of the ongoing issue and promptly files the grievance, but it cannot retroactively exhaust a stale claim based on earlier conduct that the prisoner knew or should have known about and could have grieved earlier.
2. Kellam's April 2024 grievance did not exhaust his claims against Trzebiatowski because those claims arose from her 2021 telehealth interaction and the grievance was an impermissible attempt to resurrect an old claim by combining it with a newer grievance concerning other defendants.
3. Dismissal for failure to exhaust administrative remedies is without prejudice.

KEY QUOTATIONS

“The general rule from Turley, Compton, and Nieto is this: if a plaintiff becomes aware of an ongoing issue and promptly files a grievance, then the grievance exhausts administrative remedies for the entire ongoing course of events, both before and after the date of the grievance. But if a plaintiff was already aware of an issue and could have grieved it earlier, then he cannot retroactively exhaust his administrative remedies by shoehorning the earlier issue into a later grievance and asserting that the problem is ongoing.”

“Nothing in Turley allows an inmate to exhaust administrative remedies that way.”

FACTUAL BACKGROUND

Kellam alleged that medical staff denied him custom medical shoes and refused to allow him to see a foot specialist. Trzebiatowski treated Kellam only once, during a telehealth visit in 2021. Kellam filed his only grievance about the medical-shoe issue on April 8, 2024, referring to conduct by health-services nursing staff and Jimmie Barker, but not specifically identifying Trzebiatowski's earlier treatment.

PROCEDURAL HISTORY

Kellam, proceeding without counsel, sued medical staff at Stanley Correctional Institution concerning medical shoes and access to a foot specialist. The court previously denied Trzebiatowski's motion for summary judgment, concluding that Kellam's 2024 grievance exhausted his claims against her under the continuing violations

doctrine. Trzebiatowski moved for reconsideration, Kellam did not respond, and the court granted the motion and dismissed the claims against Trzebiatowski without prejudice.

DISPOSITION

other

CASES CITED

- Turley v. Rednour, 729 F.3d 645 (7th Cir. 2013)
- Compton v. Cox, No. 12-cv-837-jdp, 2017 WL 933152 (W.D. Wis. Mar. 8, 2017)
- Nieto v. Dittman, No. 16-cv-163-jdp, 2017 WL 3610571 (W.D. Wis. Aug. 22, 2017)
- Ford v. Johnson, 362 F.3d 395, 401 (7th Cir. 2004)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN MELVIN LEON KELLAM, Plaintiff, v. ORDER JAMIE BARKER, VIRGINIA TRZEBIATOWSKI, and 24-cv-454-jdp JERED KUEHN, Defendants. Plaintiff Melvin Kellam, proceeding without counsel, alleges that medical staff at Stanley Correctional Institution denied him custom medical shoes and refused to allow him to see a foot specialist.

I previously denied defendant nurse practitioner Virginia Trzebiatowski's motion for summary judgment for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA). Dkt. 41. I concluded that an inmate complaint that Kellam submitted in 2024 about his foot care was sufficient for Kellam to exhaust his claims against Trzebiatowski.

Id. Trzebiatowski now moves for reconsideration on the exhaustion issue, contending that the continuing violations doctrine, which I relied on in deciding that Kellam had exhausted his claims against Trzebiatowski, does not apply to Kellam's case. Dkt. 42. Kellam did not respond to the motion to reconsider. I agree with Trzebiatowski that the continuing violations doctrine does not apply in these circumstances, so I will grant the motion to reconsider and dismiss Kellam's claims against Trzebiatowski for failure to exhaust administrative remedies.

Under the continuing violations doctrine, a prisoner who is experiencing an ongoing violation of his rights does not need to file multiple, successive grievances about the same issue to exhaust his administrative remedies. *Turley v. Rednour*, 729 F.3d 645 (7th Cir. 2013).

In *Turley*, the plaintiff sued prison officials for constitutional violations associated with repeated prison lockdowns, which began in January 2008 and continued through October 2010. The court of appeals concluded that a February 2009 grievance that *Turley* submitted about the lockdowns was sufficient to exhaust his administrative remedies for the entire period.

Id. at 649–50. The court reasoned that the lockdown problem was ongoing when Turley filed the grievance; thus, the grievance satisfied the purpose of the exhaustion requirement, because it notified the prison about the lockdown problem and gave it an opportunity to correct the issue. Id. at 650. Relying on Turley, I previously concluded that Kellam had exhausted his administrative remedies for his claims based on defendants’ refusal to give him medical shoes.

Dkt. 41. Kellam submitted a grievance about the medical shoe issue on April 8, 2024, in which he wrote that “HSU Nursing Staff and Jimmie Barker are refusing to fill the orthotic order, ordered by an orthotic specialist.” Dkt. 30-1. Trzebiatowski argued that this grievance did not exhaust Kellam’s administrative remedies for his claims against her, because Trzebiatowski treated Kellam only once in 2021, and this grievance was submitted almost three years later.

I rejected that argument, reasoning that Kellam was complaining about an ongoing issue, like the plaintiff in Turley. On reconsideration, Trzebiatowski asserts that Turley is inapplicable because Kellam was not raising a true ongoing condition; instead, he was attempting to retroactively complain about separate incidents of inadequate medical care. Trzebiatowski says that if a grievance like Kellam’s were sufficient, then prisoners could avoid rules for filing timely grievances by simply submitting generalized grievances combining old and new problems.

Trzebiatowski argues that this would deprive prison officials of a meaningful opportunity to correct problems, undermining the purpose of the PLRA. Dkt. 42, at 5. I have previously considered the retroactive application of Turley in two similar cases about inadequate medical care issues.

In *Compton v. Cox*, No. 12-cv-837-jdp, 2017 WL 933152 (W.D. Wis. Mar. 8, 2017), plaintiff Compton alleged in his complaint that prison staff had failed to treat a broken finger that he suffered in 2007, causing him problems that lasted until at least 2013. Compton filed his first grievance about this issue in October 2011, stating that he had been complaining about his broken finger since 2007 and that his pain had become unbearable.

Citing Turley, Compton argued that this grievance retroactively exhausted all of his claims going back to 2007, because the problems with his finger treatment were ongoing. I rejected that argument, reasoning: Compton misconstrues Turley to mean that an inmate could exhaust a claim about the first act of continuing misconduct by filing a grievance about a later act of continuing misconduct taking place years later.

Nothing in Turley suggests that a relatively recently filed grievance can retroactively exhaust claims about far earlier misconduct. Rather, Turley stands for the proposition that once a grievance is filed about part of a pattern of misconduct, a prisoner may not be required to file subsequent grievances for later instances of misconduct fitting within that pattern.

Id. (“Thus, once a prison has received notice of, and an opportunity to correct, a problem, the prisoner has satisfied the purpose of the exhaustion requirement.”). Id. at *3. I concluded that Compton had failed to exhaust administrative remedies for any claims based on conduct that occurred prior to September 2011.

In *Nieto v. Dittman*, No. 16-cv-163-jdp, 2017 WL 3610571 (W.D. Wis. Aug. 22, 2017), plaintiff Nieto alleged that prison staff had failed to diagnose and treat his broken toe and bone spurs. He alerted health services staff and was told that he had been scheduled for a follow-up appointment, but he did not actually see a doctor for more than a year.

The doctor diagnosed a toe fracture, but Nieto received no further treatment. After six more months of waiting, Nieto filed a grievance, alleging that he had first complained about his symptoms more than a year and a half ago and had not yet received treatment. I concluded that the grievance was sufficient to exhaust Nieto’s administrative remedies for the entire course of events related to his broken toe treatment.

Unlike Compton, Nieto filed his grievance promptly once he became aware that he was facing an ongoing delay of care. Nieto was “not using a late-filed grievance to resurrect a stale claim that he failed to press promptly.” Id. at *2.

The general rule from *Turley*, *Compton*, and *Nieto* is this: if a plaintiff becomes aware of an ongoing issue and promptly files a grievance, then the grievance exhausts administrative remedies for the entire ongoing course of events, both before and after the date of the grievance. But if a plaintiff was already aware of an issue and could have grieved it earlier, then he cannot retroactively exhaust his administrative remedies by shoehorning the earlier issue into a later grievance and asserting that the problem is ongoing.

Turning to *Kellam*’s case, I conclude that the April 2024 grievance was insufficient to exhaust *Kellam*’s claims against *Trzebiatowski*. *Trzebiatowski*’s only interaction with *Kellam* was a telehealth visit in 2021, so any claim that she denied him medical shoes would have to have been based on conduct that occurred around that time. It is implausible that *Kellam* only became aware that *Trzebiatowski* denied him medical shoes in 2024, which is when he filed his only grievance about the issue.

Instead, it appears that *Kellam* was trying to resurrect an old claim against *Trzebiatowski* by combining his grievance about her conduct with a new grievance about conduct by defendants *Barker* and *Kuehn*. Nothing in *Turley* allows an inmate to exhaust administrative remedies that way. I will grant *Trzebiatowski*’s motion for reconsideration and dismiss *Kellam*’s claims against *Trzebiatowski* for failure to exhaust administrative remedies.

Dismissals for failure to exhaust are always without prejudice, *Ford v. Johnson*, 362 F.3d 395, 401 (7th Cir. 2004), although it is almost certainly too late for *Kellam* to properly exhaust these claims.

ORDER IT IS ORDERED that: 1. Defendant Virginia Trzebiatowski's motion for reconsideration, Dkt. 42, is GRANTED. 2. Plaintiff Melvin Kellam's claims against Trzebiatowski are DISMISSED without prejudice for failure to exhaust administrative remedies.

3. Trzebiatowski is DISMISSED from the case. Entered May 11, 2026. BY THE COURT: /s/
_____ JAMES D. PETERSON District Judge