

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

Arkansas State Claims Commission

MAY 09 2014

F16

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

RECEIVED

- Mr. Mrs. Ms. Miss

Theodis Kelly, #105053 Claimant

vs.

State of Arkansas, Respondent Dept. of Corr.

Do Not Write in These Spaces Claim No. 14-0855-CC Date Filed May 9, 2014 Amount of Claim \$ 204,000.00 Fund DOC

Loss of Wages (future) Personal Injury, Pain & Suffering, Mental Anguish, Failure to Follow Procedure, Negligence

COMPLAINT

Theodis Kelly, #105053 the above named Claimant, of Arkansas Department of Correction - Varner Unit represented by ...

State agency involved: Arkansas Department of Correction - Varner Unit Amount sought:

Month, day, year and place of incident or service: June 14, 2013, Ark. Dept. of Corr. - Varner Unit, Barrack No. 13

Explanation: On 6-14-13 I was dispatched by Sgt Crompton and Capt Gander to clean cameras in the barracks using a 9x10 ft ladder in which Sgt Crompton, Capt Gander knew this ladder was too short. No harness was provided as required by OSHA standards per a safety meeting by either Sgt Crompton, Capt Gander, Director Artis Ray Hobbs, Warden Randy Waitson, Warden Mizner (Security Warden), Warden Jackson (Treatment Warden). This negligence and deliberate indifference is the cause of my fall. The injury has left me in persistent pain in my left shoulder and back. Although I have seen the doctor and medical staff here on several occasions and is treated daily, for this injury over the past 10 months since the fall the pain remains and has caused me to forfeit and not enjoy the physical performance I once did and desire. My career goals and work performance in landscaping is destroyed. My job skills pay me an average of \$10 per hour. Prior to the fall I could work up to 8 hours per day easily and my goals were to work 40 hours per week until the age of 65 years in which I would retire, or, work up to ten years after my release from prison. My yearly salary at \$10 per hour, 8 hours per day is \$19,200. The ten year income loss is 192,000 which is the amount claimed. Witnesses to this incident is Renee Smith 134161, Ricky Scott 112513, Kenneth Hankins 92940, Melvin Lockhart 121199, Jama Thomas 84795. Also the 13 barrack cameras as well as the 13 and 14 Barrack Hallway cameras and 11 & 12 barrack hallway cameras, and 9 and 10 barrack unit the infirmary cameras. I will also require continued pain medication and medical expense equal my average life expectancy of 76 with expense of \$2,200.00 for 10 years is 22,000 total claim at \$204,000.00

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 thereof? Yes when? 6 25 2013 to whom? Arkansas Department of Correction

and that \$ 0 was paid thereon: (2) Has any third person or corporation an interest in this claim? no; if so, state name and address 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 verily believes that they are true.

Theodis Kelly (Print Claimant/Representative Name) Theodis Kelly (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Grady Ark. (City) (State)

Edward Lane Notary Public State of Arkansas Lincoln County on this 5th day of May 2014 (Date) (Month) (Year)

SF1-R7/99 Commission # 12362690 Commission Expires July 20, 2017 (Notary Public) (Month) (Day) (Year)

UNIT LEVEL GRIEVANCE FORM (Attachment I)

Unit/Center _____

Name _____

ADC# _____ Brks # _____ Job Assignment _____

FOR OFFICE USE ONLY
GRV # VU13-774
Date Received: 07/03/13
GRV. Code #: 800

6-25-13 (Date) STEP ONE: Informal Resolution

6-30-13 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)
If the issue was not resolved during Step One, state why: Sgt. L. Thomas says he dropped

(Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm; emergency grievances are not for ordinary problems that are not of a serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. If an Emergency, state why: _____

Is this Grievance concerning Medical or Mental Health Services? no If yes, circle one: medical or mental
BRIEFLY state your one complaint/concern and be specific as to the complaint, **date**, place, name of personnel involved and how **you** were affected. (Please Print):

ON THE 14th OF JUNE 2013, I INMATE T. KELLY
ALONG WITH INMATE K HAWKINS OF SANITATION WAS DISPATCHED TO REPORT TO THE SANITATION
OFFICE BY SGT. CRUMPTON AND COTI GUNDER TO CLEAN CAMERAS IN THE BRKS WITH A
STEP LIFT LADDER, IN WHICH I KNOW THAT SGT. CRUMPTON AND GUNDER KNEW THAT THIS LADDER
WAS TO SHORT, PLUS ANYTHING OVER A CERTAIN FT BY OSHA STANDARDS YOU NEED A HARNESS
+ SAFETY HAT IN WHICH NONE WAS PROVIDED BY EITHER SUPERVISOR. SO DIE RAY/HILTS,
WARDEN WADSON, WARDEN MIENZER (SECURITY WARDEN) ALSO WARDEN JACKSON TREATMENT WAS A OF ALL
ALONG WITH SGT. CRUMPTON + COTI GUNDER HAS BEEN NEGLIGENCE + A DELIBERATE INDIFFERENCE
IN THE CAUSE OF MY FALL

Inmate Signature _____

Date 6-25-13

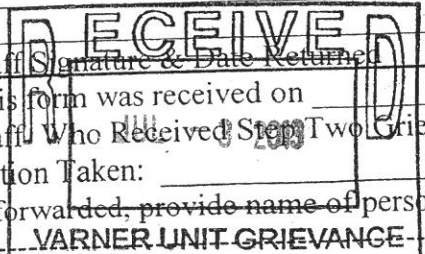
If you are harmed/threatened because of your use of the grievance process, report it immediately to the Warden or design

THIS SECTION TO BE FILLED OUT BY STAFF ONLY

This form was received on _____ (date), and determined to be **Step One** and/or an Emergency Grievance
(Yes or No). This form was forwarded to medical or mental health? _____ (Yes or No). If yes, name

of the person in that department receiving this form: _____ Date _____
Sgt. Lewis Thomas 70569 [Signature] 6-25-13
PRINT STAFF NAME (PROBLEM SOLVER) ID Number Staff Signature Date Received

Describe action taken to resolve complaint, including dates: _____



Staff Signature & Date Returned _____ Inmate Signature & Date Received _____
This form was received on _____ (date), pursuant to **Step Two**. Is it an Emergency? _____ (Yes or No)
Staff Who Received Step Two Grievance: _____ Date: _____
Action Taken: _____ (Forwarded to Grievance Officer/Warden/Other) Date: _____
If forwarded, provide name of person receiving this form: _____ Date: _____

DISTRIBUTION: YELLOW & PINK - Inmate Receipts; **BLUE**-Grievance Officer; **ORIGINAL**-Given ba
to Inmate After Completion of Step One and Step Two. 2

Best 12-27

INMATE NAME: Kelly, Theodis

ADC #: 105053A

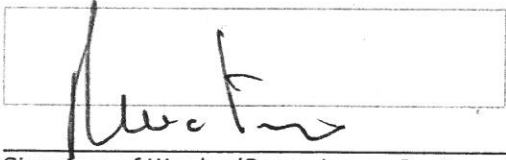
GRIEVANCE #: VU-13-00776

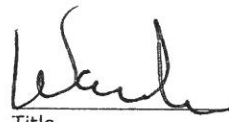
WARDEN/CENTER SUPERVISOR'S DECISION

In response to your grievance: Inmate Kelly, you state: "On the 14th of June 2013 I inmate T. Kelly along with inmate K. Hawkins of sanitation was dispatched to report to the sanitation office by Sgt. Crompton and COII Gonder to clean camera's in the brks. with a 9 to 10 ft ladder, in which I know that Sgt. Crumpton and Gonder knew that this ladder was to short. plus anything over a certain ft by OSHA standards you need a harness & safety hat in which none was provided by either supervisor. so Dir. Ray Hobbs, Warden Watson, Warden Meinzer (security warden) also Warden Jackson treatment warden all along with Sgt. Crumpton & COII Gonder has been negligent & a deliberate indifference in the caused of my fall."

Records show that you did fall from a ladder on June 14/2013 while cleaning the cameras in 13 barracks. COII Gonder had stepped into the 13 and 14 barracks hallway when she heard the inmates shout that you had fallen from the ladder. Medical was immediately contacted; when medical staff arrived, you were placed in a neck brace and on a spine board and onto a stretcher to be escorted to the infirmary. You have been seen by Medical on several occasions since 06/14/2013. According to your Condense Health Services Encounters, you have been assessed: It is noted - No swelling or deformity noted on C-spine, full range of motion to all extremities, all x-ray results are negative, no evidence of fracture, no evidence of dislocation of right and left shoulder, no evidence of acute cardiopulmonary disease; shogun pellets present in the soft tissues of the patients neck - they were present in 2011 (has been seen several times for this: 06/18, 06/19, 06/24 by APN and 07/03 - inmate has not been taking Robaxin as ordered per APN on 06/24/13. Instructed to take prescribed medications to help injured muscle.) Normal gait, no spasms noted, has full range of motion with shoulder, no warmth swelling or abnormality noted to area, still complains of back pain. Unable to raise left arm above head, ambulates without assistance, left should Bursitis, refer to Dr. Schock. Requesting renewal of Robaxin and APAP, back pain lower center of back, Per IM history of gunshot wound 20 years ago, no spasms, denies numbness or radicular pain, Left shoulder pain. X-ray reveals shotgun pellets in soft tissues of the left back (these were present in 2011).

Sgt Crompton advises that he was not supervising you; he only called you for work call and was not present when you fell. There is no evidence that you have suffered any long term effects from the fall. However, no evidence has been presented that you received instruction during safety meetings regarding climbing ladders, only Officer Gonder stating to you to not climb all the way to the top but you did not receive a disciplinary for failure to obey the order of staff for disobeying her instructions and staff was not present when you fell. Therefore, I find this issue with merit but resolved due to receiving medical treatment.


Signature of Warden/Supervisor or Designee


Title

12-30-13
Date

JAN 14 2014

INMATE'S APPEAL

INMATE GRIEVANCE SUPERVISOR
ADMINISTRATIVE DIVISION

If you are not satisfied with this response, you may appeal this decision within five working days by filling in the information requested below and mailing it to the appropriate Chief Deputy/Deputy/Assistant Director along with the Unit Level Grievance Form. Keep in mind that you are appealing the decision to the original grievance. Do not list additional issues, which are not part of your original grievance as they will not be addressed. Your appeal statement is limited to what you write in the space provided below.

WHY DO YOU DISAGREE WITH THE ABOVE RESPONSE? *(I am not satisfied with this response Therefore I am exhausting my Administrative remedies per ADC Policy; Ark Civil Rights Acts and P.L.R. Acts. These officers were present and Factual Statements were NOT GIVEN in good faith.*

Primarily it would have TAKEN SOMEONE between 6'5" to 7' Ft tall TO REACH THE CAMERA BY CLIMBING $\frac{1}{2}$ to $\frac{3}{4}$ of the particular ladder used. I'm well under 6'. TO EVEN SAY they gave an order AS SUCH TO ME IS Factually absurd and it totally disregards the job duties of professional conduct among A.D.C. Employed staff.

Respectfully Submitted;

Shedra Kelly

Inmate Signature

105053

ADC#

1-5-14

Date

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JAN 14 2014
INMATE GRIEVANCE SUPERVISOR
ADMINISTRATION BUILDING

INMATE NAME: Kelly, Theodis

ADC #: 105053

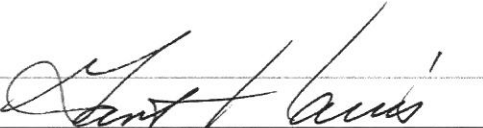
GRIEVANCE#: VU-13-00776

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION

You grieved on 6/30/13 that you and another inmate were dispatched to sanitation per Sgt. Crompton and CO-II Gonder to clean the cameras in the barracks. You stated that the ladder you used was too short to perform the job and you feel that you should have been provided a safety harness and a hat by OSHA standards, but you did not receive them. You believe that these two officers were negligent and showing deliberate indifference as to your falling off the ladder.

After review of your appeal and supporting documentation, I find that I concur with the Warden's decision. Your appeal is without merit. However by way of this response, I am instructing the Unit Warden to investigate this matter further to determine if any corrective action is necessary.

Appeal denied.



Director

1-24-2014
Date

On June 14th inmate T. Kelly and I, inmate K. Hawkins #92940 was cleaning cameras in (13) Barracks, when T. Kelly climbed up on the ladder to clean the camera, and fell from the ladder to the floor.

This statement is true to the best of my knowledge. K. Hawkins #92940

4-30-14

ON June 14, 2013
I INMATE ALTON RANDALL #70071
WAS IN #13 BARRACKS, IN THE DAY
ROOM WATCHING T.V. WHEN I SAW
AN OFFICER AND FOUR INMATE COME
INTO #13 BARRACKS TO CLEAN OFF THE
CAMERA THAT ARE VERY HIGH ON THE
WALLS IN THE BARRACKS, WITH A VERY
TALL LADDER. INMATE KELLY GOT ON
THE LADDER AND STARTED TO CLEAN
OFF THE CAMERA, ALL OF A SUDDEN
THE LADDER STARTED TO SHAKING. IT
FELL ONE WAY AND INMATE KELLY
FELL THE OTHER WAY, NEXT TO THE
WALL VERY HARD SO HARD THAT IT
KNOCK HIM OUT COLD. SO WE GOT
UP TO HELP HIM. AND WE DIDN'T
LET ANYONE MOVE HIM EXCEPT FOR
THE NURSE WHEN THEY CAME TO
HELP

Inmate

Alton D. RANDALL
#70071

4-26-14

I, Ronnie Smith witnessed on June 14, 2013 Mr Theotis Kelly enter 13 Barracks with Sgt Crompton with a ladder to clean the security cameras. I was watching Mr Kelly set up the ladder and I noticed that the ladder Mr Kelly had was too small, it was not the proper ladder for the job. Mr Kelly climbed to the top of the ladder and I seen the ladder tip sideways and Mr Kelly fell hitting his head and causing him serious injury. The infirmary was called and they went to 13 BKS to get Mr Kelly who was bleeding from the head. This is my statement of the facts

Ronnie Smith

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

THEODIS KELLY (ADC 105053)

Arkansas Claims Commission

CLAIMANT

V.

NO. 14-0855-CC

MAY 15 2014

ARKANSAS DEPARTMENT OF CORRECTION

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RESPONDENT

ANSWER

COMES NOW the Respondent, Arkansas Department of Correction, and for its Answer, states and alleges as follows:

1. Respondent denies liability in this claim and asserts it will hold the Claimant to strict proof on each allegation unless admitted by Respondent. Respondent reserves the right to plead further upon completion of the investigation by internal affairs and requests the matter be held in abeyance until the investigation is complete.
2. The applicable account information required by the Commission is:
 - a. Agency number: 0480
 - b. Cost Center: HCA 0100
 - c. Internal Order: 340301
 - d. Fund Center: 509

WHEREFORE, for the reasons cited above the Respondent prays that the claim be dismissed with prejudice and that Claimant take nothing, or in the alternative that the matter be held in abeyance until completion of the investigation by internal affairs.

Respectfully submitted,
Department of Correction Office of Counsel

Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190
Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 14 day of May, 2014, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Theodis Kelly (ADC 105053)
Varner Unit
PO Box 600
Grady, AR 71644-0600

Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

THEODIS KELLY (ADC #105053)

V.

NO. 14-0855-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

MOTION TO DISMISS

COMES NOW the Respondent, Arkansas Department of Correction, and for its Motion to Dismiss, states as follows:

1. Claimant is seeking \$204,000.00 for failure to follow policy, mental anguish, pain and suffering and personal injury he received after from a ladder on June 14, 2013. Claimant has failed to state a cause of action under ARCP 12(b)(6) and the claim should be dismissed.
2. Claimant alleges the Respondent failed to provide the proper height ladder for the job and failed to provide a safety harness as required by OSHA standards.
3. Claimant states that he was using a 9-10' ladder. Claimant is 5'7" tall. The camera height is 13'3" from the ground. Respondent submits that the ladder was more than sufficient in height for the job to be performed considering the claimant would extend his arms to work giving him additional reach. Furthermore, Claimant signed a Weekly Safety Meeting wherein he was advised of ladder safety, including, to 'choose the right ladder for the job.' See Exhibit "A." If Claimant did not believe the ladder to be high enough, Claimant could have requested another ladder.
4. As stated in Claimant's complaint and according to witness statements, he was standing on the top of the ladder. The OSHA standards he alleges Respondent violated clearly state that the user should not stand on the top step or top cap. See Exhibit "B". Claimant's own actions caused his injuries.
5. The ladder was being held by another inmate while Claimant was cleaning the camera, Inmate Hawkins. Inmate Hawkins released his grip from the ladder while Claimant was climbing down from the ladder and the ladder began to sway and Claimant fell off the ladder.
6. Claimant was treated for pain to his right shoulder and lumbar back. He had full range of motion to all extremities and no swelling of the c-spine. He later reported pain upon palpation of the chest wall. He was prescribed Robaxin for the injured muscle, but it was noted when he was seen 3 weeks later, that he was not taking it. When he was seen on August 31, 2003, he had a normal gait, no spasms, full range of motion with shoulder, no swelling or warmth, but was still complaining of pain. There were no objective findings of injury. In September Claimant was given a diagnosis of left shoulder bursitis. No spasm, has decreased range of motion due to stiffness and pain, no discoloration, steady gait, no numbness or radicular pain, and requested renewed medications. Nurse restricted his sports and weight lifting for 3 days.
7. In order to show that ADC was negligent to recover for his personal injuries, Claimant must show that he sustained damages, that Respondent was negligent and that such negligence was a proximate cause of Claimant's damages. Negligence is the failure to do something which a reasonably careful person would do under similar circumstances.
8. Claimant is serving a 60 year sentence for Murder in the First Degree out of Phillips County, Arkansas. He is not eligible for parole until May 31, 2041, 27 years from now. He will be 64 years old then. His projected

Arkansas
State Claims Commission
JUN 24 2014
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CLAIMANT

release date is June 1, 2059, 45 years from now. He will be 82 years old then. Any loss of future income is highly speculative at best.

9. Claimant has failed to show how the Respondent is negligent and responsible for his injuries. The fact that an injury occurred is not, of itself, evidence of negligence on the part of the Respondent. Claimant must show a breach of duty which he has not done.
10. Respondent moves that the commission dismiss this claim. A motion to dismiss is proper when there are no facts upon which relief can be granted. ARCP 12(B)(6). Claimant can show no facts upon which he is entitled to relief and therefore this claim should be dismissed.

Respectfully submitted,
Department of Correction
Office of Counsel



LISA MILLS WILKINS Ark. Bar #87190
Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 23 day of June, 2014, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

THEODIS KELLY (ADC #105053)
Varner Unit
P. O. Box 600
Grady, AR 71644-0600


LISA MILLS WILKINS Ark. Bar #87190

WEEKLY SAFETY MEETING
WEEK OF: June 10, 2013 thru June 14, 2013

Location: VARNER UNIT

Work Area: SANITATION (HOUSEKEEPING)-All Porters

Date of Attendance: 6/14/13 Start Time: 10:05 (A.M.) / P.M.) End Time: 11:08 (A.M.) / P.M.)

Date of Attendance: _____ Start Time: _____ (A.M. / P.M.) End Time: _____ (A.M. / P.M.)

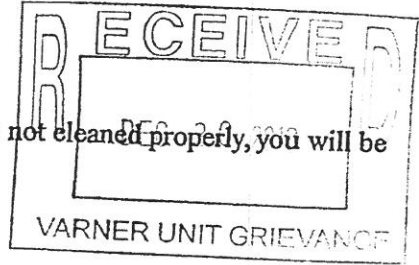
Date of Attendance: _____ Start Time: _____ (A.M. / P.M.) End Time: _____ (A.M. / P.M.)

Sanitation Supervisor: CO-II J. Callaway

Alternative Supervisor: *[Signature]*

SANITATION (Housekeeping):

YOU MUST CLEAN ALL AREAS DAILY. If your assigned area is not cleaned properly, you will be called back to work.



WORK AREA SAFETY:

1. Watch for wet surfaces. When you see any type of spill, clean it up right away. (Place a Wet Floor Sign in the wet area until it dries!)
2. Keep work areas WELL-LIT, Always turn on the lights before entering a dark room. Make sure you can see where you are going, even if it means an extra trip.
3. HORSE PLAY WILL NOT BE TOLERATED.
4. REPORT ALL INJURIES TO YOUR SUPERVISOR.
5. During work time you are expected to be in your assigned area, when you are not in your assigned area you can not be accounted for. If you are instructed to clean an area by a staff member do so, regardless of your assignment.
6. Do not hang out at other work areas or chemical room unless instructed to be there. Being in an unassigned area without supervision will not be tolerated.
7. **SAFETY GLASSES MUST BE WORN AT ALL TIMES WHILE CLEANING. IF YOU ARE CAUGHT CLEANING WITHOUT WEARING SAFETY GLASSES; DISCIPLINARY ACTIONS WILL BE TAKEN! THIS IS YOUR WARNING!**

TOOLS:

All tools must be checked out and in daily. All tools must be returned to check out area before you leave the Area you are working in.
Barracks Porters: It is your responsibility to make sure that all tools/chemicals are returned to the control booth immediately upon completion of use. If you fail to do so, disciplinary actions will be taken.

CHEMICALS:

Do not mix chemicals. All chemicals are pre-mixed, you can add water while mopping.
Do not fill any bottle that is not properly labeled for that product.
Never store chemicals for cleaning in a food container.
It is the responsibility of all individuals (staff and inmates) to read and follow manufacture's instructions on all chemicals used.
Safety equipment must be worn at all times while handling chemicals...i.e, safety glasses, rubber gloves.



Exhibit

A

COPY

USE PROPER LIFTING PROCEDURES:

1. Take your time to examine the object that you will move.
2. Arrange the object so that it will not slip, move, or change its balance when you lift it.
3. Stand close to the load that you have to carry. Center yourself and put your feet apart to the same width as your shoulders.
4. Keep your back as straight as possible. Bend your knees and squat down to reach for the load. Place your feet close to the object, the closer the better. Make sure that you have a good grasp at the load.
5. Keep the load close to your body, and get up while you still have a straight back. Keep your back vertical and straight and extend your hands toward the grips you will use to lift the object.
6. Begin applying force with your legs and arms. Do this slowly. If you give a sudden, hard pull or jerk you could injure your back.
7. Stand up, if the object is on the floor. Keep the object as close to your body as possible.
8. Bend through your knees with a straight back to place the load on a different spot.

MOVING CARTS THAT ARE FULL:

1. Push the load, rather than pull when you must move heavy objects.
2. If the cart is fully loaded, you will need to have one (1) person in front pulling and one (1) person behind the cart to push at the same time. Never attempt to move a cart that is too heavy for one (1) person to manage.

USING A LADDER SAFELY:

1. Choose the right ladder for the job.
2. Inspect the ladder before you use it.
3. Step up on the ladder with care.
4. Climb carefully. Always use a rail too help assist in keeping your balance. Do not jump from the ladder. Climb back down the ladder correctly.

BLOOD SPILL CLEAN-UP PROCEDURES

1. Restrict access to area, then put on personal protection equipment (two pairs of gloves: avoid tearing gloves, Leak-proof apron to protect your clothes)
2. Clean-up large amounts of blood with disposable towels in red bag (bio-hazardous bag).
Clean area from outward to inward, making contaminated area smaller without stepping into this area.
3. Do not pick up contaminated sharp objects with your hand; you must use mechanical means, such as a broom and dust pan to push the object into the dust pan.
4. After clean-up of visible blood, use a solution of 1 part of bleach to 9 parts of water to mop area, after this area is cleaned you must disinfect with germicidal product (Razor Citrus Breeze) allow for product to sit on area approximately 10 minutes or as directed by manufacture before mopping spill.
5. Apply disinfectant to bottom of shoes with disposable towels to ensure not to spread to other areas.
Before leaving the affected area place PPE (gloves) in a red bag of disposal.
6. Immediately dispose of red bag once cleanup is complete, place bag in Medical Services in a bio-hazardous container.
7. After cleaning, you must remove all personal protection equipment, promptly place all mop heads, aprons, etc. in a red bag then send to laundry for cleaning. All workers must wash their hands immediately after removal of personal protective equipment.

NOTE: UPON COMPLETION OF USAGE OF THE PUSH BROOM, MOP, DUST PAN, MOP BUCKET and SHOWER BRUSH; THESE TOOLS ARE TO BE IMMEDIATELY RETURNED TO THE OFFICER WORKING THE CONTROL BOOTH OR RETURNED TO THE SANITATION DEPARTMENT!!!

COPY

INMATE NAME-PRINT-READABLE	ADC #	SIGNATURE-READABLE & BARRACKS #
----------------------------	-------	---------------------------------

68. <i>T Kelley</i>	105053	<i>T Kelley</i>
69.		
70.		
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78.	COPY	
79.		



213

FAIC

Exhibit

D

15

OSHA® Factsheet

Reducing Falls in Construction: Safe Use of Stepladders

Workers who use ladders in construction risk permanent injury or death from falls and electrocutions. These hazards can be eliminated or substantially reduced by following good safety practices. This fact sheet examines some of the hazards workers may encounter while working on stepladders and explains what employers and workers can do to reduce injuries. OSHA's requirements for stepladders are in Subpart X—Stairways and Ladders of OSHA's Construction standards.

What is a Stepladder?

A stepladder is a portable, self-supporting,

A-frame ladder. It has two front side rails and two rear side rails. Generally, there are steps mounted between the front side rails and bracing between the rear side rails. (See Figure 1, below.)

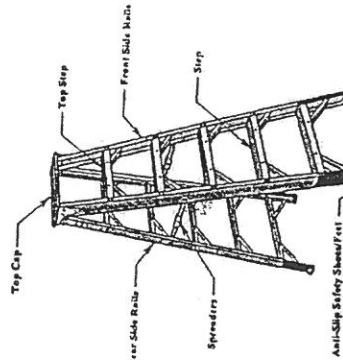


Figure 1: Stepladder

PLAN Ahead to Get the Job Done Safely.

A competent person must visually inspect stepladders for visible defects on a periodic basis and after any occurrence that could affect their safe use. Defects include, but are not limited to:

- Structural damage, split/bent side rails, broken or missing rungs/steps/cleats and missing or damaged safety devices.

- Grease, dirt or other contaminants that could cause slips or falls.
- Paint or stickers (except warning or safety labels) that could hide possible defects.

PROVIDE the Right Stepladder for the Job with the Proper Load Capacity.

- Use a ladder that can sustain at least four times the maximum intended load, except that each extra-heavy duty type 1A metal or plastic ladder shall sustain at least 3.3 times the maximum intended load. Also acceptable are ladders that meet the requirements set forth in Appendix A of Subpart X. Follow the manufacturer's instructions and labels on the ladder. To determine the correct ladder, consider your weight plus the weight of your load. Do not exceed the load rating and always include the weight of all tools, materials and equipment.

Type	Duty Rating	Use	Load
IAA	Special Duty	Rugged	375 lbs.
IA	Extra Heavy Duty	Industrial	300 lbs.
I	Heavy Duty	Industrial	250 lbs.
II	Medium Duty	Commercial	225 lbs.
III	Light Duty	Household	200 lbs.

Source for Types IA, I, II, III: Subpart X—Stairways and Ladders, Appendix A American National Standards Institute (ANSI 14.1, 14.2, 14.5 (1982)) of OSHA's Construction standards. Source for Type IAA: ANSI 14.1, 14.2, 14.5 (2009), which are nonmandatory guidelines.

TRAIN Workers to Stepladders Safely. Employers must train each worker to recognize and minimize ladder-related hazards.



PLAN. PROVIDE. TRAIN. Three simple steps to prevent falls.

Common Stepladder Hazards

- Damaged stepladder
- Ladders on slippery or unstable surface
- Unlocked ladder spreaders
- Standing on the top step or top cap
- Loading ladder beyond rated load
- Ladders in high-traffic location
- Reaching outside ladder side rails
- Ladders in close proximity to electrical wiring/equipment

Safe Stepladder Use—DO:

- Read and follow all the manufacturer's instructions and labels on the ladder.
- Look for overhead power lines before handling or climbing a ladder.
- Maintain a 3-point contact (two hands and a

OSHA standard: 29 CFR 1926 Subpart X—Stairways and Ladders

American National Standards Institute standard: ANSI A14.1, A14.2, A14.5—Ladder Safety Requirements (Not an OSHA standard, included to be used as guidance to meet OSHA's requirements)

Employers using stepladders must follow the ladder requirements set forth in 29 CFR 1926 Subpart X. For Appendix A to Subpart X of Part 1926—Ladders, ladders designed in accordance with the following ANSI standards will be considered in accordance with 29 CFR 1926.1053(l)(1): ANSI A14.1-1982—American National Standard for Ladders—Portable Wood-Safety Requirements; ANSI A14.2-1982—American National Standard for Ladders—Portable Metal—Safety Requirements; and ANSI A14.5-1982—American National Standard for Ladders—Portable Reinforced Plastic—Safety Requirements.

State plan guidance: States with OSHA-approved state plans may have additional requirements for avoiding falls from ladders. For more information on these requirements, please visit: www.osha.gov/ocsp/ospstatesstandards.html.

Most OSHA offices have compliance assistance specialists to help employers and workers comply with OSHA standards. For details call 1-800-321-OSHA (6742) or visit: www.osha.gov/hlm/vfba-map.html.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For assistance, contact us. We can help. It's confidential.



www.osha.gov (800) 321-OSHA (6742)

00c 15-3487 02/07

JUL 08 2014

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

RECEIVED

THEODIS KELLY
ADC. # 105053

CLAIMANT

V. NO. 14-0855-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

CLAIMANT OBJECTIONS TO RESPONDENT'S MOTION TO DISMISS

COMES NOW, the claimant, Theodis Kelly, and for his
Objection To Respondent Motion To Dismiss, do State the following
as cause;

1. Claimant disagrees that he has Failed to state a Cause of
Action under A.R.C.P. 12(b)(6) and his claim should not be
dismissed. Claimant sustained serious injuries that to the date
of this filing he is still suffering from pain, undergoing on-
going treatment and therapeutic attempts to overcome the June 14,
2013, fall from a ladder at Varner Unit.
2. Claimant submits that the weekly safety meeting document,
pages 1 - 5, showing date of attendance June 14, 2013, with start
time of 10:05 a.m. with a end time of 11:08 a.m. is a fabricated
document in a effort to practice fraud upon the Arkansas Claims
Commission.

In fact Claimant had never seen; what's described as
Respondent Exhibit "A", until he received a copy of the Motion to
Dismiss on June 24, 2014. Claimant was not and has never been
advised of ladder safety or to "choose the right ladder for the

job as alleged in paragraph #3 of Motion to Dismiss. It is the supervisor's responsibility to provide inmates with the proper tools to do state work.

3. Claimant never signed the weekly safety meeting form described as Respondent Exhibit "A". In fact the name T. Kelley on page #4, line 68 of Respondent "A" is a forgery. Claimant moves this commission to Order the Respondent's to Produce the complete list 1-68 in support of Claimant's claim for relief. Claimant's name has never been spelled T. Kelley, clearly a forgery, fabricated by Respondent.

4. There is no excuse for this attempt to cover up the impossible task of Claimant reaching the camera without climbing to the top of the ladder. Refusal results in a Major Disciplinary for Disobeying a Direct Order, ADC Rule 12-1. Staff supplied the ladder, Staff saw that I had to stand at the very top of the ladder to reach the camera lens, and Staff did not request, order or supply a bigger ladder. Nor was Claimant ever advised or trained as Respondent Exhibit "C" requires. It clearly states, "Train workers to Step Ladder Safety," this never happened.

5. Staff should have supervised inmate Hawkins, yet Staff was not in a supervisory position. Staff was unaware that Claimant had fallen until advised by inmates in 13 barracks. The very camera's that Claimant was cleaning is the best evidence to support this claim and should be produce in support of.

6. The tragic fall happened over a year ago and Claimant is still in pain, seeking and receiving treatment for his injuries, unable to use the full range of his right arm and shoulder, not to mention the ongoing headaches.

7. The Respondent has not set-forth a plausible defense to the gross negligence which took place June 14, 2013. Yet Claimant stands by his written grievance detailing said negligence.

8. As for paragraph #7 (seven) of Respondent Motion to Dismiss, Claimant states that;

Respondent is negligent when he or she "fails to use responsible care." A responsible prudent person [supervisor] in a similar situation would have made sure Claimant had the proper ladder, hardhat, safety eye wear and someone to hold the ladder for someone reaching 13 - 15 feet high. A safety harness should have been provided as well for such a task.

9. There are four things Claimant needs to show in a Negligence Claim: Duty, Breach, Causation, and Damages.

- A. **Duty** is shown in paragraph #8 of this objection.
- B. **Damages** have been shown because Claimant was clearly hurt due to a fall from a ladder June 14, 2013, in 13 Barracks, Varner Unit.
- C. **Breach** is shown due to the fact that Respondent made no effort to supply the proper tools and equipment for Claimant to perform the job ordered by Respondent.

D. Claimant's injury, pain and suffering are a direct **cause** of the negligent actions of Respondent not providing proper equipment. Respondent's in paragraph #7 (seven) clearly states, "Negligence is the failure to do something which a reasonable careful person would do under similar circumstances.

In *Jones v. United States*, 91 F.3d 623 (3rd. Cir. 1996), the Court found the prison breached a duty to a prisoner who had a stroke after prison officials withheld his medication. In *Plummer v. United States*, 580 F.2d 72 (3rd. Cir. 1978), Prisoners successfully made a negligence claim based on exposure to tuberculosis.

CLOSING

Claimant has clearly shown a Claim for Relief. Respondent Exhibit "A", "B", and "C" only strengthens Claimant's claim. Had Exhibit "A" with Claimant's signature and named forged on it, been enforced, as per ADC policy calls for, this tragic fall would not have happened. Exhibit "A" creates a duty, which was breached by Respondent. page 2 of 5 clearly advises on USING A LADDER SAFELY.

Respondent's Exhibit "B", is the type of ladder used for painting, no where near the type of ladder used by the Respondent June 14, 2013, which resulted in Claimant's injuries.

Lastly, Respondent Exhibit "C" which is based upon Occupation safety and Health Administration from United States Department of Labor clearly states, "TRAIN WORKERS TO STEP LADDER SAFETY." Employers, in this case the Arkansas Department of Correction [Respondent], **must train each worker to recognize and minimize ladder related hazards.**

Claimant's serving a 60 year sentence for Murder, not being eligible for parole until May 31, 2041, at which time he would be 64 years old or being 82 years old at his projected release date of June 1, 2059, still does not negate the fact that Respondent's Negligence cause Claimant serious injury and are liable for damages and medical treatment.

Based on these facts, Claimant has stated a claim upon which relief can be granted under A.R.C.P. Rule 12(b)(6).

WHEREFORE, for the reasons stated, Claimant ask the Claims Commission to Deny Respondent's Motion to Dismiss, and grant any and all relief deemed just and proper.

Respectfully submitted,



Theodis Kelly
ADC # 105053
P.O. Box 600
Grady, AR. 71644

STATE OF ARKANSAS)
)
COUNTY OF Lincoln)

6th Subscribed and Sworn to before me, a Notary Public, this
day of July, 2014.

Edward Lane
Notary Public

Edward Lane
Notary Public
State of Arkansas
Lincoln County
Commission # 12562690
Commission Expires July 20, 2017

July 20 2017
My Commission Expires

CERTIFICATE OF SERVICE

I, Theodis Kelly, the above named Claimant, hereby certify that a copy of this Objection to Respondent's Motion to Dismiss has been served on the Respondent's Attorney, Lisa Mill Wilkins, Ark. Bar #87190 at P.O. Box 8707, Pine Bluff, Arkansas 71611, this 6 day of July, 2014, by placing a copy of same in U.S. Mail, postage paid.

Theodis Kelly
Theodis Kelly

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 204,000.00

Claim No. 14-0855-CC

Theodis Kelly, #105053 Claimant vs. Pro se Claimant

Department of Correction Respondent vs. Lisa Wilkins, Attorney Respondent

State of Arkansas

Date Filed May 9, 2014

Type of Claim Loss of Wages, Personal Injury, Pain & Suffering, Mental Anguish & Failure to Follow Procedure

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraph 2-9 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraph 2-9 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing July 10, 2014

Date of Disposition July 10, 2014

[Signature] Chairman
[Signature] Commissioner
[Signature] Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and is found in Arkansas Code Annotated 619-10-211.

Theodora Kelly 105053
Claim # 14-0855-CC

US.

DEAR Mr. Hodges: DEPARTMENT OF CORR.

I'm writing in response to your letter dated July 28, 2014. The reason for this delay is because I got TRANSFERRED FROM the WARNER UNIT on July 29, 2014 AND I'm just now receiving your letter on this date Aug. 12, 2014. In response to your letter I'm requesting to have my claim go before the GENERAL Assembly.

Thanks

Sincerely,
Theodora Kelly
105053

Arkansas
State Claims Commission

AUG 13 2014

RECEIVED