

Please note that all sections must be completed, or this form will be returned to you, which will delay the processing of your claim.

1. Claimant's Legal Counsel - (If representing yourself (Pro Se) please check this box and proceed to section 2)

(last name)

(first name)

(email)

(address)

(city)

(state)

(zip)

(primary phone)

Arkansas Bar Number: _____

If not licensed to practice law in Arkansas, please contact the Claims Commission for more information.

2. Claimant

Mr. Wine Mitchell

(title/last name/first name or company)

(email)

(address)

(city)

(state)

(zip)

(primary phone)

3. State Agency Involved: (must be an Arkansas state agency. The Arkansas Claims Commission has no jurisdiction over county, city, or other municipalities)

Arkansas Game and Fish Commission

(state agency involved)

4. Incident Date

12/14/2017

5. Claim Type

Negligence

Please provide a brief explanation of your claim. If additional space is required please attach additional statements to this form.

Arkansas Game and Fish officer Jon Crisman illegally entered my property on December 14, 2017 by disassembling a shut and locked security gate clearly displaying a \no trespassing sign\. Officer Crisman had no probable cause, no invitation, and his willful and negligent actions nearly resulted in loss of life as a result of his breach of the curtilage of my property in a surprise manner after trespassing across a neighboring landowner (who later tried to take legal action against me regarding the incident). Officer Crisman's actions resulted in personal injury documented by a government approved medical professional and resulted in a \severe\ disabling medical condition that caused me to lose my federal employment. There are no facts in this case to be disputed, only the amount owed me as a result of the reckless behavior of Officer Crisman.

5a. Check here if this claim involves damage to a motor vehicle.

5b. Check here if this claim involves damage to property other than a motor vehicle.

All property damage claims require a copy of your insurance declarations covering the property or motor vehicle at the time of damage.

I did not have insurance covering my property/motor vehicle at the time of damage.

All property damage claims require ONE of the following (please attach):

1. Invoice(s) documenting repair costs, OR
2. Three (3) estimates for repair of the damaged property, OR
3. An explanation why repair bill(s) or estimate(s) cannot be provided.

6. Was a state vehicle involved? (If Yes, please complete the following section)

(type of state vehicle involved)

(license number)

(driver)

7. Check here if this claim involves personal injury.

All personal injury claims require a copy of your medical insurance information in place at the time of the incident.

I do not have health insurance

8. Amount Sought: \$1,900,000.00

(Signature)

(Date)

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MITCHELL WINE

CLAIMANT

V.

CLAIM NO. 200849

**ARKANSAS GAME AND
FISH COMMISSION**

RESPONDENT

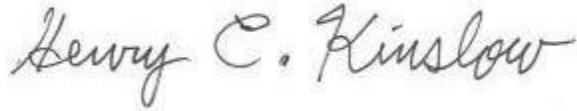
ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a motion filed by Mitchell Wine (the “Claimant”) for summary judgment as to his claim against Arkansas Game and Fish Commission (the “Respondent”). Claimant’s motion is based on the fact that Respondent requested an extension to respond to the claim, and that “[o]ther agencies have managed to respond in a timely fashion without extension . . . during the viral pandemic and Respondent should be held to the same standard.” However, Claimant’s claim does not consider the fact that Respondent’s request for an extension was granted by the Claims Commission, through its director, on March 30, 2020, per Claims Commission Rule 2.2:

Within thirty (30) days from the date that a claim has been served upon the Respondent agency, the Respondent shall file its responsive pleadings in original and three copies, unless granted an extension by the Director.

(emphasis added). The fact that Claimant does not agree that such extension to be necessary does not change the fact that the extension was approved, which means that Respondent’s response to the claim and the pending discovery is not due until May 8, 2020. As such, the Claims Commission hereby DENIES Claimant’s motion for summary judgment.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: April 13, 2020

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(a)(1). 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(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (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(a). 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

MITCHELL WINE

CLAIMANT

V.

CLAIM NO. 200849

**ARKANSAS GAME AND FISH
COMMISSION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a motion filed by Arkansas Game and Fish Commission (the “Respondent”) to dismiss the claim of Mitchell Wine (the “Claimant”). Also pending before the Claims Commission is Claimant’s motion for judgment on the pleadings and Claimant’s subpoena request. Based upon a review of the motions and subpoena request, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on February 17, 2020, seeking \$1,900,000.00 in damages based upon the actions of Respondent’s officer. Claimant described his claim as follows:

Arkansas Game and Fish officer Jon Crisman illegally entered my property on December 14, 2017 by disassembling a shut and locked security gate clearly displaying a ‘no trespassing sign’. Officer Crisman had no probable cause, no invitation, and his willful and negligent actions nearly resulted in loss of life as a result of his breach of the curtilage of my property in a surprise manner after trespassing across a neighboring landowner (who later tried to take legal action against me regarding the incident). Officer Crisman's actions resulted in personal injury documented by a government approved medical professional and resulted in a ‘severe’ disabling medical condition that caused me to lose my federal employment. There are no facts in this case to be disputed, only the amount owed me as a result of the reckless behavior of Officer Crisman.

2. Respondent filed a motion to dismiss, arguing that Claimant failed to state a claim for intentional infliction of emotional distress. Respondent also argued that Claimant’s statements regarding the “severe disabling medical condition” that caused Claimant to lose his federal

employment represents a “gross misstatement” on the part of Claimant, given that Claimant was “fired from his federal employment” the day before Respondent’s officer came to Claimant’s property. In support of this argument, Respondent pointed to Claimant’s own supporting documentation in the form of emails dated December 13, 2017, and December 14, 2017.

3. Claimant filed a combined response to the motion to dismiss and motion for judgment on the pleadings. In that filing, Claimant argued that (1) the motion to dismiss “contained only conclusory summary statements of denial, no supporting material evidence, and no sworn affidavits;” (2) Respondent “failed to defend their [sic] unlawful actions . . .”; (3) Officer Crisman trespassed on Claimant’s property, as Officer Crisman did not have probable cause or permission to enter Claimant’s property, such that Claimant can recover mental anguish damages that resulted from the trespass; (4) Officer Crisman’s actions were criminal under Arkansas law; (5) Officer Crisman’s actions deprived Claimant of his rights under the Fourth and Fifth Amendments to the United States Constitution; (6) Officer Crisman “inflict[ed] emotional distress” upon Claimant “so severe that it became mentally disabling and eventually led directly to loss of employment;” (7) Officer Crisman’s actions caused a “mental disability” in Claimant that left him “unable to respond” to his removal from employment, such that Claimant was “forced out of his federal employment via medical retirement;” (8) Respondent is liable for the tort of outrage based upon the actions of Officer Crisman. Claimant summarized his arguments as follows:

In summary, Officer Crisman knew or should have known his unlawful entry onto Claimant’s property would cause emotional distress. Crisman’s actions were outrageous as a law enforcement officer and not tolerable in a civilized society. Crisman could have been met with deadly force upon tampering with Claimant’s privacy gate to gain unlawful entry into his property. Material medical evidence directly ties Crisman’s actions to emotional distress caused by Claimant [sic] that led to loss of employment. No reasonable person should have to endure severe emotional distress resulting from unlawful entry onto their private property through a shut gate displaying a “no trespassing” sign by law enforcement without probable cause of any kind. Claimant has therefore demonstrated a tort claim of intentional

infliction of emotional distress through willful criminal trespass and a property claim related to violations of due process that led to his medical retirement from a federal position with the U.S. Fish and Wildlife Service.

4. Respondent filed a response to the motion for judgment on the pleadings, arguing that denial of that motion is proper. Respondent noted that, “[c]ontrary to Claimant’s assertions, at this early stage in the litigation, AGFC is not required to produce ‘material evidence’ or ‘sworn affidavits.’”

Respondent’s Motion to Dismiss

5. In reviewing the pleadings, the Claims Commission notes the following significant facts, which are established solely from a review of Claimant’s complaint and supporting documents:

- **Claimant was previously employed by the federal government.** While not stated explicitly in Claimant’s complaint, Attachment A to Claimant’s claim, which is produced in redacted form, suggests that Claimant’s employment was with the U.S. Fish and Wildlife Services.
- **Claimant was terminated on or before December 13, 2017,** as demonstrated by the December 13, 2017, email from Claimant to his employer, which is attached to Claimant’s claim as Attachment B:

Are they paying me to transport the items from my last work station? If not, they can come pick them up from my telework station. Perhaps they should think things out a bit before firing people under false pretenses before having them check out. I’ll have the items waiting on them and need as much notice as possible prior to their arriving. Trespassing is not allowed on my property.

(emphasis added).

- **Claimant still had government property in possession after his termination.** See Attachment B to Claimant’s claim.
- **Officer Crisman went to Claimant’s house on December 14, 2017, to recover to retained government property.** Claimant’s claim description includes an affirmative statement by Claimant that Officer Crisman went to Claimant’s house on December 14, 2017.

6. The Claims Commission finds that Claimant is attempting to plead an impossibility. In his complaint, he stated that Officer Crisman’s actions “resulted in a ‘severe’ disabling medical condition that caused me to lose my federal employment.” However, Officer Crisman did not go to Claimant’s property until after Claimant had been terminated.

7. The Claims Commission further finds that Claimant has not stated facts to support a claim for intentional infliction of emotional distress, such that dismissal is proper. Ark. R. Civ. Proc. 12(b)(6).

8. The elements required to establish a claim for intentional infliction of emotional distress (also known as the tort of outrage), are:

(1) the actor intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of his conduct; (2) the conduct was extreme and outrageous, was beyond all possible bounds of decency, and was utterly intolerable in a civilized community; (3) the actions of the defendant were the cause of the plaintiff’s distress; and (4) the emotional distress sustained by the plaintiff was so severe that no reasonable person could be expected to endure it.

Key v. Coryell, 86 Ark. App. 334, 185 S.W.3d 98 (2004) (citing *Crockett v. Essex*, 341 Ark. 558, 19 S.W.3d 585 (2000)). As the Arkansas Supreme Court stated in *Crockett*, “a narrow view” is given to these claims, and “clear-cut proof” is required to establish the elements. 341 Ark. 558, 564, 19 S.W.3d 585, 589. As stated by the Arkansas Supreme Court in *Renfro v. Adkins*, 323 Ark. 288, 299, 914 S.W.2d 306, 312 (1996), “[m]erely describing the conduct as outrageous does not make it so.” Similarly, in *Crockett*, the Arkansas Supreme Court noted that “the tort of outrage should not and does not open the doors of the courts to every slight insult or indignity one must endure in life.” *Id.*¹

¹ As an example of what is not considered outrage, in *Sterline Drug, Inc. v. Oxford*, 294 Ark. 239, 743 S.W.2d 380 (1988), the Arkansas Supreme Court held that an employer’s “systematic campaign . . . [over an 18 month period] designed to force” an employee to resign did not support a claim for outrage, even though there was “ample evidence” that the employer knew the employee was under “severe pressure because of a recent divorce.”

9. In Claimant's December 13, 2017, he advised that he would "have the items waiting" to be picked up. While Claimant requested advance notice of the pickup, the fact that government employees, including Officer Crisman, arrived at his property to reclaim government property does not rise to the level of conduct that is "extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized community." *Key*, 86 Ark. App. 334, 185 S.W.3d 98 (2004). The Claims Commission notes that Claimant could have made arrangements to deliver the government property to his employer at a mutually agreeable location instead of advising his employer that the government property would be "waiting" to be picked up.

10. Moreover, Attachment E to Claimant's claim, which is correspondence from Claimant's doctor, Heidi M. M. Thompson, Ph.D., establishes that on March 26, 2018 (more than three months after the incident), Claimant "reported that he was unable to work at all for the agency due to home invasion ordered by the agency" (as opposed to Claimant's doctor finding that he was unable to work). However, Claimant had previously been diagnosed with "an Adjustment Disorder with anxiety and depressed mood," and in 2016, Claimant's diagnosis was "updated . . . to Major Depressive Disorder, recurrent, severe and Generalized Anxiety Disorder." The reason given for the update was "an intensifying degree of symptoms reported as a direct result of retaliatory actions

Another example can be found in *Crockett v. Essex*, 341 Ark. 558, 19 S.W.3d 585 (2000), where the Arkansas Supreme Court found that no outrage existed where a funeral home's employees were alleged to have rushed a funeral service, driven the hearse too fast on the highway, driven a "disabled family member [to the graveside] by car over the graves of unknown persons," and talked on a cell phone "for a prolonged period of time during the burial."

In *Neff v. St. Paul Fire & Marine Ins. Co.*, 304 Ark. 18, 799 S.W.2d 795 (1990), the Arkansas Supreme Court held that a hospital's actions did not amount to outrage where the hospital released the body of a stillborn baby to the father, who was intoxicated and later arrested for driving under the influence, and directed the mother to recover the baby's body from the sheriff's office.

taken by his supervisors at work.” These diagnoses happened more than a year before Officer Crisman went to Claimant’s house.

11. To the extent that Claimant believes his termination from his federal employment to be wrongful, the Claims Commission is not the proper venue to pursue that claim.

12. To the extent that Claimant believes Officer Crisman’s actions to be criminal, the Claims Commission is not the proper venue for criminal matters.

13. To the extent that Claimant believes Officer Crisman’s actions to violate Claimant’s constitutional rights, Claimant may bring a civil rights claim in a court of general jurisdiction.

Claimant’s Motion for Judgment on the Pleadings

14. In light of the Claims Commission’s ruling on Respondent’s motion to dismiss, Claimant’s motion for judgment on the pleadings is hereby moot.

Claimant’s Subpoena Request

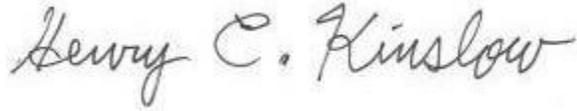
15. In light of the Claims Commission’s ruling on Respondent’s motion to dismiss, Claimant’s request to subpoena documents from various federal agency employees is hereby moot. However, even if the Claims Commission had not granted Respondent’s motion to dismiss, Claimant’s subpoena request would be denied based upon failure to comply with the rules outlined in *U.S. ex rel Touhy v. Ragen*, 340 U.S. 462 (1951).

Conclusion

16. Respondent’s motion is GRANTED pursuant to Ark. R. Civ. Proc. 12(b)(6), and Claimant’s claim is DISMISSED.

17. Claimant’s motion for judgment on the pleadings and Claimant’s subpoena request are hereby rendered moot.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: June 2, 2020

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(a)(1). 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(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (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(a). 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

MITCHELL WINE

CLAIMANT

V.

CLAIM NO. 200849

**ARKANSAS GAME AND FISH
COMMISSION**

RESPONDENT

**ORDER RE CLAIMANT'S MOTION FOR
RECONSIDERATION**

Now before the Arkansas State Claims Commission (the "Claims Commission") is a motion filed by Mitchell Wine (the "Claimant") seeking reconsideration of the Claims Commission's June 2, 2020, order dismissing Claimant's claim against the Arkansas Game and Fish Commission (the "Respondent") pursuant to Ark. R. Civ. Proc. 12(b)(6). Based upon a review of the motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on February 17, 2020, seeking \$1,900,000.00 in damages based upon the actions of Respondent's officer.

2. Respondent filed a motion to dismiss, arguing that Claimant failed to state a claim for intentional infliction of emotional distress. Respondent also argued that Claimant misstated the facts, given that he was fired from his federal employment before Respondent's officer came to Claimant's property to gather up the government work equipment that Claimant still had in his possession.

3. The Claims Commission agreed with Respondent that Claimant had failed to state a claim for intentional infliction of emotional distress, also known as the tort of outrage, and dismissed the claim on June 2, 2020. As part of that order, the Claims Commission also denied Claimant's motion for judgment on the pleadings and Claimant's subpoena request.

4. Claimant subsequently filed the instant motion for reconsideration, the majority of which is focused on Claimant's disagreement with the portion of the order that refers to Claimant's employment with the federal government as "terminated." In support of his position, Claimant refers to a letter from the United States Office of Personnel Management, which is attached to his complaint, to clarify that Claimant was medically retired. In his motion, Claimant provided further information about his transition out of work for the federal government:

In the course of due process, it was determined Claimant could not be terminated by his federal employer and was instead paid a salary that included the timeframe of December 14, 2017 through April 20, 2018.

Claimant also took issue with the Claims Commission's description of the report of Dr. Heidi Thompson, specifically the portion of the report where Dr. Thompson advised that Claimant could not return to work. Additionally, Claimant argued that the "damage to real property, his federal employment" was not included in the order:

This damage to real property was not addressed in Respondent's motion to dismiss nor thereafter was errantly not ruled upon by this tribunal. This fact was completely disregarded by the final Order of this tribunal and this tribunal does not dispute in their Order that Crisman entered Claimant's property unlawfully, therefore that much is tacitly admitted by both Respondent and this tribunal and will be used by Claimant in any future legal proceedings. This tribunal must rule upon damages to real property or it lacks any credibility as an alleged "fact finding body."

5. Respondent filed a response to the motion for reconsideration, arguing that Claimant's motion for reconsideration should be denied. As to Claimant's allegations regarding his "damage to real property, his federal employment," Respondent argued that:

. . . whatever protected property interest Claimant may have had in federal employment is between him and his former employer and is not, in any case, an interest in real property (i.e., land) for which Claimant can pursue damage in this case. In that regard, the Claims Commission correctly ruled, "To the extent that Claimant believes his termination to be wrongful, the Claims Commission is not the proper venue to pursue that claim." To the extent that Claimant is now trying to allege some damage to his land, he pled no facts to support that. Indeed, in his Complaint, Claimant did not claim any real estate or personal property damage.

(internal citations omitted). As to Claimant's arguments regarding his employment status and therapist report, Respondent argued that Claimant's claim "clearly demonstrate[s] that Claimant's medical issues, employment troubles, and eventual loss of employment" began well before the incident on December 14, 2017.

6. Claimant's reply brief included further argument about his employment status on December 14, 2017, as well as a statement that "[t]his tribunal has admitted that Officer Crisman's actions on December 14, 2017 were criminal in nature and that he is guilty of trespass."

7. The Claims Commission finds that Claimant's claim of intentional infliction of emotional distress was properly dismissed for failure to state facts upon which relief can be granted. As stated by the Arkansas Supreme Court in *Renfro v. Adkins*, 323 Ark. 288, 299, 914 S.W.2d 306, 312 (1996), "[m]erely describing the conduct as outrageous does not make it so." As stated in the June 2, 2020, order, while Claimant requested advance notice of the pickup, the fact that government employees, including Officer Crisman, arrived at his property to retrieve government property does not rise to the level of conduct that is "extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized community." *Key v. Coryell*, 86 Ark. App. 334, 185 S.W.3d 98 (2004).

8. The Claims Commission finds that the technical details of Claimant's employment status are irrelevant to whether Claimant has stated a claim for intentional infliction of emotional distress. To this point, the Claims Commission agrees with Claimant's argument in his reply brief that "Claimant's employment status is of no consequence to this matter" because the claim is based upon the actions of Officer Crisman. However, using the term included in Claimant's letter from the United States Office of Personnel Management, the December 13, 2017, email between Claimant and his employer demonstrates that Claimant's *separation* from federal employment was

already underway due to the fact that the federal agency was coordinating with Claimant to retrieve the agency's equipment from him.

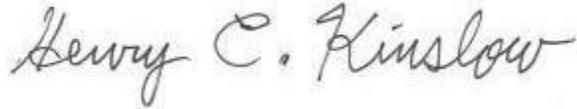
9. As to Claimant's argument that the Claims Commission did not address his claim regarding the "damage to real property, his federal employment," the Claims Commission finds this argument to be unpersuasive and incorrect. The term "real property" means land, and Claimant's complaint does not allege any facts regarding damage to real property. *See Cross v. Ouachita Railroad, Inc.*, 2002 WL 432542 (March 20, 2002) (quoting Black's Law Dictionary to define "real property" as "[l]and and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land"). To the extent that Claimant is referring to an *actual* property interest in his federal employment, Claimant can bring a civil rights claim against Officer Crisman in a court of general jurisdiction, as stated in the Claims Commission's June 2, 2020, order.

10. The Claims Commission cautions Claimant that the absence of a finding does not constitute an "admission" or "tacit admi[ssion]" by the Claims Commission, as argued by Claimant in his motion for reconsideration and reply brief. The Claims Commission's June 2, 2020, order did not contain any findings that Officer Crisman's actions were criminal or that Officer Crisman was guilty of trespass. The June 2, 2020, order contained only the following finding regarding Officer Crisman's actions:

To the extent that Claimant believes Officer Crisman's actions to be criminal, the Claims Commission is not the proper venue for criminal matters.

11. Claimant's motion for reconsideration is DENIED, and the June 2, 2020, order remains in effect.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: June 15, 2020

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(a)(1). 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(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (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(a). 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

MITCHELL WINE

CLAIMANT

V.

CLAIM NO. 200849

**ARKANSAS GAME AND FISH
COMMISSION**

RESPONDENT

**ORDER RE CLAIMANT’S SECOND MOTION FOR
RECONSIDERATION**

Now before the Arkansas State Claims Commission (the “Claims Commission”) is another motion filed by Mitchell Wine (the “Claimant”) seeking reconsideration of the Claims Commission’s June 2, 2020, order dismissing Claimant’s claim against the Arkansas Game and Fish Commission (the “Respondent”) pursuant to Ark. R. Civ. Proc. 12(b)(6). Based upon a review of the motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby DENIES the motion for reconsideration. The Claims Commission interprets Ark. Code Ann. § 19-10-211 as permitting a singular motion for reconsideration, after which a party still has the remedy of appealing the Claims Commission decision to the Arkansas General Assembly. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii)(a) (“If a motion for reconsideration is denied, a party may file with the commission a notice of appeal of the claim to the General Assembly within twenty (20) days of entry of the order denying the motion for reconsideration”). To permit multiple motions for reconsideration would allow a party to indefinitely delay the finality of the Claims Commission order and to expend unnecessary resources.

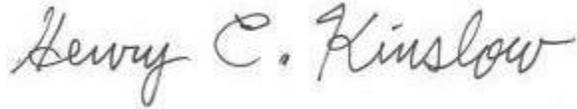
However, to address Claimant’s argument that he was “not offered” a hearing, a claimant is not entitled to a hearing on a pending motion. The Claims Commission has to find that “oral argument or witness testimony, or both, will benefit the commission in deciding” the motion before

a hearing can be scheduled. Ark. Code Ann. § 19-10-210(c). In this claim, the Claims Commission did not find that oral argument would be helpful in deciding the motion.

To address Claimant's argument that the Claims Commission "failed to issue a subpoena," the subpoena requested by Claimant was subject to the Claims Commission's discretion pursuant to Claims Commission Rule 3.2. Once the Claims Commission determined (in its June 2, 2020, order) that Claimant's claim was subject to dismissal pursuant to Ark. R. Civ. Proc. 12(b)(6), all pending discovery requests became moot. Had Respondent asked the Claims Commission to stay discovery pending a ruling on the motion to dismiss, the Claims Commission likely would have granted that request, as the motion to dismiss concerned the insufficiency of the initial claim filing.

Claimant's second motion for reconsideration is DENIED, and the June 2, 2020, order remains in effect. Claimant may appeal the Claims Commission's order to the Arkansas General Assembly pursuant to Ark. Code Ann. § 19-10-211.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: June 22, 2020

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(a)(1). 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(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (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(a). 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).

From: [Mitch Wine](#)
To: [Kathryn Irby](#)
Cc: [ASCC Pleadings](#); [Goodhart, James](#)
Subject: Re: ORDER: Wine v. AGFC, Claim No. 200849
Date: Monday, July 6, 2020 3:15:34 PM

Thank you for the response. The code is slightly confusing as it says “may” appeal using the form. I’m simply ensuring I’ve exhausted administrative remedies in this matter. I would like a copy of all materials sent to the legislature if possible.

Thanks. MW

Sent from my iPhone

On Jul 6, 2020, at 3:05 PM, Kathryn Irby <Kathryn.Irby@arkansas.gov> wrote:

Mr. Wine,

I don’t believe that Ark. Code Ann. 19-10-211 references a specific form that must be filled out in order to appeal the decision. You need to file a notice of appeal with the Claims Commission. The below email is sufficient to do so, and I will prepare the claim to be sent over to the Arkansas General Assembly as soon as possible.

Thanks.

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Mitch Wine <mitchwine@hotmail.com>
Sent: Monday, July 6, 2020 2:51 PM
To: [ASCC Pleadings](mailto:ASCCPleadings@arkansas.gov) <ASCCPleadings@arkansas.gov>; [Goodhart, James](mailto:james.goodhart@agfc.ar.gov) <james.goodhart@agfc.ar.gov>; [Kathryn Irby](mailto:Kathryn.Irby@arkansas.gov) <Kathryn.Irby@arkansas.gov>
Subject: Re: ORDER: Wine v. AGFC, Claim No. 200849

All,

The statute regarding appeals to the legislature in these types of matters indicates there is a specific form that would need to be filled out in order to appeal the decision to the legislature. I was informed today that no such form

actually exists, so I am requesting an appeal of this decision to the legislature. There is no reason this court can ignore criminal trespass in its decisions when it claims to evaluate what is or is not considered "outrageous". Please see that the appeal is sent to the legislature as soon as possible.

Thank you,

Mitch Wine

From: Kathryn Irby <Kathryn.Irby@arkansas.gov> on behalf of ASCC Pleadings <ASCCPleadings@arkansas.gov>
Sent: Monday, June 22, 2020 10:26 AM
To: Mitch Wine <mitchwine@hotmail.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; Goodhart, James <james.goodhart@agfc.ar.gov>
Subject: ORDER: Wine v. AGFC, Claim No. 200849

Mr. Wine and Mr. Goodhart,

Please see attached order entered by the Claims Commission today.

Thanks.

Arkansas State Claims Commission

101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-1619