

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 1, 2026

Christopher M. Wolpert
Clerk of Court

WALTER JOHNSON,

Plaintiff - Appellant,

v.

KELLER, Health Services Administrator;
A. CIOLLI, Warden,

Defendants - Appellees.

No. 25-1369
(D.C. No. 1:24-CV-01361-CNS-SBP)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **MORITZ**, and **FEDERICO**, Circuit Judges.

Walter Johnson, a federal prisoner proceeding pro se,¹ appeals the district court's grant of summary judgment to prison officials he sued alleging violations of his civil rights. The district court dismissed Mr. Johnson's claims because he did not

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ Because Mr. Johnson proceeds pro se, we construe his arguments liberally, but we "cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

first exhaust his administrative remedies. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

Mr. Johnson sued the health-services administrator and warden at the Administrative Maximum facility in Florence, Colorado, where he is an inmate. He alleged the prison's delay in delivering eyeglasses to him violated the Eighth Amendment and sought damages under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The defendants moved for summary judgment on the basis that Mr. Johnson did not complete the fourth and final step of the administrative grievance program of the Bureau of Prisons (BOP). Adopting the recommendation of a magistrate judge over Mr. Johnson's objection, the district court granted the motion. This appeal followed.

“We review the district court's grant of summary judgment de novo, applying the same legal standard that the district court is to apply.” *N.H. Ins. Co. v. TSG Ski & Golf, LLC*, 128 F.4th 1337, 1344 (10th Cir. 2025). Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “On appeal, we examine the record and all reasonable inferences that might be drawn from it in the light most favorable to the non-moving party.” *Markley v. U.S. Bank Nat'l Ass'n*, 59 F.4th 1072, 1080 (10th Cir. 2023) (internal quotation marks and brackets omitted).

Under the Prison Litigation Reform Act (PLRA), “[n]o action shall be brought with respect to prison conditions . . . by a prisoner . . . until such administrative

remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). This provision means exhaustion “is required for any suit challenging prison conditions.”

Woodford v. Ngo, 548 U.S. 81, 85 (2006). Exhaustion must be “proper,” which “demands compliance with an agency’s deadlines and other critical procedural rules” *Id.* at 90. Failure to exhaust administrative remedies under the PLRA is an affirmative defense, the applicability of which we review de novo. *See Estrada v. Smart*, 107 F.4th 1254, 1261 (10th Cir. 2024), *cert. denied*, 146 S. Ct. 90 (2025).

Accordingly, when, as here, the defendants move for summary judgment based on failure to exhaust, they initially bear “the burden . . . to demonstrate that no disputed material fact exists regarding the affirmative defense asserted.” *Id.* (internal quotation marks omitted). If they meet that initial burden, “the plaintiff must then demonstrate with specificity the existence of a disputed material fact. If the plaintiff fails to make such a showing, the affirmative defense bars his claim, and the defendant is then entitled to summary judgment as a matter of law.” *Id.*

The BOP has a four-step administrative remedy program, set forth in 28 C.F.R. § 542.13–15, for addressing prisoner complaints. It was undisputed before the district court that Mr. Johnson properly exhausted steps one through three. At the fourth and final step, though, an inmate dissatisfied with the response of the appropriate Regional Director must submit an appeal to BOP’s Office of the General Counsel (OGC). “Appeal to the General Counsel is the final administrative appeal.” § 542.15(a). Such an appeal “shall be submitted on the form designed for Central

Office Appeals (BP-11) and accompanied by one complete copy or duplicate original of the institution and regional filings and their responses.” § 542.15(b)(1).

Johnson did attempt to submit an appeal to OGC on February 26, 2024, but OGC rejected the submission because it did not include copies of his earlier agency-level appeals (which the regulations refer to as “BP-9” and “BP-10,” respectively, *see* §§ 542.14(a), 542.15(a)) and the BOP’s responses thereto. OGC extended to Mr. Johnson fifteen additional days (to March 16) to resubmit his appeal (termed “BP-11,” *see* § 542.15(a)) with all required documents, but the record does not indicate he did so.

The regional director filed a belated response to Mr. Johnson’s earlier BP-10 on March 26, and Mr. Johnson received that response on April 3. He then filed a second BP-11 on April 12, but OGC rejected that submission, too, because it determined he failed to attach his prior BP-10. OGC extended to Mr. Johnson another fifteen days, to May 3, to correct this submission, but he never did.

Because Mr. Johnson did not complete the BOP’s review process, the district court correctly concluded he did not exhaust his administrative remedies. This failure to exhaust bars his claim. *Woodford*, 584 U.S. at 85. On appeal, he contests OGC’s determination that his BP-11 from April 12 did not include a copy of his prior BP-10. But, “[t]o avoid summary judgment, a nonmovant must offer evidence, not bare allegations,” *Estrada*, 107 F.4th at 1262, and Mr. Johnson presented none.

We therefore affirm the judgment of the district court. We grant Mr. Johnson's motion for leave to proceed on appeal without prepayment of costs or fees.

Entered for the Court

Jerome A. Holmes
Chief Judge