

APR 29 2015

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Please print in ink or type

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BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

Waimonushun Smith #111026 Claimant

Do Not Write in These Spaces Claim No. 15-0777-CC Date Filed April 29, 2015 Amount of Claim \$ 1,000.00 Fund DOC

vs. State of Arkansas, Respondent Dept. of Correction

COMPLAINT

Loss of property, Failure to follow procedure

Waimonushun Smith #111026 the above named Claimant, of P.O. Box 240, Tucker AR 72168 ARKANSAS, 72168 County of JEFFERSON represented by PROSE

State agency involved: ARKANSAS DEPT. OF CORRECTION Amount sought: \$1,000

Month, day, year and place of incident or service: OCTOBER 4, 2014 @ TUCKER UNIT Explanation: ON OCTOBER 4, 2014, MS. D. HARRIS, THE MATRIMON SUPERVISOR AT TUCKER UNIT WITHHELD 5 PICTURES AND A PERSONAL LETTER FROM A FRIEND OF MINE NAMED CARLOS BROWNING...

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? FEBRUARY 9, 2015; to whom? WARDEN STEPHEN WILLIAMS of the AR. DEPT. OF CORRECTIONS...

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verify believes that they are true. WAIMONUSHUN SMITH Waimonushun Smith #111026

SWORN TO and subscribed before me at Tucker AR this 26 day of April 2015 John Ella Marshall My Commission Expires: 10 21 2018



ARKANSAS DEPARTMENT OF CORRECTION
RETURN MAIL NOTICE

Barracks No. 5

Date: 10/4/14

Inmate's Name Waimonukraun Smith

ADC # 111024

Regarding Letter/Package from Carlos Browning

212 W. 2nd St

The above item has to be returned to sender for the following reason(s):

JR AR 725

- No ADC Number On Letter
- Incorrect ADC Number On Money Order
- Postage Stamps
- Stamped Envelope
- Unauthorized Photos
- Reading Material (Must come from publisher or Bookstore)
- Unauthorized Money Order
- Money Order did not include your ADC number (All money orders must include inmate name and ADC Number)
- Cash Enclosed (Amount \$ _____)
- Unauthorized Material Enclosed Sexually Suggestive
- Pornographic Material
- Unauthorized Correspondence
- Other _____

1/9 83

You need to send a stamped envelope to return this item to the above person. self addressed

Letter too large to fit in regular-size envelope. Send a signed Inmate Check for the amount of \$ _____.

Please send a signed Inmate Check for \$ _____ and a stamped envelope.

All money orders that do not have an ADC Number must be returned to the sender to have the number put on it. And in accordance with the new postal regulation, postage has to be paid on letters that are returned to the sender. Therefore, you need to send me a stamped envelope addressed to the above person.

Advise your correspondent that **ALL** of the required information **MUST** be included in your address. The information which shall be required is:

Please check one of the boxes below and return this notice to the Mailroom.

- I Wish To:
- Donate above items
- Return to sender
- Destroy above items

[Signature]
Mail Room Supervisor

Inmate's Signature _____ Date _____

UNIT LEVEL GRIEVANCE FORM (Attachment I)

Unit/Center TUCKER

Name WATMONL SHAWN SMITH

ADC# 111026 Brks # 4A Job Assignment M/S INMATE GRIEVANCE SUPERVISOR

2-4-15 (Date) STEP ONE: Informal Resolution

2-9-15 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why: STEP ONE WAS NOT RETURNED/RESPONDED TO WITHIN THE 72 HOUR LIMIT

(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 serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. In an Emergency, state why: _____

Is this Grievance concerning Medical or Mental Health Services? _____ 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 1-28-15, I SENT A REQUEST FOR INTERVIEW TO MS. HARRIS IN THE MAIL ROOM. THE REQUEST ASKED MS. HARRIS FOR THE LOCATION OF PERSONAL MAIL SHE OBSTRUCTED ME FROM RECEIVING ON 10-4-14. ON 1-28-15, MS. HARRIS HAD SGT. F. JOHNSON ESCORT ME TO THE MAIL ROOM ABOUT MY REQUEST. SHE ASKED IF I HAD MY RETURN MAIL NOTICE CONCERNING THE MAIL. I AGREED TO SEND IT TO HER PROMPTLY BY SGT. JOHNSON. SHE THEN TOLD ME THAT SHE DON'T HAVE NO MONEY AND WANTED TO KNOW WHAT WAS THE CLAIMS COMMISSION. I REFUSED TO RESPOND TO THOSE REMARKS AND SGT. JOHNSON ESCORTED ME BACK TO MY BARRACKS. I THEN HANDED HER THE NOTICE HARRIS REQUESTED. ITS NOW 7 DAYS LATER AND MS. HARRIS REFUSED TO RESPOND TO THE REQUEST. THIS IS AFTER I ADMITTED THAT I NEED THE REQUESTED INFO TO FILE A CLAIM. MS. HARRIS IS CLEARLY TRYING TO IGNORE MY REQUEST AND DETER ME FROM MAKING A CLAIM BASED ON FACTS. WHERE IS THE PERSONAL MAIL AND PICTURES MS. HARRIS REFUSED TO DELIVER TO ME ON 10-4-14. THIS GRIEVANCE IS ABOUT THE REQUEST I WROTE ON 1-28-15 TO MS HARRIS AND IS BEING IGNORED.

W. Smith
Inmate Signature

2-4-15
Date

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

THIS SECTION TO BE FILLED OUT BY STAFF ONLY

This form was received on 02/07/15 (date), and determined to be **Step One** and/or an Emergency Grievance (Yes or No). This form was forwarded to medical or mental health? NO (Yes or No) If yes, name of the person in that department receiving this form: _____ Date _____

LOBBERS 5705 K. Selfars 02/07/15
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 back to Inmate after Completion of Step One and Step Two.

MAR 11 2015

IGTT410
3GS

Attachment III

INMATE GRIEVANCE SUPERVISOR

INMATE NAME: Smith, Waimonshun

ADMINISTRATION BUILDING
ADC #: 111026C

GRIEVANCE #: TU-15-00095

WARDEN/CENTER SUPERVISOR'S DECISION

In your grievance you stated, "On 1/28/15, I sent a request for interview to Ms. Harris in the mailroom The request asked Ms. Harris for the location of personal mail she obstructed me from receiving on 10/4/14. on 1/28/15, Ms. Harris had Sgt. F. Johnson escort me to the mailroom about my request, she asked if I had my return mail notice concerning the mail. I agreed to send it to her promptly by Sgt. Johnson. She then told me that she don't have no money and wanted to know what was the claims commission I refused to respond to those remarks and Sgt. Johnson escorted me back to my barracks. I then handed him the notice Harris requested. It's now 7 day's later and Ms. Harris refused to respond to the request. This is after I admitted that I need the requested info to file a claim. Ms. Harris is clearly trying to ignore my request and deter me from making a claim based on facts. Where is the personal mail and pictures Ms. Harris refused to deliver to me on 10/4/14. This Grievance is about the request I wrote on 1/28/15 to Ms. Harris and is being ignored."

Inmate Smith, please be advised, according to my investigation, it has been determine that your grievance has merit. Due the fact that policy and procedure was not followed in this current complaint. However, there is a color copy of the photo in the Grievance office that can be returned to the sender.

[Signature box]

Stephen S. Williams
Signature of Warden/Supervisor or Designee

Warden
Title

3/9/2015
Date

INMATE'S APPEAL

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? THE SITUATION CANNOT BE REMEDIATED BY RETURNING A COLOR COPY OF THE PHOTO TO SENDER. FOR ONE, IT DOESN'T ADDRESS THE LOSS OF THE LETTER THAT ACCOMPANIED THE PHOTO OR THE 4 OTHER PICTURES INCLUDED IN THE LETTER. BECAUSE MR. BROWNING WAS MOVING, THE LETTER SHOULD'VE CONTAINED HIS PHONE NUMBER AND NEW ADDRESS. ALSO, ANY OTHER INFO HE NEEDED TO CONVEY TO ME. I NEVER RECEIVED ANY OF THE CONTENTS INVOLVED AND BECAUSE MS. HARRIS IN THE MAILROOM DEVIATED FROM POLICY AND PROCEDURE, MY MAIL IS LOST, NOW, I HAVE NO WAY OF CONTACTING MR. BROWNING. HE NO LONGER RESIDES AT THE ADDRESS.

W. Smith
Inmate Signature

111026
ADC#

3/6/15
Date

IGTT430
3GD

Attachment VI

INMATE NAME: Smith, Waimonshun

ADC #: 111026

GRIEVANCE#:TU-15-00095

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION

On 2/4/2015; you allege," On 1/28/15, I sent a request for interview to Ms. Harris in the mailroom The request asked Ms. Harris for the location of personal mail she obstructed me from receiving on 10/4/14. on 1/28/15, Ms. Harris had Sgt. F. Johnson escort me to the mailroom about my request, she asked if I had my return mail notice concerning the mail. I agreed to send it to her promptly by Sgt. Johnson. She then told me that she don't have no money ey and wanted to know what was the claims commission. I refused to respond to th ose remarks and Sgt. Johnson escorted me back to my barracks. I then handed h im the notice Harris requested. It's now 7 day's later and Ms. Harris refused to respond to the request. This is after I admitted that I need the requested info to file a claim. Ms. Harris is clearly trying to ignore my request and deter me from making a claim based on facts. Where is the personal mail and pictures Ms. Harris refused to deliver to me on 10/4/14. This Grievance is about the request I wrote on 1/28/15 to Ms. Harris and is being ignored."

On 3/9/2015; Warden Williams responded," Inmate Smith, please be advised, according to my investigation, it has been determine that your grievance has merit. Due the fact that policy and procedure was not followed in this current complaint. However, there is a color copy of the photo in the Grievance office that can be returned to the sender."

After reviewing your appeal and all supporting documentation, I concur with the Warden's response.

Appeal denied

By way of this response, I will instruct the unit Warden to take corrective actions and forward a copy of actions taken to my office.



Director

Date 4-9-15

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

WAIMONUSHUN SMITH (ADC 111026)

Arkansas Claims Commission

CLAIMANT

V.

NO. 15-0777-CC

MAY 28 2015

ARKANSAS DEPARTMENT OF CORRECTION

RECEIVED

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 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 27 day of May, 2015, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Waimonushun Smith (ADC 111026)
Tucker Unit
PO Box 240
Tucker, AR 72168-0240


LISA MILLS WILKINS Ark. Bar #87190

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

OCT 22 2015

CLAIMANT RECEIVED

WAIMONUSHUN SMITH (ADC #111026)

V. NO. 15-0777-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

RESPONDENT'S MOTION TO DISMISS

COMES NOW the Respondent, Arkansas Department of Correction, and for its MOTION TO DISMISS, states and responds as follows:

1. Claimant alleges that on OCTOBER 4, 2014, he received a letter and photos from a friend. All the items were confiscated by the mailroom due to one photo being 'sexually suggestive.' He states he cannot contact his friend who has moved and only one photo can be found. He seeks damages of \$1,000.00. Claimant has failed to state a claim upon which relief can be granted and the claim should be dismissed under ARCP 12(b)(6).
2. Claimant received a Return Mail Notice on October 4, 2014 directing him to provide a stamped envelope to return the item at that time to Mr. Browning. See Exhibit "A". This exhibit is attached to Claimant's complaint so, clearly, he received it. Claimant failed to do so and protect his interest in the property at that time. Claimant is comparatively negligent in the loss of the photos and the letter by not responding to the request to return them!
3. Claimant states that Mr. Browning was moving; however, Claimant does not know if Mr. Browning left a forwarding order with the post office or the exact date of the move for the photos to be returned to him.
4. AD 14-51 states inmates will be given thirty (30) days from the date received to pay the postage for returning mail containing contraband. If inmates are not willing to pay for the return postage within the time limit, the mail and contraband will be destroyed. See Exhibit "6"
5. Claimant never produced the stamped envelope, although he had the ability to pay. On October 17, 2014, he received a \$20.00 deposit on his account from his mother. Four dollars of this went to pay towards a federal filing lien and the remainder was his to spend in the commissary.


10/17/2014	Deposit Money for Inmate	Posted	Tucker Unit	21851233740	06120377	\$ 20.00	\$ 20.00
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6. Instead of returning the photos, Claimant filed a grievance challenging the ruling that the photo was sexually suggestive. The filed another grievance challenging the ruling that the first grievance was untimely. Claimant filed a third grievance in February of 2015, due to not receiving an interview request.

7. There is no documentation that the photos have been destroyed or are still in the mailroom either. There is no documentation as to how many photos were received only that one photo was received and it was sexually suggestive.

WHEREFORE, for the reasons stated above and the evidence submitted, the Claim must 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 MOTION TO DISMISS has been served this 21 day of October, 2015, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

WAIMONUSHUN SMITH (ADC #111026)
TUCKER UNIT
2501 STATE FARM ROAD
TUCKER, AR 72168


LISA MILLS WILKINS Ark. Bar #87190

ARKANSAS DEPARTMENT OF CORRECTION
RETURN MAIL NOTICE

Barracks No. 5

Date: 10/4/14

Inmate's Name Waimonu Shau Smith

ADC # 111024

Regarding Letter/Package from Carlos Browning

1212 W. Hwy

The above item has to be returned to sender for the following reason(s):

JR-AR
722

- No ADC Number On Letter
- Incorrect ADC Number On Money Order
- Postage Stamps
- Stamped Envelope
- Unauthorized Photos
- Reading Material (Must come from publisher or Bookstore)
- Unauthorized Money Order
- Money Order did not include your ADC number (All money orders must include inmate name and ADC Number)
- Cash Enclosed (Amount \$ _____)
- Unauthorized Material Enclosed Sexually suggestive.
- Pornographic Material
- Unauthorized Correspondence
- Other _____

39
83

You need to send a stamped envelope to return this item to the above person. self addressed

Letter too large to fit in regular-size envelope. Send a signed Inmate Check for the amount of \$ _____

Please send a signed Inmate Check for \$ _____ and a stamped envelope.

All money orders that do not have an ADC Number must be returned to the sender to have the number put on it. And in accordance with the new postal regulation, postage has to be paid on letters that are returned to the sender. Therefore, you need to send me a stamped envelope addressed to the above person.

Advise your correspondent that **ALL** of the required information **MUST** be included in your address. The information which shall be required is:

Please check one of the boxes below and return this notice to the Mailroom.

- I Wish To:
- Donate above items
 - Return to sender
 - Destroy above items

[Signature]
Mail Room Supervisor

Inmate's Signature _____ Date _____

DC/dh 491



Exhibit
A

and the Unit Chaplain must approve any questionable medal or emblem. Any religious medal or emblem will be mailed directly from a commercial source with a copy of the invoice included. Any religious medal or emblem, which is deemed unauthorized during initial commitment will be disposed of as outlined herein.

4. Personal photographs: Inmates are limited to five (5) personal photographs. A personal photograph is defined as a photograph intended for individual viewing, as opposed to a commercially produced photograph that is published and sold to the public. Photographs can be no larger than 8 ½" x 11" in size. Such photographs may contain either single or multiple digital images/pictures on one (1) side of the page only. When digital images/pictures are cut from an 8 ½" x 11" sheet, it they will no longer be considered as one. Each digital image/picture cut from that sheet will be counted as one of the five authorized photographs. Digital images and photocopies are considered the same. Prohibited photos are photos which contain (1) nude or sexually suggestive photographs, or (2) contain subject matter that is disruptive in nature or would threaten security or the good order of the institution. Liability for loss of a photograph is limited to \$2.50 per photograph or per 8 ½" x 11" size pages regardless of number of photos contained on any one page. Inmates are advised not to retain sole copies of important or sentimental family photographs due to the possibility of damage or loss. Electronic photographs which are transferred to an inmate's MP3 Player will not be subject to the same numerical restrictions as noted above.
5. Legal Materials – for example, mail, transcripts, research, pleadings: An inmate may retain legal materials, which provided the quantity of those materials can be stored in his/her assigned property box.
 - (a) The inmate is responsible for the disposal of those materials as outlined herein. Inmates may access stored legal materials by utilizing the inmate request system.
 - (b) At the time of transfer, the inmate must notify the UPCO that he or she has legal materials belonging to another inmate and turn those materials or work over to the UPCO. Any inmate transferring with legal materials or work belonging to another inmate is subject to disciplinary action.
 - (c) The inmate is responsible for notifying the UPCO if they possess a trial transcript, or if one is received by the inmate by mail or delivery for addition to his/her personal inventory. The only information required is the date of the deposition, case number, and the name of the person deposed.
6. Work Craft Materials – work craft or hobby craft materials are governed by the appropriate administrative directive and all inmates participating in the work craft program must meet the criteria for the unit to which they are assigned. Materials will be transferred with the inmate to the new unit. If the inmate does not qualify for work craft or hobby craft or the new unit does not have a work craft or hobby craft program, the materials will be disposed of as per the work craft or hobby craft policy. Liability for tools and materials is limited to a cumulative of \$200.00 including all other items of personal property.
7. Inmates are not allowed to possess an MP3 Player and a radio. If the inmate owns a radio and wishes to purchase an MP3 Player, then the inmate is responsible for disposing of the radio as addressed in this policy. Possession of both the radio and the MP3 Player will result in disciplinary action and the radio being considered as contraband and dealt with accordingly.

Arkansas Claims Commission

NOV 03 2015

RECEIVED

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

WAIMONUSHUN SMITH, ADC#111026

CLAIMANT

V.

NO. 15-07777-CC

ARKANSAS DEPT. OF CORRECTION

RESPONDENT

**CLAIMANT'S REPLY TO
RESPONDENT'S MOTION TO DISMISS**

Comes Now the Claimant, Waimonushun Smith, and for his reply to respondent's motion to dismiss, states and responds as follows:

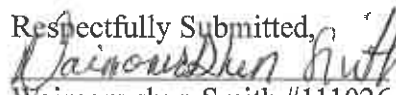
1. Claimant has stated a claim upon which relief can be granted. Tucker mail-room staff confiscated personal mail of Claimant's. Policy wasn't followed by respondents, which resulted in the property being lost or destroyed by Respondent's. See Grievance #TU-15-00095
2. On October 4, 2014, when Claimant received the return mail notice, he filed grievance #TU-14-00713 in accordance with administrative directive 14-16. AD14-16 Governs ADC grievance procedure and states that it is a "Mechanism designed to solve the problem at the lowest level, as immediately as feasible, and in a manner that is fair, reasonable..." Also, "The Policy violation/incident/action alleged in the grievance shall be investigated..." In this case, respondent's rejected the grievance in error and didn't satisfy their investigatory obligation. So, Claimant filed grievance #TU-14-00834 to get the issue addressed. At this point, respondents had clearly lost or destroyed the property because they were referencing a "Publication" and denying it for "Nudity." See Grievance #TU-14-00713 and #TU-14-00834
3. Claimant then filed grievance #TU-15-00095 before filing with the Claims Commission. AD 14-16 states, "The department is to encourage the resolution of grievances found to have merit involving property loses, confiscations..." This didn't happen.

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4. Claimant states the respondents should have not disposed of the property while the matter was being grieved pursuant to AD 14-16.
5. Not only does Claimant not have an address for Mr. Browning, Claimant states that the letter accompanying the missing photos is lost because of the improper handling of the property.
6. The thirty (30) days given by AD 14-16 for the time limit for payment of the postage for returning mail does not apply. Claimant filed a grievance #TU-14-00713 concerning the withholding of the letter because of a sexually suggestive photo the day he received the return mail notice. AD 14-16 states "The **entire** grievance procedure should be completed within seventy-six (76) working days..." Only then would destruction be appropriate.
7. Claimant also states that a lack of ability to produce a stamped envelope was not the issue. Claimant filed grievances pursuant to AD 14-16 and was owed a decision on the merits before respondents could take permanent prohibitive actions.
8. After receiving the final decision concerning the withholding of the mail (#TU-14-00834), on Jan. 22, 2015, Claimant wrote to the mail-room on Jan. 28, 2015, six (6) days later. The request was to finally arrange to have the property sent home.
9. The mailroom met with Claimant on Jan. 28, 2015. The mail-room clerk had no idea what or where the mail was. Claimant grieved #TU-15-00095 and it was decided that after investigation, the complaint had merit and that policy and procedure wasn't followed in this complaint.
10. Respondents are responsible for the documentation of property they destroy. There is no documentation. Respondents are also responsible for the storage of the property til it can be destroyed or sent out by Claimant.

11. Respondents can't produce the letter or photos. They are lost. Ms. D. Harris had several talks in the hallway at Tucker Unit with Claimant about this mail in Oct. of 2014. Claimant states that Harris told him if it was up to her, she'd let him have the photos. She described it as a female adorned in a sheer material. She said that it was the only one "sexually suggestive." Claimant asked if she'd forward him the rest with the letter. Harris stated that the one photo prevents her from giving him the other four (4) and the letter. Respondents are responsible for documenting how many photos were received. The only time this is done is when too many photos are received, and never when one out of the bunch is prohibited.


WHEREFORE, for the reasons stated above and the evidence submitted, the claim must be granted.

Respectfully Submitted,

Waimonushun Smith #111026
P.O.Box 240
Tucker, AR 72168

CERTIFICATE OF SERVICE

I, certify that a copy of the Reply to Respondent's Motion to Dismiss has been served this 15th day of November, 2015, on the below respondent by placing a copy of the same in the U.S. Mail, regular postage to:

Lisa Mills Wilkins Ark. Bar #87190
P.O. Box 8707
Pine Bluff, AR 71611


Waimonushun Smith #111026

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 1000.00

Claim No. 15-0777-CC

Attorneys

Waimonushun Smith, #111026 Claimant
vs.

Pro se Claimant

Department of Corrections Respondent
State of Arkansas

Lisa Wilkins, Attorney Respondent

Date Filed April 29, 2015

Type of Claim Loss of Property, Failure to Follow
Procedure

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 2-7 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 2-7 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing November 12, 2015

Date of Disposition November 12, 2015

Reed L. Mag Chairman
W. H. ... Commissioner
Paul ... Commissioner

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

WAIMONUSHUN SMITH, ADC#111026

CLAIMANT

V.

NO. 15-0777-CC

ARKANSAS DEPT. OF CORRECTION

RESPONDENT

CLAIMANT'S MOTION FOR RECONSIDERATION

Comes Now the Claimant, Waimonushun Smith, and for his Motion for Reconsideration states:

1. On October 4, 2014, Claimant received a letter and photos from a friend, Carlos Browning. All the items were confiscated by Ms. D. Harris in the Tucker Unit mailroom. Because one photo was considered "sexually suggestive." The friend can't be reached and only one copy of a photo can be produced. He seeks damages of \$1,000.00.
2. On November 12, 2015, this Claims Commission unanimously granted the respondent's "motion to dismiss" based on the reasons set forth in paragraphs 2-7 contained in the motion.
3. Claimant brings this timely motion for reconsideration pursuant to Arkansas Code Annotated section 19-10-211(b)(2), which states, "within forty (40) days after the decision is rendered, file with the commission a motion for reconsideration requesting the commission to reconsider its decision..."
4. Respondent's included Exhibits "A" & "B" with their motion to dismiss to make their claim that claimant was "comparatively negligent" in the loss of the photos and the letter by not responding to the request to return them. Exhibit "A" is a return mail notice and Exhibit "B" is a page from the ADC Policy governing inmate property control (Admin. Directive 14-03).

4 1

5. Claimant launched a grievance against the confiscation of these items on October 4, 2014, the same day he received the return mail notice. Under the policy submitted by respondents in their motion to dismiss they were to “hold property until proceedings complete.”

Administrative Directive 14-03: IV(E)(3) states: “...confiscated items to be used for disciplinary, **grievance** or judicial proceedings will be secured until proceedings are completed.” The grievance process wasn’t completed til January 22, 2015 when Mr. Marvin Evans rendered his final decision in the matter on grievance #TU-14-00834. Therefore, Claimant was not “comparatively negligent” In the loss of the property. ADC didn’t follow it’s policy of securing the property til the grievance proceeding were done. *See Exhibit “D”*.

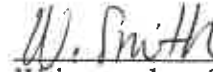
6. This alone destroys respondent’s motion to dismiss based on the reasons set forth in paragraphs 2-7 contained in their motion. Respondents statement in #2 of their motion admits their “...Negligence in the loss of the photos and the letter...”

7. ADC can’t produce the required “list of letters and items” that the mailroom personnel **must** submit to the Deputy/Assistant Warden/Asst. Center Supervisor in order to have said property destroyed pursuant to AD 14-51:III(A)(4) and (5). But #4-#6 of their motion is used to point out that the property will be destroyed after 30 days. This is another failure to follow a policy mandate by ADC in this incident. See Exhibit “E”.

8. Grievance #TU-15-00095 is a complaint about the whereabouts of Claimant’s photos and letter. After an investigation, the Unit Warden, Stephen Williams, admitted the mailroom staff didn’t follow policy, and only one “copy” of a photo could be produced. Numbers 2 and 7 of respondent’s motion make references to “photos and the letter” and “...photos have been destroyed...”, respectively. These admissions give support to Claimant’s assertions that 5 pictures and a letter is at issue.

9. WHEREFORE, for the reasons stated above and evidence submitted, this Claimant begs the Arkansas State Claims Commission to reconsider claim No. 15-0777-CC.

Respectfully Submitted,



Waimonushun Smith #111026
P.O.Box 240
Tucker, AR 72168

CERTIFICATE OF SERVICE

I, certify that a copy of the Claimant's Motion for Reconsideration has been served this 19 day of November, 2015, on the below respondent by placing a copy of the same in the U.

S. Mail, regular postage to:

Lisa Mills Wilkins Ark. Bar #87190
P.O. Box 8707
Pine Bluff, AR 71611


Waimonushun Smith #111026

property bag. The bag will be sealed with notations on the seal of the date, name, and ADC # of the inmate. Upon arrival at the new location or upon return to the inmate, as soon as possible, the inmate, if he/she desires to have his copy completed, will hand the pink copy to the UPCO and inventory completed. The completed pink copy will be returned to the inmate. When the receiving/returning unit completes the inventory, the Form F-841-1 shall be signed by the UPCO with his/her name printed, signed and AASIS number thereon or a designee and by the inmate with ADC# written. If the inmate refuses or is unavailable to sign the inventory, a second officer will sign in the presence of the inmate.

3. The completed white original will be forwarded to the records office to be placed in the inmate's institutional file and the inmate will keep the pink copy. Property inventory shall be immediately scanned into eOMIS.

E. EXCESSIVE PROPERTY AND CONTRABAND AFTER INTAKE

1. Any property found in the possession of an inmate, which is not listed on either Form 841-1 or 841-3 or approved for purchase from the commissary will be deemed contraband.
2. Form 401 must be completed to identify all property taken from the inmate as either excess/contraband or disciplinary/criminal evidence. After completion the form must be immediately scanned into eOMIS. The form must include at least the inmate name, ADC Number, date of receipt, a description of the property item(s) in sufficient detail for easy identification; the reason the property was taken from the inmate; disposition of the items; and the confiscating officer and inmate will co-sign the form. If the inmate refuses to sign the form it will be signed by a second officer in the presence of the inmate.
3. Hold property until proceedings complete. Confiscated items to be used for disciplinary, grievance or judicial proceedings will be secured until proceedings are completed. Photograph all items if necessary, attach to the Property Confiscation Form, Form F-401 and document all actions relative to these items on Form F-401.
4. Unauthorized property shall be disposed of as follows:
 - (a) Mail the items at the inmate's expense to a party of the inmate's choosing. No lien will be placed on the inmate's account for postage to mail unauthorized property.
 - (b) Destruction, if authorized by the inmate completing and signing the destruction section of Form F-841-5 and destruction is witnessed by the UPCO and another staff member; or
 - (c) Pick-up by a party of the inmate's choosing during visitation or from the Unit where it was confiscated if the inmate has been transferred from that unit. Confiscated property will not be transferred with the inmate or to another more convenient location for pick-up. Any person authorized by an inmate to receive excess personal property will sign the appropriate section of the F-841-5 form.
5. A disciplinary may be written on all confiscated property as unauthorized excessive or contraband.
6. Contraband will be destroyed.

EXHIBIT D

III. PROCEDURES:**A. Inmate Correspondence Constituting or Containing Contraband**

1. All mail is opened in accordance with AR 860. Mail containing contraband will be returned to the sender and the inmate to whom the correspondence was addressed and/or was to receive the contraband will be required to pay for the return postage or agree to the destruction of the mail and contraband.
2. Inmates are encouraged to communicate with those persons with whom they correspond to make them aware of the items which they can receive legally and request that contraband items not be sent.
3. Inmates will be given thirty (30) days from the date received to pay the postage for returning the mail containing contraband. If inmates are not willing to pay for the return postage within the time limit, the mail and contraband will be destroyed.
4. Mailroom personnel will submit a list of letters and items to be destroyed to the Deputy/Assistant Warden/Assistant Center Supervisor.
5. At a time designated by the Warden/Center Supervisor, after the time limit has expired, the mailroom personnel and the Deputy/Assistant Warden/Assistant Center Supervisor will oversee the destruction of said mail and contraband.
6. Any mail received without a return address containing the first and last name of the individual or the business name, street address or post office box number, city, state, and zip code will be considered contraband and destroyed. However, it may be opened to determine if disciplinary charges are warranted against the intended recipient.

B. Inmate Electronic Correspondence

1. All inmate electronic correspondence will be subject to the rules outlined in AR 860, Inmate Correspondence.
2. The cost of the electronic correspondence is at the expense of the sender. The cost of any rejected electronic correspondence will be borne by the sender.

EXHIBIT E

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 1000.00

Claim No. 15-0777-CC

Attorneys

Waimonushun Smith, #111026 Claimant
vs.

Pro se Claimant

Department of Corrections Respondent
State of Arkansas

Lisa Wilkins, Attorney Respondent

Date Filed April 29, 2015

Type of Claim Loss of Property, Failure to Follow
Procedure

FINDING OF FACTS

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that would change the prior decision of the Claims Commission. Therefore, the Commission's November 12, 2015, order remains in effect.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that would change the prior decision of the Claims Commission. Therefore, the Commission's November 12, 2015, order remains in effect.

Date of Hearing December 10, 2015

Date of Disposition December 10, 2015

Rachel May Chairman
Bill Hancock Commissioner
John King Commissioner

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DEC 21 2015

WAIMONUSHUN SMITH, ADC#111026

RECEIVED
CLAIMANT

V.

NO. 15-0777-CC

ARKANSAS DEPT. OF CORRECTION

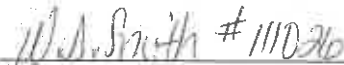
RESPONDENT

CLAIMANT'S NOTICE OF APPEAL

Comes Now the aggravated Claimant, Waimonushun Smith, *Pro-Se*, and for his Notice of Appeal states:

1. On November 12, 2015, this Claims Commission held a hearing in which claimant was not present. This commission unanimously granted the respondent's "**Motion to Dismiss.**"
2. On November 23, 2015, The Claimant filed a "**Motion for Reconsideration.**" A hearing was held on December 10, 2015 in which Claimant was not present, again. This Commission unanimously denied his motion, without addressing his claims.
3. Claimant herein lodges this **Notice of Appeal** pursuant to *A.C.A. § 19-10-211(b)(1)*.
4. Claimant also request that he be provided with a copy of the transcripts of both hearings on this claim that were held on November 12, 2015 and on December 10, 2015 without his being presents.

Respectfully Submitted,


Waimonushun Smith #111026
P.O.Box 240
Tucker, AR 72168

CERTIFICATE OF SERVICE

I, certify that a copy of the Claimant's Motion for Reconsideration has been served this 15th day of December, 2015, on the below respondent by placing a copy of the same in the U.S. Mail, regular postage to:

Lisa Mills Wilkins Ark. Bar #87190
P.O. Box 8707
Pine Bluff, AR 71611

W. Smith #111026
Waimonushun Smith #111026