



STATE OF ARKANSAS BUREAU OF LEGISLATIVE RESEARCH

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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Clarence Kelly v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: February 20, 2017
Date of Claim Filed: June 14, 2017
Amount Claimed: \$5,000.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate alleges that he was locked up from the general population and that ADC personnel brought some, but not all, of his property to him. The inmate states that ADC personnel indicated that they would bring the rest, but he did not receive any of his other property until he filed a grievance and, even then, his property did not arrive until fifteen (15) days later. The inmate argues that this violated agency policy and that he now seeks damages for loss of property, as well as his time, stress, and work that he had to put into his claim. The specific items the inmate claims were lost were a watch, clothing, food items, headphones, ear buds, a radio, a mirror, and a legal transcript.

Agency Response: The agency moved to dismiss arguing several grounds. First, that the inmate has failed to state facts upon which relief may be granted. Specifically, the agency states that the inmate has failed to specifically plead any basis for an award of damages beyond mere speculation. Damages are, the agency contends, an essential element of a tort claim. The agency also argues that the inmate has made only conclusory statements as to the general facts of the case, which does not rise to the level of factual pleading required for a case such as this. Second, the agency argues that the inmate is not stating correct facts to the commission, specifically as to his claims as to what personal property he contends was missing or stolen, and therefore has unclean hands.

Opinion of the Claims Commission: The commission treated the agency's motion to dismiss as one for summary judgment and found that the inmate failed to demonstrate any genuine issue of material fact. As such, the commission dismissed the claim due to the fact that the inmate had previously indicated on the property disposition for he signed that he was not missing any property. A motion for reconsideration was likewise denied.