

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

- Mr.
- Mrs.
- Ms.
- Miss

Do Not Write in These Spaces		
Claim No.	15-0612-CC	
Date Filed	March 16, 2015	
	(Month)	(Day) (Year)
Amount of Claim \$	750.00	
Fund	DOC	
Failure to follow procedure		

Kevin Wright, #140591 Claimant

vs.
State of Arkansas, Respondent
AR Dept of Correction

COMPLAINT

Kevin Wright, #140591 the above named Claimant, of P.O. Box 180, Brickeys, AR 72320

(Name) (Street or R.F.D. & No.) (City)
County of: Lee represented by _____
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

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

State agency involved: Arkansas Department of Corrections Amount sought: \$750.00

Month, day, year and place of incident or service: November 21, 2013, East Arkansas Regional Unit ("Brickeys")

Explanation: [SEE ATTACHMENT]

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?
No when? _____; to whom? _____
(Yes or No) (Month) (Day) (Year) (Department)

and that \$ _____ was paid thereon: (2) Has any third person or corporation an interest in this claim? No; 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.

Kevin Wright (Print Claimant/Representative Name) Kevin Wright (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Brickey AR
(City) (State)

on this 04 day of March, 2015
(Date) (Month) (Year)

Seccer Cole
(Notary Public)

My Commission Expires: Dec 01 2017
(Month) (Day) (Year)



COMPLAINT

Facts

Explanation: Claimant brings this complaint concerning violations of ADC policy and procedures. On or about Tuesday, November 19, 2013 claimant was served with a disciplinary notice by, Serving Officer, respondent Cpt. Thorne. On the same day, the Chief Security Officer reviewed and referred the disciplinary report to the Hearing Officer. On Thursday, November 21, 2013 claimant went before the hearing officer and was found guilty for the rule violations alleged against him and sentenced him to thirty (30) days punitive isolation, reduction of class, and forfeited 365 day good time.

On Monday, December 2, 2013 claimant filed a grievance alleging policy and procedure violations. [See Grievance Attachment I] On Thursday, January 2, 2014, Warden, respondent Danny Burl denied claimant's grievance stating it to be without merit. [See Warden's Decision, Attachment III] On Friday, February 14, 2014, Deputy Director, respondent Grant Harris also found claimant's grievance to be without merit denying his appeal. [See Deputy Director's Decision, Attachment III]

Policy and Procedure Violations

According to ADC disciplinary policy, particularly AD 13-10 Inmate Disciplinary Manual § #3 Definitions: (C), Exhibit A-1, reveals that it is the responsibility of the Serving or Notifying Officer to serve charges on inmates and receive their list of witnesses regarding a charge. Claimant contends that Thorne failed to carry out these duties. AD 13-10 Inmate Disc. Manual § #7 Major Disc. Court: (E) Hearings (3), Exhibit A-2, requires how witness statements are to be gathered and submitted. Thorne was responsible for obtaining and providing witnesses, gathering statements, and submitting them to the Hearing Officer, wherein which he failed to do. Claimant's grievance reveals that, Problem Solver, Sgt. H. Williams conducted an investigation by e-mailing Thorne but he failed to respond. Claimant also contends that Thorne failed to interview his requested witnesses without assigning a valid reason or a rational explanation was arbitrary and capricious.

According to AD 13-10 Inmate Disc. Manual § #3 Definitions: (A), Exhibit A-1, Wardens are responsible for ensuring that Serving Officers are properly trained. Burl failed to carry out this responsibility, he was grossly negligent in training Thorne and after being informed of the violations through his grievance and disciplinary appeal, he failed to remedy the wrong.

Harris is vested with the authority to properly investigate any and all grievance matters. Claimant's grievance clearly revealed a complaint challenging the serving officer's violation of policy and conduct, but was denied by Harris as a disciplinary matter, wherein which, claimant contends is incorrect. However, he implicitly authorized and approved the unconstitutional conduct of the offending subordinates.

Relief Sought

Claimant contends that without the enforceable right to have his requested witness statements submitted to the Hearing Officer, he was not guaranteed an opportunity to present any defense beyond his own word and it significantly affected his ability to demonstrate his innocence. Claimant suffered from the respondents' failure to follow the, aforementioned, policies wherein which, he was wronged in a major degree, was a victim of intentional policy violations, and suffered illegal confinement. It is obvious from the reversal of claimant's disciplinary appeal that the conviction was violative of the mandatorily required policy. [See Exhibit A-2]

Wherefore, claimant contends that the, aforementioned, respondents are liable for having violated policy and liable for having him serve 30 illegal days in punitive isolation. He is entitled to approximately \$25⁰⁰ for every illegal day served, which is a total of at least \$750⁰⁰ and an appropriate immediate evidentiary hearing.

UNIT LEVEL GRIEVANCE FORM (Attachment I)

Unit/Center East Ae. Regional Unit

GRIEVANCE/RECEIVED

FOR OFFICE USE ONLY	
GRV. #	<u>EAM13-04072</u>
Date Received:	<u>12-10-13</u>
GRV. Code #:	<u>803</u>

Name Kevin P. Wright

DEC 10 2013

ADC# 140591 Brks # ISO/MX 1-5 Job Assignment N/A

12.2.13 (Date) STEP ONE: Informal Resolution

12.8.13 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)
If the issue was not resolved during Step One, state why: No response concerning matter.

_____ (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 a serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. If 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 Tuesday, 11-19-13, in ISO/MX 3-88, Sgt. Thorn served me, I/M K. Wright #140591, a major disciplinary notification. He then asked me for witnesses and I gave him: 1) Cpl. Resborough 2) Sgt. Thornton and 3) I/M Furlough (Tbki). On Friday, 11-22-13, Cpl. Resborough was assigned to ISO/MX 3. I asked him if anyone notified him about writing a witness statement and he replied "no". According to the AD's Inmate Disciplinary Manual, all written statements are to be obtained by ADC employees and submitted to the serving officer. Sgt. Thorn did not follow these procedures. There was no reasonable effort made to procure the witnesses' statements for being presented at the court hearing. Due to this prejudice act I was denied the right, such as equal protection, of the law under the 14th Amendment, which guarantees me a right to due process under the 4th and 5th Amendment. My due process rights ensures that I'm entitled to a fair and impartial court hearing and that no bias is created in favor of the charging officer. Sgt. Thorn's conduct violated ADC's policy and my right to due process.

RECEIVED

JAN 13 2014

Kevin Wright
Inmate Signature

12.2.13
Date

INMATE GRIEVANCE SUPERVISOR
ADMINISTRATIVE BUILDING

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 12-04-13 (date), and determined to be **Step One** and/or an Emergency Grievance (Yes or No). This form was forwarded to medical or mental health? _____ (Yes or No). If yes, name of the person in that department receiving this form: _____ Date _____

Sgt F. Williams 36644 Sgt H. Williams 12-4-13
PRINT STAFF NAME (PROBLEM SOLVER) ID Number Staff Signature Date Received

Describe action taken to resolve complaint, including dates: Sgt H. Williams e-mailed Cpl. Thorne concerning this matter and received no response

Sgt H. Williams 12-6-13 Kevin P. Wright 12-8-13
Staff Signature & Date Returned Inmate Signature & Date Received

This form was received on 12-10-13 (date), pursuant to **Step Two**. Is it an Emergency? (Yes or No).
Staff Who Received Step Two Grievance: Sgt Cole Date: 12
Action Taken: _____ (Forwarded to Grievance Officer/Warden/Other) Date: 10
If forwarded, provide name of person receiving this form: MS Roby Date: 7/3

DISTRIBUTION: YELLOW & PINK – Inmate Receipts; **BLUE**-Grievance Officer; **ORIGINAL**-Given back to Inmate After Completion of Step One and Step Two.

INMATE NAME: Wright, Kevin R.

ADC #: 140591B

GRIEVANCE #: EAM13-04012

WARDEN/CENTER SUPERVISOR'S DECISION

Inmate Wright, you grieve Cpl. Thorne violating your due process right by not get witnesses' statement from the name you gave him. Your complaint is noted. Cpl. Thorne denies allegation. Without further evidence, I find your complaint without merit.

[Redacted Signature Box]

DANNY BOUL BY R.T.B. SP
Signature of Warden/Supervisor or Designee

DIW
Title

1-2-14
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? A thorough review of the Warden's response indicates that there was no reasonable fact finding methods used in determining rather appellants complaint had any merit. He denied the complaint by relying solely upon the Serving Officer's denial of appellants' allegations. His decision clearly shows bias in favor of the charging officer. Appellant contends that nothing was mentioned about the witnesses being investigated to find any evidence, in which he believes that necessary evidence would have arisen. Appellant also believes that if the correct methods are taken, by reviewing the camis recording on Tuesday, Nov. 19th, 2013, in isolation 3 barracks, cell #88, at around approximately 10:00 am - 1:00 pm, for further evidence, that appellants' allegations would prove to be factual. Moreover appellant further contends that he was deprived of his right to **due process** and was not afforded a fair and impartial trial. Wherefore appellant prays that corrective step are taken by reviewing the evidence give and find that he was denied due process.

Kevin R. Wright
Inmate Signature

140591B
ADC#

1-9-14
Date

RECEIVED

JAN 13 2014

INMATE GRIEVANCE SUPERVISOR
ADMINISTRATION BUILDING

5

IGTT430
3GD

Attachment VI

INMATE NAME: Wright, Kevin R.

ADC #: 140591

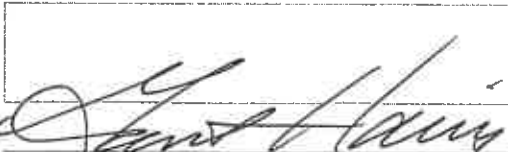
GRIEVANCE#:EAM13-04012

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION

Your complaint is on 11/19/13; Sgt. Thorne served you, a major disciplinary notification and asked you for witnesses. You claim you submitted several names as witnesses but Sgt. Thorne violated your due process right by not collecting witness statements from the names you submitted.

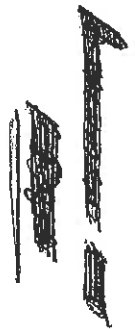
After reviewing your appeal and supporting documentation, I find according to AD 12-16 disciplinary matters are not grievable through the Inmate Grievance policy. therefore, I find your appeal without merit.

Appeal denied



Director

2-14-2014
Date



6

- C. there is a reliable method of determining whether an infraction has in fact occurred; and
- D. blatant forms of partiality which can result from prior knowledge, involvement, bias, or personal interest in a particular case is minimized.

III. DEFINITIONS:

- (A) Disciplinary Hearing Administrator is the Internal Affairs Administrator. The Disciplinary Hearing Administrator is responsible for ensuring that Disciplinary Hearing Officers are trained and will regularly review the hearings conducted by these hearings officers. Wardens are responsible for ensuring Serving Officers are properly trained and will designate an officer to be trained to handle the minor disciplinarias.
- (B) Disciplinary Hearing Officer - conducts hearings on Major Disciplinaries known as Major Disciplinary Court.
- (C) Serving Officer/Notifying Officer - serves charges on the inmate(s), may appoint a counsel substitute and receives the inmate's list of witnesses regarding the charge.
- D. Minor Disciplinary Officer - conducts hearings on minor disciplinary charges referred to as Minor Disciplinary Court.
- E. Disciplinary Report - the factual basis for the charge of rule violation(s) and the rule(s) violated.
- F. Charge - the details of the rule violation(s) contained in the Disciplinary Report.
- G. Assault - a willful "attempt" or "threat(s)" to inflict injury upon the person of another.
- H. Battery - the actual use of physical force upon the person of another.
- I. Indecent Exposure - public exposure of one's sex organs for gratification or pleasure.
- J. Masturbation - manipulating one's sex organ to arouse or gratify a sexual desire; does not require exposure.
- K. Staff includes any employee of the Arkansas Department of Correction, the Correctional School System, and any employee or contractor providing services within an Arkansas Department of Correction facility through contract or agreement with the Arkansas Department of Correction.

Exhibit A-1

the record and the Disciplinary Hearing Officer may indicate the names of the other witnesses and the fact that their statements are consistent. The choice of how the witness statement will be taken is left to the discretion of the Disciplinary Hearing Officer. If more information or clarification is needed from the charging person or other witnesses, such information may be obtained through the means described above (written, oral, telephone). In the event that such testimony is obtained with the witness appearing before the court, the charged inmate is not to be allowed in the room during testimony and the inmate does not have a right to cross-examine witnesses. The inmate will receive a statement of fact(s) from the Disciplinary Hearing Officer if provided by the charging officer. The Disciplinary Hearing Officer may grant an extension to the inmate if the witness is not readily available to provide additional testimony.

9. The inmate should be informed that he/she has been charged with a specific offense, the possible consequences of a finding of guilt including possible loss of privileges, loss of good time, loss of class status, assignment to punitive isolation, additional duty, change in assignment/unit, restitution, or any combination.
10. The inmate should then be asked whether the nature of the proceeding and the possible consequences are understood. If it appears that the inmate does not understand, the policy regarding counsel substitutes (see Section VII-J and 1) must be followed.
11. The rule violation(s) and the charging person's report will then be read to the inmate.
12. The inmate will be asked to enter a plea of guilty or not guilty. Guilty pleas must be explored to determine whether the inmate is certain of the charge being admitted. Any refusal to enter a plea shall be construed as a plea of not guilty.
- (13) The inmate must be afforded an opportunity to speak in his/her own behalf and submit any documentary evidence excluding witness statements. All witness statements are to be gathered by ADC employees after the inmate has submitted a witness list to the serving officer. Inmates will not be allowed to gather and submit witness statements on their own.
14. After the inmate has made a statement and/or presented a defense, he/she will be asked to step outside the hearing room. The witness statements will then be read into the record followed by the recorder being turned off for deliberation.

Exhibit A-2

[REDACTED]

[REDACTED]

8




Arkansas Department of Correction

Internal
Affairs
Division
P.O. Box 8707
Pine Bluff, Arkansas 71611-8707
Phone: (870) 267-6218
Fax: (870) 267-6226

MEMORANDUM

TO: Inmate Kevin Wright ADC# 140591
East Arkansas Regional Unit

FROM: 
Raymond Naylor, Disciplinary Hearing Administrator

RE: Major Disciplinary Appeal Reversal

DATE: January 21, 2014

Please be advised I am in receipt of your disciplinary appeal dated January 13, 2014 regarding the major disciplinary you received on 11-13-2013, 5:17am, by Sgt. Sherice Ivey.

After a thorough review of all the documents pertaining to this matter, I find that I must reverse the decision of the major disciplinary hearing officer.

If you so desire, you may appeal further to the Director of the Department of Correction.

RN1

Cc: Warden Burl / Inmate File
File

Exhibit A-3

150-5

F-831-4

ARKANSAS DEPARTMENT OF CORRECTION AR 831

East Arkansas Regional Unit
MAJOR DISCIPLINARY APPEAL FORM

PUNITIVE ISOLATION
MARK AN "X"

X

Inmate Kevin R. Wright ADC # 140591 Date 12-6-13
Concerning Disciplinary Given on (date) 11-13-13 by (officer) Sgt. Trey, Sherice L.

APPEAL TO WARDEN: (to be completed by inmate)

State reasons why conviction or punishment should be reversed or modified:

appealant K. Wright # 140591, was denied a right such as, equal protection of the law under the Amendment, which guarantees appealant a right to due process under the 1st, 2nd, 3rd, 4th, and 5th Amendment. According to the AD's Inmate Disciplinary Manual, # 7 § (E)(2): An inmate may call witnesses by giving the Serving Officer the names of the individuals he wishes to call. On 11-13-13 in ISO/MX 3-88, the serving officer, Sgt. Thorn served me, appealant K. Wright # 140591.

Inmate's Signature: Kevin Wright

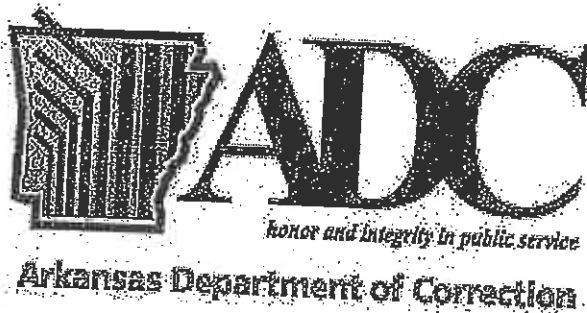
RESPONSE FROM WARDEN: (due within ten (10) calendar days of receipt of appeal if punitive)

Affirm: X Reverse: _____ Modify: _____
Reasons Action Taken: _____

After thoroughly reviewing your Disciplinary Appeal and the Major Disciplinary you received on 11/13/13 at 5:17am. Staff observed you exposed and masturbating. This type of behavior will not be tolerated. There was no procedural error found to alter the punishment rendered. Therefore I am affirming the decision of the hearing officer. If you disagree with my decision you may appeal to the Disciplinary Hearing Administrator Mr. Raymond Naylor.

Signature: [Signature] Date 12/11/13

NOTICE TO INMATE: If you do not agree with the warden's response, you may appeal it to the Hearing Officer Administrator. If you do not agree with the Hearing Officer Administrator's response, then you may appeal it to the Director. If you decide to appeal, then write a letter repeating your reasons why your conviction or punishment should be reversed or modified.



P O Box 8707
Pine Bluff, AR 71611-8707
Phone: 870-267-6200
Fax: 870-267-6244
www.adc.arkansas.gov

ADMINISTRATIVE DIRECTIVE

SUBJECT: Inmate Disciplinary Manual

NUMBER: 15-01

SUPERSEDES: 13-10

APPLICABILITY: Inmates and Staff

REFERENCE: AR 831 – Disciplinary Rules and Regulations

PAGE 1 of 44

APPROVED:

EFFECTIVE DATE: 01/12/2015

I. POLICY:

To ensure that institutional rules and regulations are enforced through an unbiased and prudent fact finder and provide appropriate due process throughout the disciplinary process. The behavior of offenders committed to the custody of the department shall be controlled in an impartial and consistent manner.

II. EXPLANATION:

The Department shall establish and designate Major and Minor Disciplinary Hearing Officers who shall hear and adjudicate all reports of infractions of institutional rules and regulations that are referred to them. These authorities shall be designated as the Major or Minor Disciplinary Hearing Officers, respectively. When inmate behavior requires discipline, procedures shall be followed to ensure that no unnecessary disciplinaries are written and that:

- A. there is no bias in favor of the charging officer;
- B. there is no presumption of guilt;

Exhibit B-1

- C. there is a reliable method of determining whether an infraction has in fact occurred; and
- D. blatant forms of partiality which can result from prior knowledge, involvement, bias, or personal interest in a particular case is minimized.

III. DEFINITIONS:

- A. Disciplinary Hearing Administrator is the Internal Affairs Administrator. The Disciplinary Hearing Administrator is responsible for ensuring that Disciplinary Hearing Officers are trained and will regularly review the hearings conducted by these hearing officers. Wardens are responsible for ensuring Serving Officers are properly trained and will designate an officer to be trained to handle the minor disciplinarias.
- B. Disciplinary Hearing Officer - conducts hearings on Major Disciplinaries known as Major Disciplinary Court.
- C. Serving Officer/Notifying Officer - serves charges on the inmate(s), may appoint a counsel substitute and receives the inmate's list of witnesses regarding the charge and provides the inmate with a copy of the Disciplinary Hearing Officer's report.
- D. Minor Disciplinary Officer - conducts hearings on minor disciplinary charges referred to as Minor Disciplinary Court.
- E. Disciplinary Report - the factual basis for the charge of rule violation(s) and the rule(s) violated.
- F. Charge - the details of the rule violation(s) contained in the Disciplinary Report.
- G. Assault - a willful "attempt" or "threat(s)" to inflict injury upon the person of another.
- H. Battery - the actual use of physical force upon the person of another.
- I. Indecent Exposure - public exposure of one's sex organs for gratification or pleasure.
- J. Masturbation - manipulating one's sex organ to arouse or gratify a sexual desire; does not require exposure.
- K. Staff includes any employee of the Arkansas Department of Correction, the Correctional School System, and any employee or contractor providing services within an Arkansas Department of Correction facility through contract or agreement with the Arkansas Department of Correction.

13. The inmate must be afforded an opportunity to speak on his/her own behalf and submit any documentary evidence excluding witness statements. All documentary evidence presented will become a part of the disciplinary packet. All witness statements are to be gathered by ADC employees after the inmate has submitted a witness list to the serving officer. Inmates will not be allowed to gather and submit witness statements on their own.
14. After the inmate has made a statement and/or presented a defense, the recorder will be muted and witness statements will be reviewed and documented.
15. The Disciplinary Hearing Officer must carefully weigh all evidence with special emphasis upon individual pieces of "primary evidence." Rumor or suspicion about an inmate's behavior shall not be taken into account.
16. After the Disciplinary Hearing Officer has weighed all of the evidence, a decision shall be made regarding guilt/innocence.
17. In the event that the inmate is found guilty, punishment must be imposed within the guidelines established by this policy.
18. The video conferencing system will then be un-muted. The inmate must then be informed as to the finding of guilt or innocence on each particular rule violation and must be informed of the punishment, if any, imposed.
19. The inmate must be informed of his right to appeal and to obtain staff assistance in the fashioning of an appeal if needed.
20. The inmate will receive an oral statement detailing the reason for the finding of guilt or innocence at the time the hearing officer informs the inmate of the verdict. The hearing officer will reduce these reasons to writing prior to the conclusion of that business day and the unit disciplinary officer will provide a typed copy or ISSR 100 (electronic generated disciplinary hearing results form) generated by electronic Offender Management Information System to the inmate within twenty-four (24) hours. The inmate is not required to sign the typed copy. It is sufficient to indicate that the inmate signed (or refused to sign) the original copy.
21. When the Disciplinary Hearing Officer has completed his/her work for the day, the Disciplinary Hearing Officer shall complete the disciplinary court report.

sentence, the suspended punishment must be revoked and imposed and additional punishment pursuant to the subsequent disciplinary episode may also be imposed. The punishment may be made consecutive.

4. Guilty Verdicts

All disciplinary hearing report forms which render a verdict of guilty shall be transmitted by the Hearing Officer to the Supervisor of Records who will promptly note the action taken against each inmate. The Supervisor of Records shall make whatever changes are required regarding statutory good time, meritorious good time, parole interview date and institutional status and cause them to be made a part of the inmate's permanent file.

M. Major Disciplinary Forms

The major disciplinary forms consist of six separate forms. The Major Disciplinary Form (F-831-1), The Disciplinary Hearing Action Form (F-831-2), and The Disciplinary Hearing Action Form (F-831-3) must be completed entirely pursuant to every major disciplinary hearing, regardless of the verdict. Data related to each form should be entered and maintained electronically when available in the electronic Offender Management Information System. The ISSR 100 electronic printed form shall contain all data found in F-831-1, F-831-2 and F-831-3 after data entry.

1. The Major Disciplinary Form (F-831-1)

a. The charging person is responsible for providing the Major Disciplinary Hearing Officer with accurate reports of rule violations. All information pertaining to the charge(s) must be detailed by the charging person. The charging person must sign an affirmation regarding the accuracy of the charges.

b. The notification officer must indicate his/her name and the time and date the inmate was notified of the impending major disciplinary action. The inmate may call witnesses at the time of notification by informing the notification officer of those individuals he/she wishes to call as witnesses. The notification officer should then list the witnesses called and instruct the inmate to sign the form under "Witness Statements." If the inmate refuses to sign, such refusal should be noted with the initials of the notifying officer.

ISSR100

Arkansas Department of Corrections
East AR Region, Unit Unit
MAJOR DISCIPLINARY

If the C.S.O. determines that the violation(s) described on this document are felonious; he/she must hand carry this document to the Unit Warden who must immediately notify the Director.

Inmate: Wright, Kevin Ray

ADC#: 140591B

Assignment: AM/PM:Discpl Court Review

Class: III is being charged by Ivey, Sherice L
with code violation(s):

Title: Correctional Sergeant

- 10-3 Indecent Exposure
- 10-5 Masturbation in the presence of another inmate.
- 12-1 Failure to obey verbal and/OR written orders of staff
- 02-12 Failure to keep one's person OR quarters IN accordance with regulations
- 17-1 Any act OR acts defined as felonies OR misdemeanor by the state of Arkansas; may result in teh loss of all good time.

Date & Time: 11/13/2013 5:17 AM

Notice of Charges:

On November 13, 2013 at approx. 5:17 a.m. I, Sgt. Ivey was walking on the South Hall conducting visual security checks of the barracks. As I approached the area of 7barracks, I noticed an Inmate in the Dayroom by the window with his erect penis in his left hand stroking in a backward and forward motion while looking at me in the presence fo another Inmate that was also in the Dayroom. I then gave his Inmate a direct order to stop his actions and go to his rack, but he did not comply. This Inmate knows his actions are against Barracks rule and ADC Policy. He was then identified through emois and photo I.D. as being Inmate Kevin Wright R. ADC# 140591. So therefore, I Sgt. Ivey am charging Inmate Wright, Kevin R. ADC# 140491 with the stated rule 10-3, 10-5, 12-1, 2-12, 17-1, pending D.C.R.

(I affirm that the information in this report is true to the best of my knowledge)

Signature of Charging Officer

NOTIFICATION: Officer _____ Date & Time Notified _____

Witness Statements: No If yes, list:

Inmate's Signature

C.S.O. Review: Outcome: Refer to Hearing Officer/Comm.
By: Comer, William M Date 11/19/2013

Extension: No Yes _____ Has extension form been completed? _____

Presentation by Counsel - Substitute is required when it is determined that the inmate is illiterate or incompetent or that the issues are extraordinarily complex.

Counsel-Substitute: Assigned (Name) _____ Not Assigned _____

Exhibit C-1

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APR 10 2015

RECEIVED

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KEVIN WRIGHT (ADC 140591)

CLAIMANT

V.

NO. 15-0612-CC

ARKANSAS DEPARTMENT OF CORRECTION

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

by: Lisa Mills Wilkins 80238
 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 9 day of April, 2014, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kevin Wright (ADC 140591)
East Arkansas Max Unit
PO Box 180
Brickeys, AR 72320-0180

by: Lisa Mills Wilkins
 LISA MILLS WILKINS Ark. Bar #87190

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KEVIN WRIGHT (ADC #140591)

CLAIMANT

V.

NO. 15-0612-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 seeks \$750.00 for failure to follow procedure. Claimant has failed to state a claim upon which relief can be granted herein under ARCP Rule 12(b)(6) for the reasons herein.
2. On November 12, 2013, received a disciplinary. The disciplinary was upheld on all levels of appeal. Claimant cannot bring an action for damages for a properly assessed and upheld disciplinary. "A prisoner cannot pursue the damages claim until the conviction or sentence is reversed, expunged, or called into question by a state tribunal or federal court." *Brown v. Sanders* 2013 WL 5522435 (E.D. Ark.), citing *Heck v. Humphrey*, 512 U. S. 477, 489 (1994). In *Edwards v. Baliso*, 520, U. S. 641 (1997), the Supreme Court extended its holding in *Heck* so as to apply to disciplinary proceedings that resulted in a loss of good time credits.
3. Claimant's disciplinary conviction for the above has not been reversed, expunged or challenged by a court; therefore, his claim should be dismissed.
4. ADC properly upheld the disciplinary based upon the officer's Notice of Charges. Furthermore, this is an internal administrative matter that is beyond the jurisdiction of the claims commission. Claimant could have submitted witness statements at the disciplinary hearing for consideration, but did not obtain those.

WHEREFORE, for the reasons stated above and the evidence submitted, the Claim filed should 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

Arkansas
State Claims Commission

MAY 14 2015

RECEIVED

CERTIFICATE OF SERVICE

I certify that a copy of the MOTION TO DISMISS has been served this 13 day of May, 2015, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

KEVIN WRIGHT (ADC #140591)
EAMU
P. O. BOX 970
MARIANNA, AR 72360-0970


LISA MILLS WILKINS Ark. Bar #87190

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KEVIN WRIGHT (ADC # 140591)

CLAIMANT

v.

No. 15-0612-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

BRIEF IN OPPOSITION TO MOTION TO DISMISS

Arkansas Claims Commission

JUN 05 2015

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COMES NOW the Claimant, Kevin Wright #140591, and his BRIEF IN OPPOSITION TO MOTION TO DISMISS, states and responds as follows:

1. Claimant seeks \$750.00 for failure to follow procedure. Claimant has properly stated a claim upon which relief can be granted herein under ARCD Rule 12(b)(6) for the reasons herein.
2. On November 21, 2013, received a disciplinary. The disciplinary was not upheld on all levels of appeal. There is a genuine issue of material facts as to each essential element of this case on which claimant bears the burden of proof. The respondents have not submitted an adequate factual case.
3. Claimant's disciplinary conviction for the above has been reversed, therefore, his claim should not be dismissed. [See Exhibit A-1]
4. ADC improperly upheld the disciplinary based on the officer's Notice of Charges. Claimant's requested witnesses were not obtained and submitted for his disciplinary hearing, which violated policy. Claims commission has jurisdiction over matters herein. Claimant confers in good faith on the specific issues in dispute and he is not able to resolve his disagreements without the intervention of the Court.

WHEREFORE, for the reasons stated above and the evidence submitted, the Claim filed should ~~not~~ be dismissed, claimant prays that his case move forward to trial.

Respectfully Submitted,
Kevin Wright #140591
P.O. Box 910
Marianna, Ar. 72360

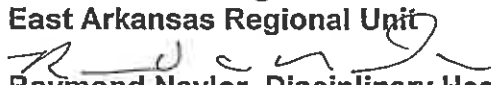


Arkansas Department of Correction

Internal
Affairs
Division
P.O. Box 8707
Pine Bluff, Arkansas 71611-8707
Phone: (870) 267-6218
Fax: (870) 267-6226

MEMORANDUM

TO: Inmate Kevin Wright ADC# 140591
East Arkansas Regional Unit

FROM: 
Raymond Naylor, Disciplinary Hearing Administrator

RE: Major Disciplinary Appeal Reversal

DATE: January 21, 2014

Please be advised I am in receipt of your disciplinary appeal dated January 13, 2014 regarding the major disciplinary you received on 11-13-2013, 5:17am, by Sgt. Sherice Ivey.

After a thorough review of all the documents pertaining to this matter, I find that I must reverse the decision of the major disciplinary hearing officer.

If you so desire, you may appeal further to the Director of the Department of Correction.

RN1

Cc: Warden Burl / Inmate File
File

Exhibit  A-1

STAT. CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 750.00

Claim No. 15-0612-CC

Kevin Wright, #140591 Claimant Pro se Claimant
vs. Lisa Wilkins, Attorney Respondent
AR Dept. of Correction Respondent
State of Arkansas
Date Filed March 16, 2015 Type of Claim 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 2-4 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 2-4 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing June 11, 2015

Date of Disposition June 11, 2015

[Signature] Chairman
[Signature] Commissioner
[Signature] 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.

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



BRENDA WADE
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, AR 72201-3823

August 3, 2015


Mr. Kevin Wright, #140591
P.O. Box 970
Marianna, AR 72360

RE: Kevin Wright, #140591
Claim #: 15-0612-CC
Vs.
AR Dept. of Corrections

Dear Mr. Wright:

This office is in receipt of your attempt to file a "Motion for Reconsideration" on the above-referenced claim. It was received on today's date (Monday, August 3, 2015). Claims Commission policy states that Claimants have forty three (43) days total to file a "Motion for Reconsideration" or an "Appeal" on a Claims Commission decision. Our records show that the opinion indicating that your claim had been dismissed was mailed to you on June 11, 2015. The deadline for submitting a "Motion for Reconsideration" or an "Appeal" was Friday, July 24, 2015. Because this motion is past the deadline, we are not accepting it and are returning it to you for your records.

Sincerely,


Brenda Wade
Director

BW/

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KEVIN WRIGHT (ADC# 140591)

CLAIMANT

V.

NO. 15-0612-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

MOTION FOR RECONSIDERATION

1. COMES NOW the claimant, Kevin Wright # 140591, and his Motion For Reconsideration, states and responds as follows:

1. Claimant seeks \$750.00 for ADC officials failure to follow policy and procedures. Claimant has properly exhausted administrative remedies and stated a claim upon which relief can be granted herein under ARCP Rule 12(b)(6) for the reasons herein.
2. On June 11, 2015 the Arkansas State Claims Commission held an oral hearing, wherein which, claimant's claim was unanimously denied and dismissed. Claimant was not afforded the opportunity to present a testimony or documentation in his own behalf.
3. Claimant filed a "Brief In Opposition To Motion To Dismiss." The Claims Commission denied and dismissed claimant's claim for reasons set forth in paragraphs 2-4 contained in the respondent's Motion To Dismiss. Claimant's brief reveals undisputable facts that refuted the respondent's Motion To Dismiss. [See Exhibits A-1 & A-2]

WHEREFORE, for the reasons stated above and the evidence submitted, the claimant prays that the dismissal of his claim be reversed and to be informed on the date that an oral hearing will be scheduled and to be present at such a hearing on his claims.

ARKANSAS STATE CLAIMS COMMISSION

November 30, 2015

Claims Commission
Attn: Ms. Brenda Wade
101 East Capitol Avenue, Suite 410
Little Rock, AR 72201-3823

RE: Kevin Wright (ADC# 140591)
Claim No. 15-0612-CC

Dear Ms. Wade:

I am writing you in concern of exhausting my remedies provided by the Commission. On August 19, 2015 I filed with the commission a (hand written) notice of appeal of the commission's denial of my Motion For Reconsideration to the General Assembly, but I have not received a response.

On September 24, 2015 I wrote the Commission asking about my notice of appeal and received a copy of the Commission's denial of my Motion For Reconsideration.

I need you to forward me a form designed by the commission so that I can file a Notice of Appeal with the commission to the General Assembly.

Please contact me at your earliest convenience, any information is well appreciated.

Arkansas
State Claims Commission
DEC 02 2015

RECEIVED

Sincerely,
Kevin Wright
Kevin Wright #140591
P.O. Box 970
Marianna, Ar 72360-0970