UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

JASON HACKER

VERSUS

N. BURL CAIN, WARDEN, ET AL.

CV. NO. 14-63-JWD-EWD

JUDGE JOHN W. deGRAVELLES

RULING AND ORDER

I. INTRODUCTION

Before the Court is Plaintiff's Motion for a New Trial and Renewed Judgment as a Matter of Law. ("Motion," Doc. 288). Defendants oppose the Motion. ("Opposition," Doc. 293). After transcripts were prepared, Plaintiff and Defendants filed Supplemental Memoranda in further support of their positions. (Docs. 308-2 and 307-1, respectively).

After careful consideration of the law, the facts of this case, and the parties' arguments, for the reasons set forth below, the Motion is **DENIED**.

II. FACTUAL AND PROCEDURAL BACKGROUND

In January 2014, Plaintiff initiated this action by filing a Complaint. (Doc. 1). The Complaint was ultimately superseded by a Second Amended Complaint filed in June 2015. (Doc. 73). Plaintiff, a prisoner at the Louisiana State Penitentiary at Angola ("Angola"), alleged in relevant part that Defendants violated the Americans with Disabilities Act ("ADA"), Rehabilitation Act ("RA"), and the Eighth Amendment by delaying his receipt of cataract surgery for several years and failing to provide reasonable accommodations in the interim. (*Id.* at 1-12).

In October 2016, Plaintiff moved *in limine* to exclude certain evidence and testimony as irrelevant. (Doc. 177-1). As it is germane to the instant Motion, the motion *in limine* sought to exclude evidence of Plaintiff's conviction or crimes (*id.* at 2-3), evidence of Plaintiff's prison disciplinary record (*id.* at 3-4), and evidence of Plaintiff's medical care other than cataract surgery (*id.* at 4-5).[1]

The Court ruled that: (1) the jury would be permitted to consider evidence that Plaintiff was "convicted of a felony for which he is serving a sentence at [Angola]," but Defendants would not be permitted to offer evidence of or refer to the "specific crimes for which Plaintiff was convicted or the conduct which led to his conviction"; (2) because Defendants represented that they would not introduce evidence regarding Plaintiff's disciplinary record (Doc. 183 at 2), this aspect of the motion *in limine* was moot; and (3) the jury would be permitted to receive evidence of medical care "given in connection" with his cataracts, even if non-surgical in nature, but not for "unrelated" treatment "except as it may bear on the issues related to Plaintiff's cataracts." (Doc. 235 at 1-2). The case was tried before a jury from January 30, 2017, through February 2, 2017. (Docs. 272, 273, 274, 275).

a. Opening Statements

In his opening statement, Plaintiff's counsel argued that Angola deliberately failed to fix Plaintiff's cataracts for so long that he lost his eyesight. (Trial Tr. Vol I, Doc. 295 at 13:14-14:8). Plaintiff's counsel also argued that Angola had failed to give Plaintiff "accommodations [or] a safe place to work" while he was suffering from cataracts. (*Id.* at 14:22-15:3). During the course of

[1] Plaintiff's original Motion did not discuss references to Plaintiff's disciplinary record but instead challenged defense counsel's alleged references to the medical care received by "free people." (Doc. 288-1 at 4). As Defendants correctly note, however, defense counsel made no such reference. (Doc. 293 at 6). Plaintiff's supplemental memorandum in support of the Motion does not make any argument regarding the care "free people" receive, but references Plaintiff's disciplinary history instead. (Doc. 308-2 at 5-6). The Court therefore addresses Plaintiff's argument regarding his disciplinary history.

his opening statement, Plaintiff's counsel argued that Plaintiff "basically kept on the straight and [n]arrow" in prison by playing music and exercising, but, because his surgery was delayed and because he was injured after being assigned to dangerous work, he was no longer able to do so. (*Id.* at 16:25-17-10).

In the first line of his opening statement, defense counsel stated that Plaintiff had been "serving a life sentence at Angola" since the early 2000s. (*Id.* at 23:6-8). Defense counsel then argued that prison staff had not failed to respond to Plaintiff's medical needs, observing that Plaintiff had received diabetes tests and bloodwork in response to his complaints, which included weight loss, hunger, and heart palpitations. (*Id.* at 24:14-25:16). Plaintiff's counsel objected, arguing that defense counsel was violating the Court's ruling *in limine* to exclude statements about medical treatment unrelated to Plaintiff's cataracts. (*Id.* at 25:17-26:7). Defense counsel argued that it was impossible to "extract" these other conditions from Plaintiff's treatment for cataracts. (*Id.* at 26:8-22). The Court reiterated that evidence and testimony about treatment "unrelated" to Plaintiff's cataracts would not be permitted, but evidence and testimony regarding conditions that were "linked" or "connected" to Plaintiff's cataracts, that would "explain in some way why he was or was not treated in the way he was," were permissible. (*Id.* at 26:23-28:14). Immediately following the Court's ruling, defense counsel continued with his opening statement, mentioning that in January 2012 medical records contained references to Plaintiff's "heart palpitations, visual [sic], weight loss, [and] insomnia," and that the jury would hear testimony about "all these lab tests" trying to determine what Plaintiff was suffering from.[2] (*Id.* at 29:8-17).

[2] Additionally, during later testimony, Plaintiff's counsel objected that a witness was testifying about Plaintiff's unrelated medical history in violation of the Court's ruling *in limine*. (Doc. 300 at 99:11-15). Defense counsel argued that treatment for Plaintiff's vision problems was "mixed in" with differential diagnoses and attempted treatment for Plaintiff's other complaints. (*Id.* at 99:18-100:1). The Court ultimately overruled the objection, stating that "part of eye workup has to do with ruling out other potential causes," but cautioned that defense counsel would not be permitted to inquire any further into medical care addressed in the *in limine* ruling. (*Id.* at 101:10-20).

After discussing Plaintiff's history of testing for cataracts, defense counsel said that it was "not true" that Plaintiff was doing "all that he was supposed to be doing" but was nevertheless assigned to dangerous work: according to defense counsel, Plaintiff "broke all the rules." (*Id.* at 33:14-18). Plaintiff's counsel objected, arguing that Defendants had agreed not to present evidence or testimony regarding Plaintiff's disciplinary history. (*Id.* at 33:19-24, 34:7-14). Defense counsel argued that, contrary to Plaintiff's counsel's assertions, Plaintiff was "sent out into the fields" because he was "caught with all kinds of recording paraphernalia" and was "selling his music on iTunes." (*Id.* at 34:16-23). The Court stated that that had "nothing to do with the issues in this case" and chastised defense counsel for violating a ruling *in limine*. (*Id.* at 34:24-35:10). The Court sustained the objection but denied Plaintiff's counsel's motion for a mistrial. (*Id.* at 35:12-15).

Following defense counsel's opening, Plaintiff's counsel argued to the Court that defense counsel's opening also contained an impermissible reference to the "life sentence" that Plaintiff was serving and asked for a mistrial on this basis. (*Id.* at 38:22-39:9). Defense counsel argued that his statement "fell right in line with [the] ruling on this motion *in limine*," and the Court advised counsel that it would "check that during a break" and denied the motion for a mistrial. (*Id.* at 39:14-24). Later on, the Court read its ruling *in limine* to counsel and opined that "a very fair reading" of the ruling would not permit defense counsel to say what Plaintiff's sentence was. (*Id.* at 50:22-51:20).

b. Scott Meyers

Scott Meyers, an inmate at Angola, testified that he had known Plaintiff for close to ten years and had worked alongside Plaintiff in prison industries and played with Plaintiff in a band. (*Id.* at 40:11-41:7). Meyers stated that Plaintiff's vision had worsened while Meyers had known

Plaintiff, affecting Plaintiff's ability to play music, see his food, and identify people on sight. (*Id.* at 41:8-42:14). Meyers testified that it wasn't Angola's "policy" to help with vision problems like Plaintiff's, and prisoners relied on each other for help. (*Id.* at 42:22-43:1). Meyers claimed that Plaintiff had had a "temper" when his eyesight was failing but did not have a temper after his eyes were "fixed." (*Id.* at 43:2-22). Meyers also observed that Plaintiff did not exercise as much as he used to following an injury to one of his chest muscles.[3] (*Id.* at 45:3-17).

c. Deputy Warden Richard Peabody

Richard Peabody, a deputy warden and the ADA coordinator at Angola, testified that he had worked at Angola for roughly 40 years. (*Id.* at 52:13-53:4). Warden Peabody confirmed that, under the ADA, Angola should provide accommodations to people who cannot see well and people whose eyesight interferes with their ability to walk; read and write; read, write, and play music; or exercise. (*Id.* at 59:19-60:13). Warden Peabody also agreed that being legally blind or needing surgery to correct cataracts impairing a "major life function" is a "serious medical problem." (*Id.* at 62:3-18). Warden Peabody also testified that, at Angola, an inmate who did not have a "duty status" was on "regular duty" and could be assigned to work outside in "the field" using an L-blade, sling blade, shovel, or hoe. (*Id.* at 79:6-80:6).

Warden Peabody also confirmed that, according to May 6, 2013 forms, Plaintiff had been assigned two days of reduced duty status because he could not "see due to cataracts [and was] waiting on surgery." (*Id.* at 80:10-83:7; P. Exh. 2 at 000002; P. Exh. 5 at 000035).[4] Similarly, on May 16, 2013, Plaintiff received a medical referral and was placed on reduced duty; a Health Care

[3] According to testimony discussed *infra*, the chest injury occurred because Plaintiff was assigned to stack hay bales in the field at Angola while he was unable to see.

[4] The exhibit numbers and exhibit page numbers used during trial frequently do not match those on the Court's electronic exhibit storage system. For ease of reference, the Court uses the numbering provided by the electronic exhibit storage system.

Request Form from the same date indicated that Plaintiff complained of blurry vision and difficulty seeing far away due to cataracts. (Doc. 295 at 85:20-87:3; P. Exh. 1 at 000001; P. Exh. 6 at 000036; P. Exh. 7 at 000071). A May 22, 2013 record from the eye clinic at Angola stated that Plaintiff was "legally blind" and recommended surgery. (Doc. 295 at 90:15-92:10; D. Exh. 1 at 001635). Another medical record from the same date indicated that Plaintiff had "20/400 vision" in his left eye and should be placed on a reduced duty status. (Doc. 295 at 93:7-22; P. Exh. 7 at 000068). A June 26, 2013 note from Plaintiff to the "eye clinic" stated that, although it had been a month since he had been "declared . . . legally blind," he had not received a duty status. (*Id.* at 95:25-98:21; D. Exh. 10 at 002076). Reviewing several other exhibits, Warden Peabody confirmed that it appeared that Plaintiff had been assigned to field work or work manufacturing license tags during the period at issue. (Doc. 295 at 102:2-103:11).

Warden Peabody stated that cataracts "could" be a disability, depending on their severity, but many people "do quite fine" with them. (*Id.* at 109:22-110:18).

Warden Peabody also discussed Plaintiff's Administrative Remedy Procedure letter dated August 21, 2013, which stated that Plaintiff had been diagnosed with "severe cataracts" affecting daily life activities and declared legally blind. (*Id.* at 113:15-18, 116:21-24; D. Exh. 3 at 001875 - 001877). Plaintiff's letter also stated that he had torn his right pectoral muscle because he had been unable to catch a hay bale while working in the field. (Doc. 295 at 118:3-18; D. Exh. 3 at 001875 - 001877). Warden Peabody noted that he had been unable to investigate Plaintiff's claims because no one told him about them. (Doc. 295 at 119:1-5).

On cross-examination, Warden Peabody said that inmates "constantly" make complaints to avoid working outdoors, and that he had not been shown any complaints related to when Plaintiff worked indoors making license tags, even though the tag plant was "much more dangerous." (*Id.*

at 134:14-135:7). Warden Peabody also observed that, because Plaintiff's complaints had not been referred to Warden Peabody, Warden Peabody could only consider what Plaintiff claimed and statements by doctors. (*Id.* at 135:11-136:12). Warden Peabody also confirmed that he believed that a disability had to have "some level of permanence" in order to implicate the ADA. (*Id.* at 136:17-19).

On redirect, Warden Peabody confirmed that prisoners are disciplined for making "bogus" medical complaints or refusing to work. (*Id.* at 140:20-141:18). Plaintiff's counsel then elicited the following testimony:

> Q Now, [your] testimony also was [that] the ADA requires that the disability has to be permanent; is that right?
> A Permanent or longstanding, I don't remember the exact wording.
> Q Okay. So it was your testimony that that's what the ADA requires, correct?
> A Yes.
> Q That it must be long-term?
> A Yes.
> Q That it cannot be episodic?
> A Correct.
> Q And your definition of long-term is; is that longer than three months?
> A I don't have a definition. I would consider it mainly if it's permanent.
> Q Permanent. And so that would be longer than three months?
> A Yes.
> Q It would be longer than six months?
> A I would assume so, yes.
> Q You would assume so. I'm asking if you know.
> A If I know –
> Q Yeah. You're the ADA coordinator, correct?
> A If I know that the condition is not going to change, yes.
> Q But you know that long-term permanent disability means more than – you know that the ADA requires that, that's your testimony?
> A Yes.
> Q And [defense counsel] made note of this complaint about [Plaintiff's] eyesight in 2011, correct?
> A I believe that was the date.
> Q And that was a complaint from – that was a complaint made to the eye clinic at Angola, correct?
> A Yes. I don't remember the dates. I've looked at so much of that.
> Q Okay. And that he was complaining of blurry vision when he first went to the doctor then, correct?

A I believe so. I'm not really sure.
Q And he was working in the tag plant at that point too, correct?
A I don't know. I don't recall.
Q Okay.
(*Id*. at 141:19-143:12).

d. Miranda Tait

Miranda Tait, an attorney with the Advocacy Center of Louisiana, testified that she had visited Angola in summer 2013 and several times afterward and had not seen certain inmates with visual impairments using Braille, using a magnifier or magnifying glass, or being guided around by prison staff. (Trial Tr. Vol II, Doc. 296 at 15:2-4, 16:10-22, 29:10-30:16). Tait acknowledged that the Advocacy Center was involved in litigation against Angola regarding "medical issues." (*Id.* at 31:4-13).

e. Dr. Randy Lavespere

Dr. Randy Lavespere, the medical director at Angola, testified that, according to Department of Corrections policy, "at times" cataract surgery could be a medically necessary procedure. (*Id.* at 35:10-12; 39:13-15). Dr. Lavespere discussed an October 24, 2012 "trip return" form from an outside facility, acknowledging that it recommended that Plaintiff be referred to a hospital for cataract removal. (*Id*. at 49:8-50:11; D. Exh. 1 at 001517). He also discussed an April 2, 2013 medical form listing "cataract extraction, right eye" as a "non-emergent but medically necessary" procedure to be performed "ASAP." (Doc. 296 at 52:9-54:3; D. Exh. 1 at 001508 - 001509). Dr. Lavespere also stated that, although Angola medical staff had found that Plaintiff was legally blind and ordered cataract surgery, the finding was made by an optometrist, not an ophthalmologist, so "verification and the need for him to see an ophthalmologist would result." (Doc. 296 at 58:5-18). Dr. Lavespere said it was necessary to "keep in mind" that optical testing at Angola is "very subjective:" an inmate self-reports what he is able to read and see. (*Id*. at 59:11-

20). Dr. Lavespere also reported that, when prisoners are sent to the hospital, the hospital can choose to "keep" them and operate on the following day, but in Plaintiff's case, they kept "sending [Plaintiff] back." (*Id.* at 63:16-21). Dr. Lavespere later returned to the stand and discussed other, similar medical records at some length. (*See generally* Trial Tr. Vol. III, Doc. 300 at 87-132).

f. Jackie Wafer

Jackie Wafer, an inmate at Angola, testified that he met Plaintiff while auditioning to be in Plaintiff's band. (Doc. 296 at 68:16-17, 69:19-70:3). Wafer testified that Plaintiff played guitar and sang, wrote music, and performed managerial functions for the band. (*Id.* at 70:23-24, 72:23-73:3, 73:15-21). Wafer also testified that, when he met Plaintiff, Plaintiff "worked out a lot." (*Id.* at 75:2-4). Like Meyers, Wafer testified that Plaintiff's failing eyesight affected his ability to participate in the band's activities, exercise, read, and recognize people. (*Id.* at 75:15-76:1, 78:9-79:2).

g. Dr. Raman Singh

Dr. Raman Singh, the Chief Medical Mental Health Director for the Louisiana Department of Public Safety and Corrections, stated that cataracts usually "take[] years" to develop and are generally elective surgeries. (*Id.* at 104:16-18, 121:16-18). Dr. Singh also discussed documents allegedly describing other instances in which medical care for inmates had been delayed. (*See generally* Docs. 298, 299).

h. Dr. Jason Collins

Dr. Jason Collins, who during some of the events at issue was the medical director at Angola, testified that, when he started working at Angola in 2011 the warden expressed interest in creating a "procedural area" for cataract patients. (Doc. 296 at 153:21-154:4, 155:15-20). Dr. Collins also testified that, in or after 2012, the state's medical system started to "change," and

"there was no one available do to the cataract surgery after a while." (*Id.* at 157:1-5). On cross-examination, Dr. Collins said that he believed from his review of the record that Plaintiff had 20/60 vision in his right eye due to cataracts and, to the best of Dr. Collins's knowledge, this did not constitute legal blindness. (*Id.* at 172:25-173:11). Dr. Collins also testified that, as medical director, he would rely on an outside specialist ophthalmologist's opinion rather than an Angola optician's. (*Id.* at 174:1-10). On redirect, Dr. Collins confirmed that some medical records said that Plaintiff was "legally blind." (*Id.* at 175:6-19).

i. Dr. Edward Bell

Dr. Edward Bell, the Director of the Professional Development and Research Institute on Blindness at Louisiana Tech University, testified as Plaintiff's expert witness on management and accommodation of physical disabilities. (*Id.* at 176:20-25, 187:21-23). Dr. Bell testified that Plaintiff's complaints and experiences were consistent with the experiences of someone with cataracts, including the occasional waxing and waning of his symptoms. (*Id.* at 191:10-192:10, 193:7-13). Dr. Bell testified that a person who is "legally blind" has a visual acuity of 20/200 in the better eye after correction or a field restriction of less than 20 degrees. (*Id.* at 197:3-8). According to Dr. Bell, someone who is not legally blind may nevertheless be "pretty significantly visually impaired" and need accommodations. (*Id.* at 198:8-19). Dr. Bell testified that having ophthalmologists acknowledge his cataracts was "an indication" that Plaintiff was having "significant problems." (*Id.* at 199:16-21). Dr. Bell also reported that 20/400 vision was "beyond legal blindness," and Plaintiff likely was not "faking" based on the duration of his vision problems, their progressive nature, and that the fact that Plaintiff ultimately had cataract surgery. (*Id.* at 200:14-201:2, 205:10-206:6). Dr. Bell said that, in his opinion, Plaintiff was disabled and Angola

did not treat him appropriately. (*Id.* at 209:18-210:5). On cross-examination, Dr. Bell confirmed that, to his knowledge, Plaintiff had never been totally blind. (*Id.* at 214:6-9).

j. Jason Hacker

Plaintiff testified that, immediately before his surgery, he "couldn't see anything" in his right eye and could see very little out of his left eye. (Doc. 300 at 12:14-18). He would "bump[] into people" that he was unable to see. (*Id.* at 13:6-9). He was also unable to read or write music and communicate with other members of his band during performances. (*Id.* at 16:4-10, 22). Plaintiff also described how, on May 6, 2013, he "just couldn't take" working in the field anymore and told an emergency technician that he was waiting for surgery and could not see. (*Id.* at 21:10-23:12). Plaintiff said that he received "two or three" days of reduced duty status; Plaintiff believed that the prison intended that he would be seen by a doctor during that time. (*Id.* at 24:4-12). Plaintiff claimed that, when stacking hay bales on May 16, 2013, he injured his chest because he was unable to see. (*Id.* at 24:15-25:18). Plaintiff also discussed the June 2013 note that he wrote to the eye clinic regarding his inability to see and the fact that he had not received a no-duty status. (*Id.* at 29:4-31:11). Plaintiff acknowledged that prisoners might sometimes "fake," but argued that this was a "genuine case" where he did not receive needed help. (*Id.* at 46:3-9).

On cross-examination, Plaintiff acknowledged that he had never asked for a duty status change while at the tag plant or from any other work duty in prison, although he stated that he had "partners" that did work that he was unable to do at the tag plant. (*Id.* at 51:2-12; 52:18-21). Plaintiff also claimed that the "higher rates of sunlight" outside bothered him and said working at the tag plant was "better" than working outside. (*Id.* at 52:6-25). Plaintiff also acknowledged that, on the advice of others, he had signed his name to an Administrative Remedy Procedure form

requesting cataract surgery, attorney's fees and litigation costs, and monetary damages for his pain and suffering. (*Id.* at 54:7-55:23). Plaintiff also testified that he thought filing this lawsuit would get his issues resolved more quickly. (*Id.* at 60:14-22).

On redirect, Plaintiff confirmed that he understood that he could be punished for falsely declaring himself an "emergency" and refusing to work. (*Id.* at 67:24-68:1).

k. Dr. Peter R. Kastl

Dr. Peter R. Kastl, an ophthalmologist and faculty member at Tulane University, testified as Defendants' expert in the field of ophthalmology. (*Id.* at 156:6-157:5, 159:13-15). Dr. Kastl testified that, based on his review of Plaintiff's medical records, Plaintiff had never been legally blind. (*Id.* at 160:9-19, 170:20-25). Dr. Kastl observed that "all of us will get cataracts," but an individual might live with cataracts for a long time without them requiring surgical intervention. (*Id.* at 162:19-20, 164:17-165:4). Dr. Kastl also stated that "the whole measurement of visual acuity is the response of the patient." (*Id.* at 169:15-16). Dr. Kastl reviewed a record from March 12, 2014 and opined that "the refraction shows that the patient is pretty mild." (*Id.* at 170:5-19; D. Exh. 1 at 001478). On cross-examination, Dr. Kastl acknowledged that someone could be legally blind either due to a loss of visual acuity or loss of visual field. (Doc. 300 at 171:24-172:7).

Following the presentation of evidence, Plaintiff moved for a directed verdict under Federal Rule of Civil Procedure ("Rule") 50 on several issues, including "that there was a failure to accommodate on the basis of [Plaintiff's] disability." (*Id.* at 177:2-13). The Court denied the motion, finding that there was "evidence going on both sides of every issue [] mentioned." (*Id.* at 178:4-5).

The jury found for Defendants on all claims. (Doc. 277). In particular, the jury checked "no" in response to an interrogatory asking whether Plaintiff had proven "by a preponderance of

the evidence that he suffered from a qualified disability under the ADA/RA before he received eye surgery." (*Id.* at 1). With respect to Plaintiff's Eighth Amendment claims, the jury checked "no" in response to interrogatories asking whether Defendants "subjected Plaintiff to deliberate medical indifference" or "were deliberately indifferent to Plaintiff's medical needs" by delaying his cataract surgery or assigning him to dangerous work. (*Id.* at 3).

The Court entered judgment on February 7, 2017 (Doc. 278), and Plaintiff's Motion was filed on March 2, 2017. (Doc. 288).

III. DISCUSSION

a. Standard

Rule 59(a) provides that a new trial may be granted "on all or some of the issues . . . after a jury trial, for any reason for which a new trial has heretofore been granted in an action in federal court." Fed. R. Civ. P. 59(a)(1). Although Rule 59(a) does not list specific grounds for a new trial, the Fifth Circuit has held that a new trial may be granted if "the verdict is against the weight of the evidence, the damages awarded are excessive, the trial was unfair, or prejudicial error was committed in its course." *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 613 (5th Cir. 1985) (citations omitted). However, a trial court should not grant a new trial on evidentiary grounds unless the verdict is against the great weight of the evidence, and it is within the "sound discretion of the trial court" to determine whether to grant or deny a motion for new trial. *Pryor v. Trane Co.*, 138 F.3d 1024, 1026 (5th Cir. 1998).

A Rule 50(b) motion for judgment as a matter of law "in an action tried by jury is a challenge to the legal sufficiency of the evidence supporting the jury's verdict." *Flowers v. S. Reg'l Physician Servs., Inc.*, 247 F.3d 229, 235 (5th Cir. 2001). Such a motion may be granted only if "there is no legally sufficient evidentiary basis for a reasonable jury to have found for [the non-

moving] party with respect to that issue." *Id.* The Court must "consider all of the evidence, drawing all reasonable inferences and resolving all credibility determinations in the light most favorable to the non-moving party." *Id.*[5]

i. Plaintiff's Arguments

Plaintiff asserts five grounds upon which the Court should grant a new trial or judgment as a matter of law. First, Plaintiff argues that defense counsel's opening statement violated the three rulings *in limine* discussed previously. (Docs. 288-1 at 3-5; 308-2 at 3-6). Second, Plaintiff contends that the trial evidence overwhelmingly establishes that Plaintiff was disabled. (Docs. 288-1 at 5-7; 308-2 at 6-12). Third, Plaintiff maintains that the trial evidence overwhelmingly establishes that Plaintiff has proven the other elements of an ADA or RA violation. (Docs. 288-1 at 8-11; 308-2 at 12-15). Fourth, Plaintiff argues that Warden Peabody testified erroneously that temporary impairment is not a disability under the ADA, and the jury's verdict may have been tainted by this false testimony. (Docs. 288-1 at 11-12; 308-2 at 15-16). Fifth, Plaintiff contends that the trial evidence overwhelmingly establishes that Plaintiff was forced to work in dangerous conditions in violation of the Eighth Amendment. (Docs. 288-1 at 12-14; 308-2 at 16-18).

ii. Defendants' Arguments

Defendants oppose the Motion in all respects. First, Defendants argue that defense counsel did not violate the Court's rulings *in limine* or that any violations were harmless. (Docs. 293 at 3-6; 307-1 at 3-7). Second, Defendants contend that the evidence was sufficient to support a finding that Plaintiff was not disabled under the ADA or RA. (Docs. 293 at 6-8; 307-1 at 7-10). Third, Defendants maintain that the evidence was sufficient to support a finding that Defendants' conduct

[5] The Court observes that the standard for granting a new trial is lower than that for granting judgment as a matter of law. *See Shows v. Jamison Bedding, Inc.*, 671 F.2d 927, 930 (5th Cir. 1982). The Court will therefore generally analyze Plaintiff's arguments under the "new trial" standard, as failure to meet that standard also precludes judgment as a matter of law in Plaintiff's favor.

did not satisfy the other elements of the ADA or RA. (Docs. 293 at 8-9; 307-1 at 10-11). Fourth, Defendants argue that Plaintiff had "ample opportunity" to address Warden Peabody's testimony on cross-examination and that Warden Peabody's testimony likely had no effect on the jury's verdict. (Docs. 293 at 9; 307-1 at 11). Fifth, Defendants contend that the evidence was sufficient to support a finding that Plaintiff was not forced to work in dangerous conditions in violation of the Eighth Amendment. (Docs. 293 at 9-10; 307-1 at 12).

The Court now considers each of these issues in turn.

b. The Court's Rulings *In Limine*

Plaintiffs argue that defense counsel's opening statement violated the Court's rulings *in limine* by referring to Plaintiff's "life sentence," to medical conditions allegedly unrelated to Plaintiff's cataracts, and to Plaintiff's disciplinary record. (Docs. 288-1 at 3-5; 308-2 at 3-6).

The Court declines to grant a new trial on this basis. Preliminarily, although portions of defense counsel's opening skirted and occasionally crossed over into forbidden territory, the references were generally oblique and isolated. For example, one of the Court's rulings *in limine* barred reference to the "specific crimes for which Plaintiff was convicted or the conduct which led to his conviction." (Doc. 235 at 1). Defense counsel's statement that Plaintiff is serving a life sentence, while certainly irrelevant to the issues in this case and more problematic than a statement that Plaintiff is serving "a sentence," requires inferential steps and some knowledge about Louisiana sentencing law in order to definitively link it to Plaintiff's specific crimes or the conduct that led to his conviction. Similarly, some of the statements regarding Plaintiff's medical history may have resulted from a genuine misunderstanding about whether Plaintiff's complaints and medical testing regarding facially "unrelated" conditions were nevertheless related for purposes of

describing the differential diagnosis procedure that Defendants undertook. (Doc. 300 at 100:2-102:1).

More significantly, Plaintiff has made no specific showing of prejudice from defense counsel's violations. In fact, particularly with respect to Plaintiff's life sentence and disciplinary record, it does not appear that defense counsel introduced any evidence on either of these issues, and the jury was instructed to base their verdict on the evidence in the case and not any arguments by counsel.[6] (Doc. 300 at 237:18-21). There is simply no credible suggestion or record evidence that defense counsel's comments influenced the jury's verdict, and Plaintiff has not demonstrated, in light of the record as a whole, that "manifest injustice" resulted from the comments. *Foradori v. Harris*, 523 F.3d 477, 506 (5th Cir. 2008) (new trial will not be granted based on trial error "unless, after considering the record as a whole, the court concludes that manifest injustice will result from letting the verdict stand"); *see also City of Cleveland v. Peter Kiewit Sons' Co.*, 624 F.2d 749, 756 (6th Cir. 1980) (in determining whether there is a "reasonable probability" that jury was influenced by improper conduct, court examines totality of the circumstances, including "nature of the comments, their frequency, their possible relevancy to the real issues before the jury, the manner in which the parties and the court treated the comments, the strength of the case (e.g. whether it is a close case), and the verdict itself"); *Pullman v. Land O'Lakes, Inc.*, 262 F.3d 759, 762 (8th Cir. 2001) (for violation of ruling *in limine* to warrant new trial, ruling must be specific in its prohibition, the violation must be clear, and violation must "prejudice[] the parties or den[y] them a fair trial"); *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1192 (9th Cir. 2002) (misconduct by trial counsel results in a new trial if the "flavor of misconduct sufficiently permeates an entire proceeding to provide conviction that the jury was influenced by passion and prejudice in reaching

[6] Indeed, as Defendants note, it appears that *Plaintiff's* exhibits contain documents describing Plaintiff's crimes and prison disciplinary history. (P. Exh. 79 at 001173, 001178).

its verdict"); *Blevins v. Cessna Aircraft Co.*, 728 F.2d 1576, 1579 (10th Cir. 1984) (violation of ruling *in limine* did not warrant new trial where party seeking new trial failed to show how he was prejudiced by testimony). Therefore, neither a new trial nor judgment as a matter of law is warranted on this basis.

c. Evidence of Disability

Plaintiff contends that the trial evidence overwhelmingly establishes that Plaintiff was disabled. (Docs. 288-1 at 5-7; 308-2 at 6-12). Plaintiff points particularly to numerous statements in medical records that he had low visual acuity, was "legally blind," performed poorly on vision tests, should receive a no duty or reduced duty status, needed surgery or needed surgery "ASAP," and was complaining of blurred vision. (Docs. 288-1 at 6; 308-2 at 9-11). Plaintiff also argues that he was moved out of the fields in response to his disability, demonstrating that Defendants believed him to be disabled. (Docs. 288-1 at 7; 308-2 at 11). Plaintiff also makes much of the following excerpt from Warden Peabody's testimony, considering it an "admission" that Plaintiff was disabled:

> Q. But, Warden, You know, Mr. Coordinator, the definition of disability under the Americans with Disabilities Act.
> A. Yes.
> Q. And it's a physical impairment, correct?
> A. Correct.
> Q. That impairs life activities?
> A. Yes, major life function.
> Q. And an example of a physical impairment is a cataract?
> A. I'm not aware that cataract is – now I'm aware that blindness is, but cataracts, no.
> Q. No, you don't think cataracts is a physical impairment?
> A. It depends upon the severity of the cataracts.
> Q. If it's causing someone to be declared legally blind that would be pretty severe, correct?
> A. I would consider that severe.
> Q. Okay. And if it's affecting their ability to walk, that would be a major life activity, correct?
> A. Correct.

> Q. If it's affecting their ability to work that would be a major life activity, correct?
> A. Yes.
> Q. I'm sorry?
> A. Yes.
> Q. And affecting their ability to exercise, that would be a major life activity, correct?
> A. Yes.
> Q. Affecting their ability to play music that would be a major life activity, correct?
> A. Yes.
> Q. Affecting their ability to read and write letters, correct?
> A. Yes.
> Q. So this person has a disability, Warden.
> A. Yes.
> Q. And they should have gotten an accommodation?
> A. The accommodation that was recommended was surgery, which I believe he did get.

(*See* Docs. 308-2 at 7, 295 at 110:1-111:15).

Although the issue is close, the Court concludes that this claim does not warrant a new trial. As Plaintiff observes, an individual has a "disability" under the relevant provisions of the ADA if he has "a physical or mental impairment that substantially limits one or more major life activities" or has "a record of such an impairment." 42 U.S.C. § 12102(1)(A)-(B). Here, it is true that the medical evidence shows that Plaintiff repeatedly complained of difficulty seeing and was evaluated by numerous medical professionals in connection with his professed inability to see. However, there was also testimony at trial that much of the medical testing that Plaintiff underwent, the records substantiating his disability, and the recommendations made about his treatment were based primarily on his own self-reports. (Doc. 296 at 59:11-20). Additionally, according to Dr. Kastl, Plaintiff's medical records just prior to his surgery showed that his visual acuity was significantly better than prison records suggested. (Doc. 300 at 170:5-171:10). Moreover, most of the evidence about how Plaintiff's impairments actually affected his daily life

came from the testimony of Plaintiff and other inmates. The jury could properly have rejected this testimony.

In evaluating whether Plaintiff had established that he was disabled, the jury could also properly have considered testimony that the hospital with the ability to correct Plaintiff's cataracts kept "sending [him] back" without surgery, (Doc. 296 at 63:16-21), or that inmates frequently exaggerate their conditions to avoid working in the field and that Plaintiff never asked for a duty status change from work other than work in the field. (Doc. 295 at 134:14-135:7; Doc. 300 at 51:2-12; 52:18-21).

The jury also need not have considered Warden Peabody's testimony as an admission that Plaintiff was disabled. A fair reading of the exchange is that Warden Peabody accepted the parameters of Plaintiff's counsel's hypothetical but, at the end, also attempted to note that Plaintiff, clearly the individual that Plaintiff's counsel was referencing, had received surgery. Plaintiff's duty status similarly does not indicate that Angola personnel believed that Plaintiff was "disabled" under the ADA or RA: it appears from Plaintiff's own testimony that duty status may be given where an inmate is to be evaluated by medical personnel but an injury or disability has not been established. (Doc. 300 at 24:5-12).

In short, Plaintiff is correct that there is significant evidence that would have permitted a finding that he was disabled. However, it was not the only permissible finding that the jury could make, and a new trial or judgment as a matter of law is unwarranted.

d. Evidence of ADA/RA Violation

Plaintiff maintains that the trial evidence also overwhelmingly establishes the other elements of an ADA or RA violation. (Docs. 288-1 at 8-11; 308-2 at 12-15). Because the jury found that Plaintiff was not disabled, it did not make any findings on the other elements of an ADA

or RA violation. (Doc. 277). The jury was not required to do so, and the Court need not make such findings either, as Plaintiff's failure to establish any element of an ADA or RA violation, including that he suffers from a "disability," defeats his claim. *See, e.g., Wright v. New York State Dep't of Corr.*, 831 F.3d 64, 72 (2d Cir. 2016) (to establish ADA and RA violation, inmate plaintiff must show that he is a qualified individual with a disability; defendant is an entity subject to the acts; and plaintiff was denied the opportunity to participate in or benefit from defendant's services, programs, or activities or defendant otherwise discriminated against him by reason of his disability). However, even if Plaintiff had a disability, the Court notes that, because the evidence of the precise extent and nature of Plaintiff's disability was mixed, it would not have been error warranting a new trial or judgment as a matter of law for a jury to determine that Plaintiff had not shown discrimination or a denial of access to services or programs sufficient to give rise to a claim under the ADA or RA.

e. Testimony of Warden Peabody

Plaintiff argues that Warden Peabody testified erroneously that temporary impairment is not a disability under the ADA, and the jury's verdict may have been tainted by this false testimony. (Docs. 288-1 at 11-12; 308-2 at 15-16).

This argument does not warrant relief. In a civil case, a new trial may be granted when a witness willfully testifies falsely to a material fact. *See Traylor v. Pickering*, 324 F.2d 655, 658 (5th Cir. 1963); *see also Hitachi Consumer Electronics Co. Ltd. v. Top Victory Electronics (Taiwan) Co. Ltd.*, 2013 WL 5273326 at *6 (E.D. Tex. Sept. 18, 2013) (party seeking new trial based on false testimony must establish "by clear and convincing evidence that: (i) the witness 'willfully perjured himself,' and (ii) the allegedly false testimony prevented the party from fully and fairly presenting its case"). Here, Plaintiff asserts that Warden Peabody "either perjured

himself or does not know what a disability is under current law." (Doc. 288-1 at 11; 308-2 at 16). Therefore, Plaintiff does not clearly assert that Warden Peabody's false testimony was provided "willfully."

Moreover, Plaintiff's counsel recognized and attempted to correct this alleged error during trial. Plaintiff's counsel did little to point it out while cross-examining Warden Peabody (Doc. 295 at 141:19-143:12), but argued to the Court that the jury should be instructed that a "disability" may be temporary. (Doc. 300 at 142:2-19). The Court agreed to give the instruction, and Plaintiff argued in closing that "someone can have a disability and be covered by the ADA even if that disability is temporary." (*Id.* at 206:22-24). The Court instructed the jury in accordance with its prior ruling. (*Id.* at 229:12-14).

Plaintiff's only evidence that the jury was influenced by Warden Peabody's statement appears to be its verdict that Plaintiff was not disabled. (Doc. 288-1 at 12; 308-2 at 16). However, as the Court discussed previously, there are other permissible ways that the jury could have reached this decision. The jury was instructed on the law as Plaintiff asked; absent any meaningful evidence that the jury instead adhered to Warden Peabody's interpretation, there is no basis on which to grant a new trial or judgment as a matter of law.

f. Evidence of Eighth Amendment Violation

Plaintiff contends that the trial evidence overwhelmingly establishes that he was forced to work in dangerous conditions in violation of the Eighth Amendment. (Docs. 288-1 at 12-14; 308-2 at 16-18). To prevail on an Eighth Amendment claim, a prisoner must show that he was exposed to a "substantial risk of serious harm" and that officials acted or failed to act with "deliberate indifference" to that risk. *See Gobert v. Caldwell*, 463 F.3d 339, 345-46 (5th Cir. 2006).

Plaintiff's claim does not warrant relief. Plaintiff alleges that he was placed in working conditions that were dangerous in light of his disability. (Docs. 288-1 at 12-14; 308-2 at 16-18). As discussed previously, the evidence of Plaintiff's limitations (including those preventing him from working safely in certain conditions) was ambiguous.

Even more significant, however, is that the Eighth Amendment's "deliberate indifference" inquiry is subjective. That is, a prison official does not violate the Eighth Amendment unless he "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *see also Williams v. Hampton*, 797 F.3d 276, 280-81 (5th Cir. 2015) (en banc) (re-affirming applicability of *Farmer* standard in inmate deliberate indifference suit). Here, even if prison officials should not have assigned Plaintiff to work in the field or the tag plant, Plaintiff has done little to establish that any Defendant involved in assigning Plaintiff work actually knew that he had a visual impairment and disregarded any resultant risks when assigning him work. The jury concluded that no individual Defendant subjected Plaintiff to deliberate indifference under the Eighth Amendment (Doc. 277 at 3-4), and the jury was properly given this responsibility. *See Hare v. City of Corinth, Miss.*, 74 F.3d 633, 654 (5th Cir. 1996) ("Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a fact finder *may* conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." (emphasis added)). The jury might reasonably have reached a different conclusion, but Plaintiff has not shown that the jury's verdict was impermissible such that a new trial or judgment as a matter of law is appropriate.

IV. CONCLUSION

Accordingly, **IT IS ORDERED** that Plaintiff's Motion (Doc. 288) is **DENIED**.

Signed in Baton Rouge, Louisiana, on October 30, 2017.

JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA