

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

ARKANSAS STATE CLAIMS COMMISSION

MAY 29 2013

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BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

Rico Benton, #097236 Claimant

vs.

State of Arkansas, Respondent Dept. of Correction

Do Not Write in These Spaces Claim No. 13-0849-CC Date Filed May 29, 2013 Amount of Claim \$ 10,000.00 Fund DOC

COMPLAINT Failure to Follow Procedure, Negligence, Personal Injury Pain & Suffering

Rico Benton, #097236, the above named Claimant, of 2501 State Farm Rd, Tucker, AR 72168

(State) (Zip Code) (Daytime Phone No.) County of represented by (Legal Counsel, if any, for Claim)

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

State agency involved: ARKANSAS DEPARTMENT OF CORRECTIONS (ADC) Amount sought: \$10,000 (TEN THOUSAND DOLLARS)

Month, day, year and place of incident or service: APRIL 21, 2013 AT OR NEAR 12:30 AM

Explanation: ON 4/21/13, AT OR AROUND 12:30 AM, I WAS CALLED TO 1 & 3 CONTROL ROOM BY NURSE FOX FOR PILL CALL. UPON COMING DOWN THE STAIRS FROM THE SECOND FLOOR TO THE BOTTOM FLOOR, MY PART THAT I HAVE TO HAVE SURGERY ON ONE ARM FROM UNDER ME. I FELL DOWN THE STAIRS AND INJURED MY BACK BECAUSE SECURITY HAD REFUSED TO HONOR MY M&F-207 WHICH STATES BY MEDICAL STAFF (DOCTORS) THAT I SHOULD ONLY BE HONORED ON THE BOTTOM FLOOR AFTER I LEFT THE INFIRMARY. I INFORMED SECURITY AGAIN THAT I NEEDED TO HAVE TO THE BOTTOM FLOOR, BUT THEY ONCE AGAIN REFUSED TO HAVE ME. THE FOLLOWING DAY BARB BROWN NOTICED I WAS ON THE FLOOR AND CALLED THE INFIRMARY, I WAS HELPED DOWN THE STAIRS INTO A WHEEL CHAIR AND TAKEN BACK TO THE INFIRMARY AND SEEN BY DON HALL HUGH. (THE INFIRMARY DON HUGH, DOCTOR CRAWELL AND NURSE WOOD ALL KNOW THAT MY LEG GIVES OUT) THE PROBLEM TO I WAS HONORED IN CELL 3-08 (THE BOTTOM FLOOR) AND WAS FORCED TO HAVE TO 3-31 WHICH IS ON THE SECOND FLOOR. I INFORMED SECURITY THAT I WANTED TO BE HONORED ON THE SECOND FLOOR AND WAS TOLD

I, the undersigned, make the statements, and answers the following questions, as indicated: (1) Has claim been presented to my state department or officer thereof?

NO; when? (Month) (Day) (Year); to whom? (Department)

and that the following action was taken thereon:

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim?; if so, state name and address

and that the nature thereof is as follows: (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

: 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.

Rico Benton #97236 (Print Claimant/Representative Name)

Rico Benton #97236 (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Tucker Ark

(SEAL) on this 25th day of May 2013



Sherion Penister (Notary Public)

SP1-R7/99

My Commission Expires: 12-15-2013 (Month) (Day) (Year)

WOLE FOR 30 DAYS, SECURITY VIOLATED MY MEDICAL RIGHTS AND CAUSED ME TO GET INJURED BY NOT HONORING MY MSF-207. THAT STATES BOTTOM FLOOR HOUSING ONLY. CLASSIFICATION HAS A COPY OF MY MSF-207 ON FILE AND SO DO THE INFIRMARY MEDICAL STAFF SO THEY, (CLASSIFICATION OFFICER JENKINS KNEW THAT I SHOULDN'T HAVE BEEN MOVED FROM THE BOTTOM FLOOR TO THE SECOND IN THE FIRST PLACE WHEN I HAVE A KNEE THAT I SUPPOSE TO HAVE SURGERY ON.

RICO BENTON # 97236  
(CLAIMANT)

P.S.

(WOULD ALSO LIKE A FILE MARKED COPY FOR MY RECORD, THANK YOU)

SWORN TO AND SUBSCRIBED BEFORE ME AT  
Tucker, Ark

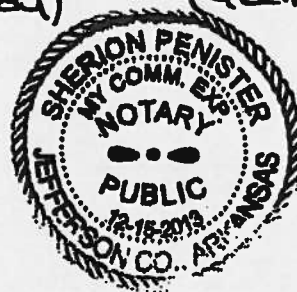
(CITY) (STATE)

ON THIS 25th DAY OF May, 2013  
(DATE) (MONTH) (YEAR)

Sherion Penister

(NOTARY PUBLIC)

MY COMMISSION EXPIRES: 12 - 15 - 2013  
(MONTH) (DAY) (YEAR)



Page #2.

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

RICO BENTON (ADC # 097236)

CLAIMANT

V.

NO. 13-0849-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 filed a claim for failure to follow policy, negligence, personal injury, pain and suffering in the amount of \$10,000.00. Claimant has failed to state a claim upon which relief can be granted herein under ARCP Rule 12(b)(6).
3. Claimant had a medical script for no upper tier which was issued to him in October of 2012. Mistakenly, Claimant had been moved to the upper tier housing on March 31, 2013. He failed to alert any officer or medical staff that he was housed in violation of the script.
4. Claimant alleges that on April 21, 2013, at 12:30 a.m., he descended the stairs to go to pill call and alleges his right knee gave out and he fell down the lower stairs. He alleges that he should not have been placed on the upper tier as he had a medical script for bottom tier and had so notified staff members who refused to move him.
5. Although he had a medical script, Claimant continued to engage in activities which were contrary to it. On February 23, 2013, he jammed his finger while playing basketball in the gym. He also served as the referee for the Christmas Basketball tournament.
6. During the short time that Claimant was on the upper tier, he did not place any Inmate Request or file any grievances to inform anyone that he was housed in violation of his script. He made two walk-in trips to the infirmary for unrelated reasons, one on March 19, 2013 and again on April 10, 2013, but did not inform any medical staff that he was housed in violation of his medical script and seek their assistance in moving him to the lower tier.
7. Respondent moves that the commission dismiss this claim. A motion to dismiss is proper when there are no facts upon which relief can be granted. ARCP 12(B)(6).

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*

LISA MILLS WILKINS Ark. Bar #87190

Attorney Supervisor

Post Office Box 8707

Pine Bluff, AR 71611

(870)267-6844 Office

(870)267-6373 Facsimile

Arkansas  
State Claims Commission  
JUL 31 2013

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CERTIFICATE OF SERVICE

I certify that a copy of the MOTION TO DISMISS has been served this 30 day of July, 2013, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

RICO BENTON (ADC # 097236)  
MSU  
2501 STATE FARM ROAD  
TUCKER, AR 72168

Lisa Mills Wilkins  
LISA MILLS WILKINS Ark. Bar #87190

AUG 06 2013

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

RICO BENTON (ADC# 97236)

CLAIMANT

VS.

CASE NO. 13-0849-CC

ARKANSAS DEPT. OF CORRECTION

RESPONDENT

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

1. Respondent states that claimant filed a claim for failure to follow policy, negligence, personal injury, pain and suffering in the amount of \$10,000.00. Claimant has failed to state a claim upon which relief can be granted, herein under Ark. Rule 12(B)(6).
  - A. Claimant's claim in the amount of \$10,000.00 is for negligence of the ADC for not following Claimant's medical restrictions by moving Claimant couldn't be housed there in the first place. Personal injury because if the ADC wouldn't have moved Claimant from the start, Claimant wouldn't have gotten injured. Pain and suffering because Claimant has gained almost 40 pounds because of the injury and is no longer active in sports or exercise because of back pain.
2. Respondent states that Claimant had a medical script for no upper tier which was issued to him in October of 2012. Mistakenly, Claimant had been moved to the upper tier housing on March 31, 2013. He failed to alert any officer or medical staff that he was housed in violation of the script.
  - A. Claimant was not moved mistakenly on March 31, 2013. Security, Sgt. D. Woods, told Claimant that he didn't have a choice but to move because classification wanted

to move Inmate C. Gray into my cell. Sgt. Woods stated that if I did not move, I would go to the hole.

B. Claimant did tell medical staff, Nurse Hamilton, Nurse Woods, and Doctor J. Carswell which I would like to call as witnesses. Claimant also told security staff, Sgt. E. Turner, Sgt. Brown, Sgt. Woods, Sgt. Crockett and Classification which I would like to call as witnesses.

3. Respondent states, although he had a medical script, Claimant continued to engage in activities which were contrary to it. On February 23, 2013, he jammed his finger while playing basketball in the gym. he also served as the referee for the Christmas Basketball Tournament.

A. Doctor's told Claimant to continue to exercise daily to build up muscles in his knee. When Claimant jammed his finger on February 23, 2013, while playing basketball in the gym. That has nothing to do with Claimant being moved to upper tier housing where he injured his back by falling down the lower stairs.

B. Claimant was a score keeper in the Christmas Basketball Tournament and I'd like to call the Treatment Coordinator, Ms. S. Simmons as a witness. Claimant did no other.

Respectfully Submitted,

Rico Benton #97236

Rico Benton #97236  
2501 STATE FARM ROAD  
TUCKER, AR 72168

Arkansas Claims Commission

AUG 06 2013

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STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 10,000.00

Claim No. 13-0849-CC

Rico Benton #097236 Claimant

Attorneys  
Pro se Claimant

vs.

AR Department of Corrections  
State of Arkansas Respondent

Lisa Wilkins, Attorney Respondent

Date Filed May 29, 2013

Type of Claim Failure to follow procedure,  
Pain and Suffering, Negligence,  
Personal Injury

FINDING OF FACTS

This claim was filed for failure to follow procedure, pain and suffering, negligence and personal injury in the amount of \$10,000.00 against Arkansas Department of Corrections.

Present at a hearing October 11, 2013, was the Claimant, pro se, and the Respondent, represented by Lisa Wilkins, Attorney.

The Claims Commission hereby unanimously denies and dismisses this claim for Claimant's failure to prove by a preponderance of the evidence any negligence on the part of the Respondent.

Therefore, this claim is hereby unanimously dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission unanimously denied and dismissed this claim for Claimant's failure to prove by a preponderance of the evidence any negligence on the part of the Respondent.

Date of Hearing October 11, 2013

Date of Disposition October 11, 2013

[Signature] Chairman  
Bill Lancaster Commissioner  
Jim Baker Commissioner

\*\*Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

RICO BENTON (ADC # 097236)

CLAIMANT

V.

NO. 13-0849-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

CLAIMANT'S MOTION FOR RECONSIDERATION FOR

DENIAL AND DISMISSAL OF CLAIM

COMES NOW THE CLAIMANT, STATES AND RESPONDS

AS FOLLOWS.

1. IT WAS CLEARLY ADC'S FAULT THAT CLAIMANT  
FELL DOWN STAIRS AND INJURED HIS BACK.  
THE ADC MADE CLAIMANT MOVE TO A  
SECOND FLOOR HOUSING WHEN THEY KNEW  
KNEW FOR A FACT THAT CLAIMANT HAD A  
MSF-207 MEDICAL SCRIPT STATING THAT HE  
COULD ONLY BE HOUSED ON LOWER BUNK /  
LOWER FLOOR. SEE EVIDENCE PRESENT TO  
THE COMMISSION.

2. ON OCTOBER 11, 2013 AT (VIDEO-CONFERENCE  
V-C), CLAIMANT WAS TOLD THAT NONE OF  
WITNESS STATEMENTS COULD BE USED BECAUSE  
I DIDN'T CALL ANY FOR WITNESSES. I HAVE  
A COPY OF A FAX FROM LISA MILLS WILKINS  
ATTORNEY SUPERVISOR, ADC DATED SEPTEMBER  
25, 2013 WHICH STATES RESPONDENT SUBMITS  
THE FOLLOWING ADDITIONAL WITNESS FOR THE  
HEARING ON OCTOBER 11, 2013: Deputy

Arkansas  
State Claims Commission

OCT 29 2013

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WARDEN S. OUTLAW, RORY GRIFFIN. THE ADC WERE ALLOWED TO CALL A WITNESS THAT THEY DIDN'T CALL FOR A WITNESS WHICH WAS BIAS BECAUSE CLAIMANT WAS TOLD THAT HE COULDN'T USE HIS WITNESSES.

3. ADC STATES THAT CLAIMANT PLAYED SPORTS BASKETBALL EVERY QUM CALL, BUT FAILED TO PROVIDE EVIDENCE. I'M SURE ADC SHOULD HAVE THIS ON CAMERA AND DIDN'T PRESENT THIS EVIDENCE TO COMMISSION.
4. CLAIMANT HAD MAJOR KNEE SURGERY ON JULY 26, 2013 BECAUSE OF UNSTABLE KNEE THAT GOES OUT, WHICH IS WHY CLAIMANT SHOULD NOT OF BEEN MADE TO MOVE TO SECOND FLOOR, SEE EVIDENCE PRESENT TO COMMISSION.
5. CLAIMANT'S CLAIM FOR FAILURE TO FOLLOW PROCEDURE, PAIN AND SUFFERING, NEGLIGENCE, AND PERSONAL INJURY IN THE AMOUNT OF \$10,000 AGAINST THE ARKANSAS DEPARTMENT OF COLLECTION UNDER THE EVIDENCE AND FACTS SHOULD BE GRANTED.
6. CLAIMANT ALSO REQUEST A FILED MARKED COPY FOR RECORD.

RESPECTFULLY SUBMITTED,  
RICO BENTON # 97236  
2501 STATE FARM ROAD  
TUCKER, ARKANSAS 72168

STATE CLAIMS COMMISSION OPINION

Amount of Claim \$ 10,000.00

13-0849-CC

Claim No.

Rico Denton, #097236 Claimant

Attorneys Pro se Claimant

Department of Correction Respondent

Lisa Wilkins, Attorney Respondent

State of Arkansas Date Filed May 29, 2013

Type of Claim Failure to Follow Procedure, Negligence, Personal Injury, Pain & Suffering

FINDING OF FACTS

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's October 11, 2013, 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 was not previously available. Therefore, the Commission's October 11, 2013, order remains in effect.

Date of Hearing November 15, 2013

Date of Disposition November 15, 2013

Signatures of Chairman, Commissioner, and Commissioner

\*\*Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

MR. NORMAN L. HODGES, JR. DIRECTOR  
ARKANSAS STATE CLAIMS COMMISSION  
201 EAST CAPITOL AVENUE  
SUITE 410  
LITTLE ROCK, ARKANSAS 72201-3823

Arkansas  
State Claims Commission  
NOV 22 2013  
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RE: Rico BENTON #097236  
CLAIM #13-0849-CC US. DEPARTMENT OF CORRECTION

DEAR MR HODGES,  
I AM IN RECEIPT OF THE STATE CLAIMS COMMISSION  
DECISION DATED NOVEMBER 15, 2013, CONCERNING  
THE DENIAL OF MY "MOTION FOR RECONSIDERATION"  
BEING ADVISED, I RESPECTFULLY REQUEST THAT I  
APPEAL THE CLAIMS COMMISSION'S DECISION ALONG WITH  
ALL SUPPORTING DOCUMENTS FROM MY FILE TO THE  
ARKANSAS GENERAL ASSEMBLY AS SOON AS POSSIBLE.  
I ALSO REQUEST THAT CLAIMS COMMISSION SEND ME THE  
PROPER FORM TO FILL OUT TO APPEAL TO ARKANSAS  
GENERAL ASSEMBLY.

Rico Benton #097236  
Respectfully  
Rico BENTON #097236

STATE OF ARKANSAS  
COUNTY OF JEFFERSON

Subscribed and sworn to before me a Notary  
Public, on this 20 DAY OF November 2013

My Commission Expires: 12-26-2015

Stanley Robinson  
(SIGNATURE OF NOTARY)

