

EXHIBIT F.6

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

Arkansas
State Claims Commission

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

JAN 03 2020

- Mr.
- Mrs.
- Ms.
- Miss

Johnny Whale Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

Claim No. _____
 Date Filed _____
 (Month) (Day) (Year)
 Amount of Claim \$ _____
 Fund _____

COMPLAINT

Johnny Lee Whale, the above named Claimant, of _____ (City)
 _____ (Street or R.F.D. & No.)
 _____ (State) _____ (Zip Code) _____ (Daytime Phone No.)
 County of _____ represented by Myself
 (Legal Counsel, if any, for Claim)

of _____ (Street and No.) _____ (City) _____ (State) _____ (Zip Code) _____ (Phone No.) _____ (Fax No.) says:

State agency involved: State Hospital and Workmen Comp. Commission Amount sought: \$300,000

Month, day, year and place of incident or service: November 7th 2010

Explanation: I was pushed by a co-worker Matt Babbs after asking him a question about what he was saying loudly toward the Nursing Station. He was down the hallway close to the dining area for the patients. I responded to my fist balled up and armed cocked back. I was pushed off balance toward the sink area in the Med Nurse room. The Med Nurse room is a very small room. If I would have not stopped my momentum I am ~~sure~~ sure I would have damaged my hip. I could not turn and hit the floor because there was no time and no room. This all happen after he entered the Nursing Station from a side door. It took all I had to keep from grabbing his face with my fists. He had a blank look on his face and never said anything after pushing me. My leg started swelling and there was pain but my mistake was not going to the hospital. I reported the injury to my supervisor on November 12, 2010 by phone when I was not able to work my 2 day (Wednesday & Thursday). I told him that Babbs hurt my right leg and that I would turn in report.

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? June 17 2012 to whom? Arkansas Workmen Comp. Commission
 (Yes or No) (Month) (Day) (Year) (Department)

and that the following action was taken thereon: Claim was denied

and that \$ _____ was paid thereon: (2) Has any third person or corporation an interest in this claim? _____ ; 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 verily believes that they are true.

Johnny Whale
 (Print Claimant/Representative Name)

Johnny Whale
 (Signature of Claimant/Representative)

SWORN TO and subscribed before me at North Little Rock AR
 (City) (State)



on this 3/5 day of December, 2019
 (Date) (Month) (Year)

[Signature]
 (Notary Public)

My Commission Expires: October 17th 2028
 (Month) (Day) (Year)

ARKANSAS STATE CLAIMS COMMISSION
PROPERTY DAMAGE/PERSONAL INJURY INCIDENT REPORT FORM

Arkansas State Claims Commission
 JAN 03 2020

SECTION I

CLAIMANT Johnny Whale ADDRESS [REDACTED]
 CITY & STATE [REDACTED] ZIP CODE [REDACTED]

DATE OF INCIDENT: 11-7-2010 19 TIME 10:00am - 11:00am

Give a brief description of incident, showing how incident happened, exact loss and extent of damage to property and/or injury to person:

I was pushed on my left side by Coworker Babbs after asking him a question. My body bent like the letter C I had pain shooting from my foot all the way up Rt. side and knee
 (If personal injury claim only, move on to Section IV) Swelling
Kept having issues
numbness of walking
toes end up being in pain

SECTION II

Has this property been repaired? Yes () No (X) If repairs have been made, give the following information: Amount: \$ Social Security disability Have you paid for the repairs? Yes () No ()

NOTE: Attach a copy of repair bill.

If repairs have not been made, list three estimates below and attach copies of each of them.

NAME	ADDRESS	AMOUNT
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____

SECTION III

Was property covered by insurance? Yes () No ()
 If yes, what is the deductible? \$ _____

NAME OF INSURANCE CARRIER ADDRESS

SECTION IV I did not go the day of injury so I used my private insurance

Is injured covered by medical insurance? Yes () No (X) If yes, is medical insurance:

If yes, what is the deductible? \$ _____
 A. Job-based Yes () No ()
 B. Uninsured Motorist Yes () No ()
 C. Private Pay Yes (X) No ()

NAME OF INSURANCE CARRIER ADDRESS

Health Advantage Don't remember

SECTION V

If incident was investigated by the police or by some other agency, give name and title of officer/person making the investigation: Supervisor Stan Dobson did not do Policy 1084
Employee Discipline Policy: Conduct/Performance
That is the problem my Supervisor did not do his job. No investigation he coworker sent home
Thats the reason why I did not win my Worker's Comp Claim

SECTION VI

The undersigned states on oath that he/she is familiar with the matters and things set forth in the above statement, and that he/she verily believes that they are true.

Johnny Whale
 Signature of Claimant



Sworn to and subscribed before me at North Little Rock AR
 City & State
 is 3/7 day of December 2010
 day month year

My Commission Expires 10/11/2021

[Signature]
 Signature of Notary Public

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JOHNNY WHALE

CLAIMANT

V.

CLAIM NO. 200678

**ARKANSAS DEPARTMENT OF
HUMAN SERVICES; ARKANSAS
WORKERS' COMPENSATION
COMMISSION**

RESPONDENTS

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") are the motions filed by the Arkansas Department of Human Services (DHS) and the Arkansas Workers' Compensation Commission (AWCC) to dismiss the claim of Johnny Whale (the "Claimant"). Based upon a review of the motions and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on January 3, 2020, seeking \$300,000.00 in damages from DHS and AWCC related to being pushed by a coworker at the Arkansas State Hospital on November 7, 2010.

2. AWCC filed a motion to dismiss, noting that Claimant presented a claim regarding this incident to AWCC on June 14, 2012, which was denied by AWCC. AWCC stated that, following the denial, Claimant failed to appeal the decision regarding his claim to the Arkansas Court of Appeals. AWCC argued that pursuant to Ark. Code Ann. § 11-9-105, an appeal to the Arkansas Court of Appeals was Claimant's only remedy.

3. DHS filed a motion to dismiss, arguing, *inter alia*, that any negligence claim against DHS is barred by the three-year statute of limitations and that Claimant's claim should be dismissed for failure to state a claim upon which relief can be granted.

4. Claimant filed a response to the motions to dismiss. As to AWCC's motion to dismiss, Claimant explained why he disagrees with the decision reached by AWCC. As to DHS' motion to dismiss, Claimant detailed the medical issues that followed the incident.

AWCC's Motion to Dismiss

5. The Claims Commission agrees with AWCC that dismissal is proper. The Claims Commission does not have jurisdiction to reconsider decisions rendered by AWCC. *See* Ark. Code Ann. § 11-9-105.

DHS' Motion to Dismiss

6. In reviewing DHS' motion to dismiss, the Claims Commission must treat the facts alleged in the complaint as true and view them in a light most favorable to the Claimant. *See Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999). All reasonable inferences must be resolved in favor of the Claimant, and the complaint must be liberally construed. *See id.* However, the Claimant must allege facts, not mere conclusions. *Dockery v. Morgan*, 2011 Ark. 94 at *6, 380 S.W.3d 377, 382. The facts alleged in the complaint will be treated as true, but not "a plaintiff's theories, speculation, or statutory interpretation." *See id.* (citing *Hodges*, 337 Ark. 470, 989 S.W.2d 530 (1999)).

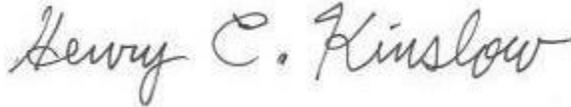
7. The Claims Commission agrees with DHS that dismissal is proper under *Hodges*. Even liberally construing the complaint, Claimant has not stated facts to support a negligence claim. *See Chambers v. Stern*, 347 Ark. 395, 406, 64 S.W.3d 737, 744 (2002) (The elements of a negligence claim are duty, breach of duty, and damages proximately caused by the breach). Assuming *arguendo* that Claimant's allegations are correct, Claimant has stated no facts to establish how DHS is liable for the actions of Claimant's coworker.

8. The Claims Commission also agrees with DHS that dismissal is proper based upon expiration of the statute of limitations. *See* Ark. Code Ann. § 16-56-105. The incident occurred on November 7, 2010, and Claimant did not file the instant claim until January 3, 2020.

Conclusion

9. AWCC's and DHS' motions to dismiss are GRANTED, and Claimant's claim is DENIED and DISMISSED.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

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

DATE: March 30, 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).

Dear Arkansas State Claims Commission: Claim # 200678 Page 1 of 2

I am appealing your decision on denying me my claim against Arkansas State Hospital. There should not be a Statute of Limitation because they started the process for my Workers Comp. claim on 4-14-19.

Arkansas
State Claims Commission
MAY 26 2020

Karin Kirkpatrick was the HR Analyst. HR is the highest power at any job.

On my Incident Report it has Staff ~~injured~~ injured by Staff. It has the

word Coworker and the Coworkers name. That info should signal a red flag. If

Human Resource does not know about the 1084 Manual or to check on it than who does. HR included themselves in this claim and should be liable for not doing their job. They should have been asking the Supervisor Stan Dobson about his report on this incident. I asked for 50% of m

\$300,000 be granted. No one likes being railroaded. The stuff that happen to me I would not wish on my worst enemy. I told the Judge at my Social Security disability hearing that Workers Comp should be ~~the~~ paying me. I told him I should have went to the hospital when I first got hurt I have been working ever since I was in th 3rd grade. I did lawn care work until I graduated High School.

Signed:

Johnny White

Date: 4-15-2020

**DEPARTMENT OF HEALTH & HUMAN SERVICES
DIVISION OF BEHAVIORAL HEALTH SERVICES
ARKANSAS STATE HOSPITAL**

INCIDENT REPORT

ID PLATE

Instructions:

- Use this form to report incidents that don't result in seclusion or restraint; don't place this form in the Chart; give original to Nursing Services; copy the Unit Nurse Manager & Program Director.
- Report seclusion or restraint incidents on ASH Form # 05.01.07 F5, Seclusion & Restraint Report (not this form)
- Report medication errors on ASH Form # 05.02.01 F2, Adverse Drug Reaction Variance Report (not this form)

Unit: C Place: Nursing Station Date: 11-7-10 Time begun: 9:00am Time ended: 9:30am
 Names, titles of staff involved: Matt Babbs (BHA), Johnny Whale (USO)

Incident type: (check all that apply)

- | | | | |
|--|---|--|--|
| <input type="checkbox"/> Arrest or crime | <input type="checkbox"/> Choking ¹ | <input type="checkbox"/> Fight | <input type="checkbox"/> Suicide |
| <input type="checkbox"/> Assault on peer | <input type="checkbox"/> Contraband / drugs | <input type="checkbox"/> Patient injury | <input type="checkbox"/> Threatening behavior |
| Name: _____ | <input type="checkbox"/> Death (not suicide) | <input type="checkbox"/> Property damage | <input type="checkbox"/> Victim of assault |
| <input type="checkbox"/> Assault on staff ³ | <input type="checkbox"/> Elopement | <input type="checkbox"/> Self harm behavior | <input type="checkbox"/> Medical emergency |
| Name: _____ | <input type="checkbox"/> Fall ² | <input type="checkbox"/> Suicide - Attempted | <input checked="" type="checkbox"/> Other <u>Staff injured</u> |
- by Staff

¹Choking: do a choking assessment

²Fall: do a fall assessment

³If Staff injured, see ASH Policy # 01.12.01, Employee Injuries & Workers' Compensation Claims

Narrative: Briefly, tell what happened:

A. What preceded / led to the incident (e.g. what "caused" the incident)?
Matt Babbs came into Nursing Station saying something about a patient putting their hands on him

B. Describe the incident itself I asked Babbs about what happen to him with dealing with patient ~~and he~~ and he pushed me. I guess that was he way of demonstrating what happen instead of telling me. My leg started swelling.

Physical injury to patient?

Treatment: Was treatment provided?

If treated at ASH, did an ASH physician provide or give order for medical treatment? Yes No

Notifications (Check if made)

- | | | | | |
|--|---|--|---|--|
| <input type="checkbox"/> Attending physician | <input type="checkbox"/> Resident on duty | <input type="checkbox"/> NOD | <input type="checkbox"/> Unit nurse manager | <input type="checkbox"/> Public Safety |
| <input type="checkbox"/> Significant other | <input type="checkbox"/> Program director | <input checked="" type="checkbox"/> Other: <u>RN Brian Olsen</u> | | |

Names of persons notified: Witness LPN Rita Carter

Reported by: Johnny Whale (USO) Signature: Johnny Whale Date: 11-15-10 Time: 9:00am

WORKERS COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS

EMPLOYER (NAME & ADDRESS INCL ZIP) ✓ AR State Hospital 305 S Palm St Little Rock, AR 72205		CARRIER/ADMINISTRATOR CLAIM NUMBER	OSHA LOG CASE #	REPORT PURPOSE CODE
		JURISDICTION		JURISDICTION CLAIM NUMBER
INSURED REPORT NUMBER				
EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)			LOCATION #	PHONE #
INDUSTRY CODE	EMPLOYER FEIN			

CARRIER/CLAIMS ADMINISTRATOR		
CARRIER (NAME, ADDRESS, & PHONE #) Public Employee Claims Div. Arkansas Insurance Department 1200 W. Third, Suite 201 Little Rock, AR 72201-1904 (501) 371-2700	POLICY PERIOD _____ TO _____ CHECK IF APPROPRIATE <input type="checkbox"/> SELF INSURANCE	CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO)
CARRIER FEIN	POLICY/SELF-INSURED NUMBER	ADMINISTRATOR FEIN

EMPLOYEE/INFORMATION					
NAME (LAST, FIRST, MIDDLE) ✓ Whale, Johnny	SEX ✓ <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE <input type="checkbox"/> UNKNOWN	MARITAL STATUS ✓ <input type="checkbox"/> UNMARRIED <input type="checkbox"/> SINGLE/DIVORCED <input type="checkbox"/> MARRIED <input type="checkbox"/> SEPARATED <input type="checkbox"/> UNKNOWN	DATE HIRED 02/25/08	STATE OF HIRE	OCCUPATION/JOB TITLE ✓ N.S.O. EMPLOYMENT STATUS Full-time
ADDRESS (INCL ZIP)	# OF DEPENDENTS 2				
PHONE ✓					
RATE PER: ✓ 11.4934	DAY WEEK	MONTH OTHER: Hour	DAYS WORKED/WEEK	FULL PAY FOR DAY OF INJURY? DID SALARY CONTINUE?	YES NO YES NO

OCCURRENCE/TREATMENT							
TIME EMPLOYEE BEGAN WORK ✓ 0630	AM PM	DATE OF INJURY/ILLNESS ✓ 11/07/10	TIME OF OCCURRENCE () CANNOT BE DETERMINED 9:00	AM PM	LAST WORK DATE	DATE EMPLOYER NOTIFIED	DATE DISABILITY BEGAN
CONTACT NAME/PHONE NUMBER ✓ Johnny Whale		TYPE OF INJURY/ILLNESS ✓ Right side of body		PART OF BODY AFFECTED			
DID INJURY/ILLNESS/EXPOSURE OCCUR ON EMPLOYER'S PREMISES? <input type="checkbox"/> YES <input type="checkbox"/> NO							
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED				ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED			
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED				WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED			
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL.							

DATE RETURN(ED) TO WORK	IF FATAL, GIVE DATE OF DEATH	WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED?	YES	NO
		WERE THEY USED?	YES	NO
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS) ✓		HOSPITAL OR OFF SITE TREATMENT (NAME & ADDRESS) ✓		
INITIAL TREATMENT				
<input checked="" type="checkbox"/> NO MEDICAL TREATMENT				
1 MINOR BY EMPLOYER				
2 MINOR CLINIC/HOSP				
3 EMERGENCY CARE				
4 HOSPITALIZED > 24 HOURS				
5 FUTURE MAJOR MEDICAL/ LOST TIME ANTICIPATED				

WITNESSES (NAME & PHONE #) ✓ Rita Carter			
DATE ADMINISTRATOR NOTIFIED ✓ 11/15/10	DATE PREPARED ✓ 04/14/11	PREPARER'S NAME & TITLE ✓ Karia Kirkpatrick, HR Analyst	PHONE NUMBER ✓ 501-686-4611