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Arkansas  
State Claims Commission

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Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

- Mr.
- Mrs.
- Ms.
- Miss

Joe Stewart - ADC #112659, Claimant

vs.

State of Arkansas, Respondent

AR. Dept of Corrections

COMPLAINT

Pain and Suffering

Do Not Write in These Spaces	
Claim No.	17-0353-cc
Date Filed	November 14, 2016 (Month) (Day) (Year)
Amount of Claim \$	75,000.00
Fund	DOC

Personal Injury, Negligence

Joe Stewart, the above named Claimant, of Varner Unit - P. O. Box 600 Grady  
(Name) (Street or R.F.D. & No.) (City)

AR 71644 N/A County of Lincoln represented by Sheila F. Campbell  
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

of 2510 Percy Machin Drive North Little Rock, AR 72114 501-374-0700 501-372-5375  
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas Department of Correction Amount sought: \$75,000.00

Month, day, year and place of incident or service: 05-25-2016

Explanation: On Wednesday, May 25, 2016, Claimant Joe Stewart was working the table saw at the Votech under the direct supervision of Ms V. Perry and was told to cut boards at 2 - 25% angle along the edges. During his second run of the board saw kicked back the board threw his hand into the blade badly cutting his middle and ring finger of his left hand. The saw malfunctioned causing him injuries. There weren't any guards on the saw nor any kick back guards to catch the board. His injuries were caused by the equipment he was instructed to use did not have the proper safety guards. Due to his injuries, Mr. Stewart lost his middle and ring fingers. The negligence of the Respondent in failing to properly guard the table saw resulted in serious personal injuries to the claimant. As a proximate cause of the negligence of the Respondent, the claimant has sustained personal injury pain and suffering in the past and future pain and suffering. As a proximate cause of the negligence of the respondent claimant is permanently injured and has permanent disfigurement.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer there? Yes; when? ; to whom? Arkansas Department of Correction  
(Yes or No) (Month) (Day) (Year) (Department)

and that \$ 0.00 was paid thereon: (2) Has any third person or corporation an interest in this claim? None; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: ; and was acquired on ; in the following manner

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verify believe

JUN 13 2017

BEFORE THE STATE CLAIMS COMMISSION

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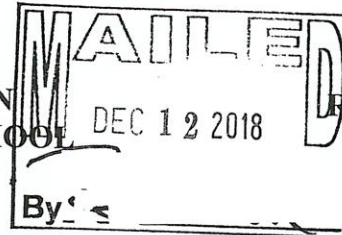
JOE STEWART (ADC #112659)

CLAIMANT

VS.

CASE NO. 17-0353-CC

ARKANSAS DEPARTMENT OF CORRECTION  
RIVERSIDE VOCATIONAL TECHNICAL SCHOOL



RESPONDENTS

AMENDED COMPLAINT

Comes the Claimant, Joe Stewart, by and through his attorney, Sheila F. Campbell, and for his Amended Complaint, states:

1. That the Commission has jurisdiction of the subject matter and the parties as the Claimant is bringing this cause of against, agencies of the State of Arkansas, the Arkansas Department of Correction and Riverside Vocational Technical School.
2. That Riverside Vocation Technical School should be added as a party pursuant to A.R.C.P., Rule 19 because complete relief cannot be accorded with this party being joined.
3. That on May 25, 2016, the Claimant, Joe Stewart, was incarcerated in the Tucker Unit of the Arkansas Department of Correction and was enrolled to take classes from the Riverside Vocational Technical School.
4. Act 496 of 2005 placed the Riverside Vocational Technical School and the Arkansas Department of Correction School District under the same umbrella.
5. On May 25, 2016, Claimant, Joe Stewart, was enrolled in carpentry classes at the Arkansas Department of Correction, Tucker Unit that was taught by Riverside Vocational Technical School.
6. On Wednesday, May 26, 2016, Claimant, Joe Stewart, was working the table saw at the Votech under the direction of Ms. V. Perry and he was instructed to cut boards at 2-25%

angle along the edges. During his second run of boards, the saw kicked back the board and drew the Claimant's hand into the blade severing his middle and right finger on his left hand.

7. There were no guards on the saw nor any kick back guard to catch the board which rendered the saw unreasonable dangerous to the Claimant.

8. That Respondents, Arkansas Department of Correction and Riverside Vocational Technical School had a duty to make sure that the Claimant was being trained in a safe environment with equipment that was not defective.

9. That the Respondent, Riverside Vocational Technical School was the agent for the Arkansas Department of Correction in providing vocational education classes for the Claimant, an inmate in the Arkansas Department of Correction.

10. That the Respondent, Arkansas Department of Correction is responsible for the negligent acts of its agent Riverside Vocational Technical School in failing to provide a safe environment for the Claimant and in providing defective equipment to the Claimant.

11. That Respondents, Arkansas Department of Correction and Riverside Vocational Technical School failed to warn the Claimant of the unreasonable dangerous condition of the saw that he was using that resulted in his fingers being amputated.

12. That Respondents, Arkansas Department of Correction and Riverside Vocational Technical School were in a joint venture to provide career education to the Claimant and they are jointly and severally liable for the injuries that the Claimant sustained on May 26, 2016 while using a table saw that was not properly guarded.

13. That as a proximate cause of the negligence of Respondents, Arkansas Department of Correction and Riverside Vocational Technical School, the Claimant sustained personal injuries to his to left hand including the amputation of his middle and right finger.

14. That as a proximate cause of the negligence of Respondents, Arkansas Department of Correction and Riverside Vocational Technical School, the Claimant sustained past pain and suffering and will have future pain and suffering.

15. That as a proximate cause of the negligence of Respondents, Arkansas Department of Correction and Riverside Vocational Technical School, the Claimant has permanent disfigurement.

16. That the Claimant exhausted all of his administrative grievances that are attached hereto, as Exhibit "1".

WHEREFORE, The Claimant, prays judgement in the amount of \$75,000.00 against the Respondents, Arkansas Department of Correction and Riverside Vocational Technical School jointly and severally, for the negligence of failing to guard the table saw making unreasonably dangerous for the Claimant to use on May 25, 2106; for Claimant's past pain and suffering; for Claimant's future pain and suffering; for the amputation of his middle and right finger on his left hand; for Claimant's permanent impairment and for all other relief to which the Claimant may be entitled.

Respectfully submitted,

Sheila F. Campbell  
Attorney at Law  
P.O. Box 939  
No. Little Rock, AR 72115  
(501) 374-0700(telephone)  
(501) 372-5375(fax)  
[cmapbl@sbcglobal.net](mailto:cmapbl@sbcglobal.net)



Sheila F. Campbell

Ark. Bar # 83-239

**CERTIFICATE OF SERVICE**

I, Sheila F. Campbell, hereby certify that I have served a copy of the foregoing Amended Complaint on the following attorney of record by depositing same in the United States mail with sufficient postage affixed on this 12<sup>th</sup> day of June, 2017:

James DePriest, Chief Counsel  
Arkansas Department of Correction  
Post Office box 8707  
Pine Bluff, AR 71611

Leslie Rultledge  
Arkansas Attorney General  
323 Center St., Ste, 200  
Little Rock, AR 72201-2610



Sheila F. Campbell

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**JOE STEWART (ADC 112659)**

**CLAIMANT**

**V.**

**CLAIM NO. 17-0353-CC**

**ARKANSAS DEPARTMENT OF  
CORRECTION; RIVERSIDE  
VOCATIONAL TECHNICAL  
SCHOOL**

**RESPONDENTS**

**ORDER**

Now before the Arkansas State Claims Commission (the "Claims Commission") is the claim of Joe Stewart (the "Claimant") against the Arkansas Department of Correction ("ADC") and Riverside Vocational Technical School ("Riverside") (collectively, the "Respondents"). At the hearing held on July 12, 2018, Claimant appeared via videoconference and was represented by Sheila F. Campbell. Thomas Burns appeared on behalf of ADC, and Vincent P. France appeared on behalf of Riverside.

At the beginning of the hearing, Commissioner Booth recused due to prior work with Claimant's attorney.

1. Claimant filed his claim on November 14, 2016, against ADC, seeking \$75,000.00 in damages based upon the alleged negligence of ADC. Claimant amended his claim on June 13, 2017, to add Riverside as a respondent. Claimant seeks damages for past pain and suffering, future pain and suffering, the injuries to his fingers, his permanent impairment, and all other relief to which he is entitled.

2. At the hearing, Claimant testified that he was accepted into Riverside's carpentry program in November 2015. He stated that the only safety course he took was for OSHA. Claimant testified that he had never used a table saw prior to starting at Riverside and that he was instructed

by the Riverside teachers how to use a table saw. Claimant testified that he cut his middle and ring fingers on his left hand on May 25, 2016, while operating a table saw under the instruction of a Riverside teacher. Claimant stated that, after his injury, he pulled the manual for the table saw and noticed that a guard and housing should have been on the table saw. Claimant testified that, following his injury, he had bone shards at the top of his middle finger that ultimately led to amputation. Claimant stated that his ring finger has scar tissue and will not bend. After the injury, Claimant stated that he quit the carpentry program. On cross examination, Claimant testified that a notice was attached to the saw warning users to keep hands away from the blade. Claimant testified as to his occasional drug use while an inmate but stated that he passed a drug test immediately after his injury. Claimant also testified as to some disciplinary issues, including fighting, after his injury. He stated that he was able to catch a football.

3. At the conclusion of Claimant's case, Respondents moved for a directed verdict, which was denied after deliberation by the Claims Commission.

4. Verna Perry, the educational program manager at Riverside, testified that she was the shop supervisor when Claimant's injury occurred. She stated that she was filling in for the regular instructor that day and that she was 15-20 feet away from the Claimant at the time of the injury. On cross examination, Ms. Perry admitted that it was her responsibility, as well as the safety person with ADC, to check the guards on the table saws. Ms. Perry stated that Riverside owns the table saws but that ADC oversees safety inspections. Ms. Perry testified that the table saw that injured Claimant had been in use for at least two years and that she never saw guards on that table saw. She stated that blade guards are not conducive to certain types of cuts made with a table saw. Ms. Perry testified as to the memo sent by ADC deputy warden John Lowe after Claimant's injury, in which he ceased operations at the carpentry shop because of unsafe conditions. Ms. Perry

testified that if Claimant had not placed his hand above the saw, the injury would not have occurred. She stated that carpentry program participants attended periodic safety meetings, at which they were shown films on power tools. Ms. Perry did not know whether there were any safety meetings offered to Claimant dealing with the use of power saws. On redirect, Ms. Perry reiterated that Claimant's hand was not positioned correctly at the time of injury.

5. Officer Ronald Bailey, a correctional captain with ADC in May 2016, testified briefly about drug tests available to ADC at that time. Officer Bailey stated that, while there were tests for a drug known as K2 at that time, Claimant's unit did not have any of those tests.

6. Lyle Wayne Cunningham testified that he was an LPN with Correct Care Solutions in May 2016. He testified that he saw Claimant when he came back from the emergency room after his injury. He also stated that on June 2, 2016, Claimant told him that Claimant fell off of his bunk and damaged his cast. Mr. Cunningham did not believe that Claimant was being truthful with him.

Based upon the pleadings, testimony, and other evidence, the Claims Commission hereby unanimously finds as follows:

#### **Findings of Fact**

7. Claimant was a participant in the Riverside carpentry program at the time of his injury.

8. On May 25, 2016, Claimant cut the middle and ring fingers of his left hand while using a table saw.

9. Against manufacturer specifications, the table saw did not have a guard on it at the time of Claimant's injury.

10. The table saw was owned by Riverside.



11. The safety inspection of the table saw was overseen by ADC.
12. Table saws are inherently dangerous.
13. Claimant was not given training or safety instructions regarding use of the table saw prior to using the table saw.
14. There was a notice attached the table saw advising users to keep hands away from the blade.
15. Claimant had not used a table saw prior to entering the carpentry program at Riverside.
16. The top of Claimant's middle finger was subsequently amputated due to bone shards in the finger.
17. Claimant's ring finger has scar tissue and does not fully bend.
18. On May 31, 2016, deputy warden John Lowe sent a memo to Ms. Perry summarizing his inspection of the carpentry shop, at which time he noted various "issues of concern," including two table saws with blade guards removed. Mr. Lowe noted that "[t]he removal of safety features from equipment in an educational and training environment is intolerable." Mr. Lowe also stated in the memo that "[a]n operable blade guard should have prevented" Claimant's injury.

#### **Conclusions of Law**

19. The Claims Commission has jurisdiction over this claim pursuant to Ark. Code Ann. § 19-10-204.
20. This is a negligence claim. The elements of a negligence claim are duty, breach of duty, causation, and damages. *See Chambers v. Stern*, 347 Ark. 395, 406, 64 S.W.3d 737, 744 (2002).

21. The Claims Commission finds that Respondents' negligence led to Claimant's injury.

22. ADC had a duty to provide Claimant with safety training prior to the use of a table saw.

23. ADC did not provide Claimant with safety training prior to use of a table saw.

24. Riverside had a duty to provide Claimant with safe equipment, including a blade guard on the table saw he was using.

25. Riverside did not provide Claimant with safe equipment, including a blade guard on the table saw he was using.

26. The Claims Commission is unpersuaded that the notice attached to the table saw gave Claimant sufficient training to prevent this injury.

27. The Claims Commission is not persuaded by Ms. Perry's testimony that blade guards cannot be in place on a table saw for certain types of cuts. For the sake of argument, even assuming that some types of cuts require the removal of a blade guard and that the cuts Claimant was making fell into this category, Claimant was a novice user without the requisite safety training or experience to be making such cuts.

28. As a result of Respondents' failure to properly train and to provide safe equipment, Claimant suffered an injury to his middle and ring fingers of his left hand.

29. The Claims Commission is unpersuaded by Respondents' argument that Claimant reaching over the blade presented an intervening cause. If Claimant's hand was positioned incorrectly, that error is attributable to Respondents' failure to properly train Claimant as to the safe use of a table saw. Mistakes can be expected when users are not provided sufficient safety training, and the mistakes are even more likely when the equipment is unsafe.

30. The Claims Commission is also unpersuaded by Respondents' argument that Claimant's ability to catch a football with his left hand eight months after the injury shows that Claimant has no damages.

31. The Claims Commission finds that the injuries to Claimant's middle and ring fingers are permanent injuries.

32. As such, the Claims Commission assigns fault as follows:

- (a) ADC: 50%
- (b) Riverside: 50%
- (c) Claimant: 0%

33. By a concurrence of two commissioners pursuant to Ark. Code Ann. § 19-10-206(d)(2), the Claims Commission herein AWARDS Claimant \$5,000.00, of which Respondents are equally liable.

IT IS SO ORDERED.

[recused]

ARKANSAS STATE CLAIMS COMMISSION  
Dexter Booth



ARKANSAS STATE CLAIMS COMMISSION  
Bill Lancaster



ARKANSAS STATE CLAIMS COMMISSION  
Mica Strother, Co-Chair

DATE: August 1, 2018

**Notice(s) which may apply to your claim**

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(b). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**JOE STEWART (ADC 112659)**

**CLAIMANT**

**V.**

**CLAIM NO. 17-0353-CC**

**ARKANSAS DEPARTMENT OF  
CORRECTION; RIVERSIDE  
VOCATIONAL TECHNICAL  
SCHOOL**

**RESPONDENTS**

**ORDER**

Now before the Arkansas State Claims Commission (the “Claims Commission”) are the motions for reconsideration filed by separate respondent Arkansas Department of Correction (“ADC”) and separate respondent Riverside Vocational Technical School (“Riverside”) regarding the August 1, 2018, order entered by the Claims Commission. Based upon a review of the motions, the arguments made therein, and the law of Arkansas, the Claims Commission hereby unanimously finds as follows:

1. Joe Stewart (the “Claimant”) filed his claim on November 14, 2016, against ADC, seeking \$75,000.00 in damages based upon the alleged negligence of ADC. Claimant amended his claim on June 13, 2017, to add Riverside Vocational Technical School (“Riverside”) as a respondent. Claimant’s claim is based upon injuries from a table saw to two of the fingers on his left hand. From ADC and Riverside (collectively referred to as the “Respondents”) jointly, Claimant sought damages for past pain and suffering, future pain and suffering, the injuries to his fingers, his permanent impairment, and all other relief to which he would be entitled.

2. After a hearing held July 12, 2018, the Claims Commission found that ADC breached its duty to oversee safety and that Riverside breached its duty to provide Claimant with safe equipment. As a result of these breaches of duty, Claimant suffered permanent injuries to the

middle and ring fingers of his left hand. The Claims Commission found Respondents to be equally liable and awarded Claimant \$5,000.00 in damages.

3. ADC then filed its motion for reconsideration, arguing that (1) the Claims Commission did not rule on a May 2017 motion to dismiss filed by ADC; (2) Claimant did not make any allegations against ADC beyond naming ADC as a respondent; (3) the memo sent by ADC deputy warden John Lowe after Claimant's injuries were "the result of an investigation and was not properly admitted into evidence;" (4) Riverside owns and operates the equipment, not ADC; (5) ADC is entirely separate from Riverside and was not responsible for safety trainings; (6) the award amount is a shock to the conscience of the State; and (7) Claimant was responsible for his injuries by placing his hand over the blade.

4. Riverside filed its motion for reconsideration, arguing that under the doctrines of comparative fault and intervening cause, Claimant is not entitled to damages.

5. Claimant responded to Riverside's motion for reconsideration, asserting that Riverside had a special relationship with Claimant that created a duty not to place him in an unsafe position and that Riverside breached its duty to Claimant by having him use a table saw without a guard. Claimant focused on Verna Perry, the educational program manager for Riverside, who testified that Riverside knew it needed new equipment and had requested new equipment with guards but that the equipment request had not been approved. Claimant argued that the doctrine of intervening cause does not apply here because his injuries would not have occurred if the guard had been attached to the table saw. Claimant also argued that, under the doctrine of comparative fault, he is still entitled to recover damages.

**ADC'S MOTION FOR RECONSIDERATION**

*Argument re May 2017 motion to dismiss*

6. As to ADC's argument that the Claims Commission did not rule on its May 2017 motion to dismiss, that motion to dismiss was effectively mooted by the Claimant's amended complaint filed June 13, 2017. To the extent that there is any confusion, ADC's May 2017 motion is DENIED.

*Argument that Claimant did not make any allegations against ADC*

7. As to ADC's argument that Claimant did not make any allegations against ADC beyond naming ADC as a respondent, the following allegations are included in the amended complaint:

- (3) That on May 25, 2016, the Claimant, Joe Stewart, was incarcerated in the Tucker Unit of the Arkansas Department of Correction and was enrolled to take classes from the Riverside Vocational Technical School.
- (4) Act 496 of 2005 placed the Riverside Vocational Technical School and the Arkansas Department of Correction School District under the same umbrella.
- (5) On May 25, 2016, Claimant, Joe Stewart, was enrolled in carpentry classes at the Arkansas Department of Correction, Tucker Unit that was taught by Riverside Vocational Technical School.
- (8) That Respondents, Arkansas Department of Correction and Riverside Vocational Technical School had a duty to make sure that the Claimant was being trained in a safe environment with equipment that was not defective.
- (9) That the Respondent, Riverside Vocational Technical School was the agent for the Arkansas Department of Correction in providing vocational educational classes for the Claimant, an inmate in the Arkansas Department of Correction.
- (10) That the Respondent, Arkansas Department of Correction is responsible for the negligent acts of its agent Riverside Vocational Technical School in failing to provide a safe environment for the Claimant and in providing defective equipment to the Claimant.

- (11) That Respondents, Arkansas Department of Correction and Riverside Vocational Technical School failed to warn the Claimant of the unreasonable dangerous condition of the saw that he was using that resulted in his fingers being amputated.
- (12) That Respondents, Arkansas Department of Correction and Riverside Vocational Technical School were in a joint venture to provide career education to the Claimant and they are jointly and severally liable for the injuries that the Claimant sustained on May 26, 2016 while using a table saw that was not properly guarded.
- (13) That as a proximate cause of the negligence of Respondents, Arkansas Department of Correction and Riverside Vocational Technical School, the Claimant sustained personal injuries to his to [sic] left hand including the amputation of his middle and right finger.
- (14) That as a proximate cause of the negligence of Respondents, Arkansas Department of Correction and Riverside Vocational Technical School, the Claimant sustained past pain and suffering and will have future pain and suffering.
- (15) That as a proximate cause of the negligence of Respondents, Arkansas Department of Correction and Riverside Vocational Technical School, the Claimant has permanent disfigurement.

8. The Claims Commission finds that Claimant stated a negligence claim against ADC and that ADC was properly included in the claim as a respondent.

*Argument re ADC's deputy warden's memo*

9. As to ADC's argument that deputy warden John Lowe's memo was "the result of an investigation and was not properly admitted into evidence," the Claims Commission is unpersuaded. The fact that the memo was the result of an investigation does not render it irrelevant.

To the contrary, the memo is entirely on point and worth including in its entirety:

On this date I was provided an incident report and accident investigation addressing an inmate accident that occurred in the Finish Carpentry shop area. Inmate cut his finger on a table saw blade while using the table saw. Along with the report was a photograph of the table saw that showed it to have had the blade guard removed. An operable blade guard should have prevented such an accident. Upon discovering this safety equipment discrepancy, I visited with the finish carpentry shop along



with Captain Greg Moore, Sgt. Alexandra Musgrove, and you, Mrs. Verna Perry. During my visit to the shop, I noted the following issues of concern:

There were two table saws with the blade guard removed.

There is a joiner with a spring missing from the blade cover that is required to make it cover the spinning blades of the joiner.

A band scroll saw appears to need a cowling extension to cover approximately 14 inches of blade above the portion used for cutting the stock.

Each of these issues appear to me to pose a risk of harm to anyone who might attempt to operate that equipment. The removal of safety features from equipment in an educational and training environment is intolerable.

I instructed you, Mrs. Perry, to shut down the equipment noted above and to have other trained staff further inspect the program for safety compliance.

I have since been informed you have closed the program until further notice. Thank you.

(emphasis added).

10. This memo demonstrates that ADC did oversee safety inspections, as discussed further, *infra*. This memo also demonstrates that ADC had the authority to shut down unsafe equipment.

11. The Claims Commission is concerned that ADC did not exercise its oversight of the safety of the program until Claimant was injured. However, to ADC's credit (and specifically to deputy warden John Lowe), Lowe visited the carpentry shop after Claimant was injured to do a safety assessment and did a full equipment evaluation, as opposed to checking only the table saw that Claimant used. The Claims Commission agrees with Lowe entirely -- "the removal of safety features from equipment in an educational and training environment is intolerable." (emphasis added).

12. To the extent that Lowe or the other parties present at the carpentry shop inspection might have qualified some of the statements in the memo, those parties were not deposed or presented to testify at the hearing.

13. As to ADC's argument that the memo was not properly admitted into evidence, ADC provides no context for its argument. Respondents did not object to Claimant's use of the memo at hearing. Moreover, the Claims Commission is not bound by the formal rules of evidence and is free to consider the memo. Ark. Code Ann. § 19-10-210(b)(1).

14. The Claims Commission finds that modification of the award based on these arguments is not appropriate.

*Argument re Riverside owning/operating equipment*

15. As to ADC's argument that the equipment is "overseen and owned by Riverside" and that "[s]afety of the equipment is not overseen by the ADC," the Claims Commission finds that this argument is inconsistent with the testimony presented jointly by Respondents. Ms. Perry, Riverside's educational program manager, testified that Riverside owns the table saws but that ADC oversees safety inspections. Ms. Perry's testimony was supported by Lowe's memo ceasing operations at Riverside's carpentry shop because of unsafe conditions.

16. As such, the Claims Commission finds that modification of the award based upon this argument is not appropriate.

*Argument re ADC's statutory separation from Riverside*

17. As to ADC's argument that it is entirely separate by statute from Riverside and that it does not provide inmates with safety training, the Claims Commission disagrees with ADC's argument. ADC cited to Ark. Code Ann. §§ 12-29-307—310, which includes the following provisions showing the collaborative relationship between ADC and Riverside:

- “This section and §§ 12-29-307—12-29-310 are intended to create an additional state vocational and technical school to provide vocational and technical education and training opportunities to qualified persons incarcerated in facilities of the Department of Correction and the Department of Community Correction . . .” Ark. Code Ann. § 12-29-306(a) (emphasis added).
- “There is established a state vocational and technical school, to be known as the “Riverside Vocational and Technical School,” to be operated by the Career Education and Workforce Development Board within the Department of Correction and the Department of Community Correction at such facilities of the Department of Correction and the Department of Community Correction as may be designated by the Department of Career Education in cooperation and agreement with the Board of Corrections.” Ark. Code Ann. § 12-29-307 (emphasis added).
- “The Riverside Vocational Technical School is created for the purpose of providing vocational and technical educational opportunities to qualified persons incarcerated in the facilities of the Department of Correction and the Department of Community Correction . . .” Ark. Code Ann. § 12-29-308 (emphasis added).
- “The operation of the school is subject to such special rules deemed appropriate for the operation of vocational or technical education or training programs at the correctional institutions under the control of the Department of Correction and the Department of Community Correction in accordance with agreements and rules mutually developed and agreed to by the Career Education and Workforce Development Board and the Board of Corrections.” Ark. Code Ann. § 12-29-309(a)(2) (emphasis added).
- “. . . the school shall be operated in accordance with the rules for the operation of vocational or technical education or training programs at facilities of the Department of Correction and the Department of Community Correction as provided in §§ 12-29-306—12-29-310.” Ark. Code Ann. § 12-29-309(b)(2) (emphasis added).
- “The cost of implementing and operating the Riverside Vocational and Technical School at facilities of the Department of Correction and the Department of Community Correction . . . shall be borne by the state and shall be paid from funds appropriated by the General Assembly to the school, the Department of Career Education, and to the Department of Correction and the Department of Community Corrections . . .” Ark. Code Ann. § 12-29-310(a) (emphasis added).
- “This section and §§ 12-29-306—12-29-309 contemplate that the Department of Correction and the Department of Community Correction

will provide facilities for the vocational and technical education programs operated by the school.” Ark. Code Ann. § 12-29-310(a)(2)(A) (emphasis added).

- “The school shall be administered under the direction and supervision of the chief administrative officer of the Corrections School System or the Director of the Riverside Vocational and Technical School under the direct authority of the Board of Directors of the Corrections School System.” Ark. Code Ann. § 12-29-310(b) (emphasis added).

18. While ADC argued that these statutes clarify the separation between Riverside and ADC, the Claims Commission draws the opposite conclusion, finding that these statutes instead show the intertwining of Riverside and ADC, including the method of funding and rules of operation.

19. Ark. Code Ann. § 12-29-309 contemplates rules governing Riverside to be developed with ADC’s involvement. To the extent that the rules contemplated by Ark. Code Ann. § 12-29-309 specify which entity is responsible for overseeing safety, such evidence was not presented by Respondents.

20. Nowhere in these statutes does it detail ADC’s lack of responsibility for safety oversight.

21. To the extent that the Claims Commission’s August 1, 2018, order was confusing as to this issue, the Claims Commission finds that ADC was responsible for overseeing the safety of the Riverside program and that, by failing to provide trainings or to confirm that Riverside was properly training its participants, and by failing to confirm the safety (or lack thereof) of the equipment Riverside was using, ADC breached its duty to oversee safety inspections.

22. The Claims Commission finds that modification of the award based on this argument is not appropriate.

*Argument re award amount*

23. As to ADC's argument that the award amount shocks the conscience of the State, ADC bases its argument on a Worker's Compensation Commission order attached to its motion.

24. However, ADC misstates the *Gilbreth* order as making an award of \$1,480.00 for "an entire finger," when the injury suffered in *Gilbreth* actually involved a "20% loss or amputation of the distal phalanx or phalange of the claimant's second finger." In *Gilbreth*, the Worker's Compensation Commission held that "the claimant has experienced, by amputation, a permanent physical impairment that would be in the amount of one-fourth or 25% of his right second finger." Moreover, the amount that the claimant in *Gilbreth* recovered was dependent upon his weekly wage and is entirely fact-specific. See Ark. Code Ann. § 11-9-501(d)(1) ("The permanent partial disability rate for compensation payable to an employee for permanent partial disability . . . shall not exceed . . . 66 2/3% of the employee's average weekly wage . . .") The Claims Commission finds that ADC's reliance upon *Gilbreth* to be misplaced and improper for use in evaluating the award amount in the instant claim.

25. While Claimant did have part of his middle finger amputated, Claimant testified that he is also unable to fully bend his ring finger. The Claims Commission found Claimant's testimony to be credible. The Claims Commission also found the fact that Claimant's injury involved two fingers to be significant. The Claims Commission considered Claimant's testimony that, given Claimant's level of education and upcoming release date, Claimant's employment prospects are likely limited to laborer positions, and his permanent injuries will likely create difficulties for him. The Claims Commission asserts that this award amount does not shock the conscience of the State and, if anything, may be insufficient to fully compensate Claimant for his permanent injuries.

*Argument re Claimant as cause of injuries*

26. As to ADC's argument that Claimant caused his injuries by placing his hand over the blade, this argument will be discussed, *infra*, with Riverside's motion for reconsideration.

**RIVERSIDE'S MOTION FOR RECONSIDERATION**

27. Riverside argued that the doctrines of comparative fault and intervening cause bar Claimant from recovery. This argument was also mentioned by ADC in its motion for reconsideration, *supra*.

28. Specifically, Riverside argued that Claimant used the table saw multiple times prior to his injuries, that Claimant was certified on the table saw, and that Claimant never knew the table saw was supposed to have a guard. Riverside also argued that because Claimant was on the third full day in which he had been working at the table saw 'ripping' boards, that "proves that the table saw in question was safe to operate and that Joe Stewart knew how to safely operate the table saw."

29. Riverside also pointed to the 'Table Saw General Safety Rules,' which are posted in the carpentry shop and which include instructions not to reach over the blade or to clear away scraps while the blade is turning.

30. Respondent placed heavy emphasis on Claimant's testimony that if his hand had not been on the other side of the blade, he would not have been injured.

31. The Claims Commission disagrees with Respondent's analysis. The fact that Claimant had used the table saw without being injured does not prove that the table saw was safe to operate and that Claimant knew how to operate the table saw. It proves only that Claimant was lucky for a period of time. Had Claimant been properly trained how to safely operate a table saw, he would have recognized that the table saw he was instructed to use did not have a blade guard

and, thus, was not safe to use. Moreover, Lowe's memo establishes that the table saw was not safe to operate ("An operable blade guard should have prevented such an accident . . . Each of these [safety] issues appear to me to pose a risk of harm to anyone who might attempt to operate that equipment. The removal of safety features from equipment in an education and training environment is intolerable.")

32. Claimant testified that he received no safety training on how to safely operate a table saw. When asked how Claimant got "certified" on the table saw, Claimant testified that he was told to cut a door and, upon completing the cut, was told that he was certified. The Claims Commission found his testimony to be credible. Respondents presented no testimony or evidence contradicting Claimant's testimony.

33. The Claims Commission finds that the act of making one cut does not equate to training and certainly does not certify that the user is trained and capable of safely operating a table saw.

34. The Claims Commission finds that the posting of instructions in the carpentry shop does not equate to training, especially when the activity involves a rapidly spinning blade with a high risk of danger. Riverside's argument is ironic, given that Riverside was created "to provide vocational and technical education and training opportunities to qualified persons incarcerated in facilities of the Department of Correction . . . ." Ark. Code Ann. § 12-29-306(a) (emphasis added).

35. The Claims Commission disagrees that Claimant's actions caused his injuries. The cause of Claimant's injuries was his lack of training and experience, as well as Riverside's failure to provide him with safe equipment and ADC's failure to oversee safety.

36. The fact that Claimant can now look back and see how the injuries happened does not make the doctrine of intervening cause applicable. With proper training and safe equipment, Claimant could have avoided his injuries. However, Claimant was provided with neither.

37. The Claims Commission is unwilling to assign any fault to Claimant given the unsafe equipment and his lack of training. ADC was overseeing the safety of the program, as evidenced by Lowe's memo, although it unfortunately failed to evaluate the safety of the equipment or program prior to Claimant's injuries. Riverside, as a training program, failed to train Claimant as to what a safe table saw looked like and how to safely use a table saw.

38. The Claims Commission finds that modification of the award based on this argument is not appropriate.

#### CONCLUSION

39. Respondents' motions for reconsideration are DENIED, and the August 1, 2018, Claims Commission order remains in effect.



IT IS SO ORDERED.

*Henry C. Kinslow*

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth  
Henry Kinslow, Co-Chair  
Bill Lancaster  
Sylvester Smith  
Mica Strother, Co-Chair

DATE: November 5, 2018

**Notice(s) which may apply to your claim**

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(b). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

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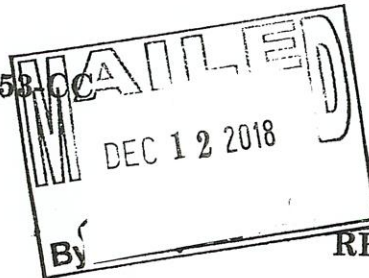
BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

JOE STEWART (ADC #112659)

RECEIVED  
CLAIMANT

v.

NO. 17-0358-CC



ARKANSAS DEPARTMENT OF  
CORRECTION; and RIVERSIDE  
VOCATIONAL TECHNICAL SCHOOL

RESPONDENTS

JOINT NOTICE OF APPEAL AND  
DESIGNATION OF THE RECORD

COME NOW Respondents, Arkansas Department of Correction (ADC) and Riverside Vocational Technical School, and hereby give their notice of appeal from all orders, judgments, and findings of the Commission in the above-referenced case. Specifically, Respondents appeal the Claims Commission's Order dated August 1, 2018 and its Order dated November 5, 2018. In its August 1, 2018 Order, the Claims Commission awarded Claimant \$5,000 and found each Respondent to be 50% at fault. In its November 5, 2018 Order, the Claims Commission denied each of the Respondent's motions for reconsideration. Thus, Respondents appeal these orders and all other decisions of the trial court adverse to the ADC and Riverside Vocational Technical School in the above-styled cause.

Respondents designate the entire record and all proceedings: including, but not limited to, any pretrial proceedings, exhibits, evidence and documents introduced into evidence or offered into evidence at all hearings to be contained in the record on appeal. The transcript shall be forwarded by the Commission to the Joint Budget Committee.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I, Vincent P. France, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via U.S. Mail on this 15<sup>th</sup> day of November, 2018:

Attorney for Claimant  
Sheila F. Campbell  
P.O. Box 939  
North Little Rock, Arkansas 72115

Vincent P. France  
Vincent P. France