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Please print in ink or type

Arkansas
State Claims Commission

MAR 04 2015

E3.

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

☒ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Ahmeen Mumit, #095017, Claimant

vs.

State of Arkansas, Respondent

Dept. of Correction

Do Not Write in These Spaces

Claim No. 15-0600-CC

Date Filed March 4, 2015

(Month) (Day) (Year)

Amount of Claim \$ 45,000.00

Fund DOC

Fail. to foll. proc., Negligence
Personal injury, Pain & suff.

COMPLAINT

Ahmeen Mumit, #095017

(Name)

the above named Claimant, of P.O. Box 976, Marianna, AR 72360

POB 180, Briceys, AR 72320

(City)

(State) (Zip Code) (Daytime Phone No.)

County of LEE

represented by

Pro'se

(Legal Counsel, if any, for Claim)

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

State agency involved: Arkansas Dept. of Correction Amount sought: \$ 45,000

Month, day, year and place of incident or service:

Explanation:

See Attached Sheet(s)

As part 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? 11 3 2014; to whom? Arkansas Department of Correction

grievance procedure and that the following action was taken thereon: Claimant's complaint/grievance were falsely found without merit, so this negligence suit was introduced 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.

Ahmeen Mumit
(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at

(SEAL)

on this 20th day of February, 2015

(Date)

(City)

(State)

(Month)

(Year)

Jana A. Casdwell

(Notary Public)

My Commission Expires:

(Month)

(Day)

(Year)

SFI-R7/95

Dear Brenda,

2/25/15

With this missive is the required original complaint and five (5) additional sets. Please forward me a "file marked copy" of this complaint.

Also be advised that this facility (East Arkansas Regional Unit) has changed it's address from the one presently on this document (complaint) to;

East Arkansas Regional Unit
P.O. Box 970
Marianna, AR 72360

Please send all notices of documents to the address above. Thank you.

Respectfully,

Alamsee Mammitt ²

COMES NOW PLAINTIFF, PRO'SE AND FOR HIS CLAIM(S) AGAINST THE ARKANSAS DEPARTMENT OF CORRECTION (ADC) FOR THE ACTS OF NEGLIGENCE OF EMPLOYEE(S) JENNIFER MORRIS, STEPHEN WILLIAMS, AND ASSISTANT WARDEN LOWE STATES:

1. PLAINTIFF IS AN INMATE IN THE ADC. THE EVENTS GIVING RISE TO THIS CLAIM OCCURRED IN JEFFERSON COUNTY, ARKANSAS

2. JURISDICTION IS PROPER IN THIS COURT PURSUANT TO ARKANSAS CODE ANNOTATED 16-4-101

3. VENUE IS PROPER IN THIS COURT PURSUANT TO ARKANSAS CODE ANNOTATED 16-55-213

4. JENNIFER MORRIS IS THE CAPTAIN OVER FOOD SERVICE AT THE TUCKER UNIT

5. STEPHEN WILLIAMS IS THE WARDEN AND SOLE AUTHORITY OVER ALL PROGRAM ACTIVITIES, INMATES, PERSONNEL AND OPERATIONS - MANAGEMENT

6. ASSISTANT WARDEN LOWE IS THE DEPUTY WARDEN OF TUCKER UNIT 3

RESPONSIBLE FOR ASSISTING IN ALL OPERATIONS OF THE UNIT

7. AT ALL TIMES RELEVANT TO THIS CLAIM, THE SAID DEFENDANTS WILLIAMS, NORRIS, AND LOWE "BY" and "THROUGH" THEIR EMPLOYER ARE/WERE GOVERNED BY OCCUPATIONAL SAFETY AND HEALTH STANDARDS, RULES, REGULATIONS, AND ORDERS ISSUED PURSUANT TO 29 USCA 654, 655, (and 666) BUT TOOK ABSOLUTELY NO PRE-EMPTIVE ACTION TO ABIDE THERETO

8. AT ALL TIMES RELEVANT TO THIS CLAIM, THE SAID DEFENDANTS WILLIAMS, NORRIS, AND LOWE WAS/IS GOVERNED BY RULES, REGULATIONS, DIRECTIVES, POLICIES AND PROCEDURES PROVIDING VIABLE MEANS ON HOW TO PROPERLY PROTECT THE PLAINTIFF FROM RECOGNIZED HAZARDS THAT CAUSE UNREASONABLE PHYSICAL BODILY HARM, BUT TOOK ABSOLUTELY NO PRE-EMPTIVE ACTION TO ABIDE THERETO.

9. THE TERM "OCCUPATIONAL SAFETY AND HEALTH STANDARD" MEANS A STANDARD WHICH REQUIRES CONDITIONS, OR THE ADOPTION OR USE OF ONE OR MORE PRACTICES, MEANS, METHODS, OPERATION, OR PROCESSES, REASONABLY NECESSARY OR APPROPRIATE TO PROVIDE A SAFE AND HEALTHFUL WORK PLACE.

10. ON SEVERAL DIFFERENT OCCASIONS PRIOR TO THE AUGUST 1ST, 2014 ACCIDENT FOR WHICH THIS CLAIM IS BROUGHT, DEFENDANT MORRIS OWED THE PLAINTIFF A DUTY OF CARE OF SAFETY FROM HAZARDOUS DANGER, BUT NEGLIGENTLY PUT HIM AT RISK OF PHYSICAL BODILY HARM, BY DIRECTING HIM TO PERFORM HAZARDOUS TASK ASSOCIATED WITH HIS JOB DUTIES AS A DETAIL CLEANER.

AS A RESULT OF DEFENDANT MORRIS NEGLIGENCE THE PLAINTIFF WAS SEVERELY INJURED. THEREFORE, DEFENDANT MORRIS BREACHED HER DUTY TO PROTECT THE PLAINTIFF FROM PHYSICAL BODILY HARM.

11. ON SEVERAL DIFFERENT OCCASIONS PRIOR TO THE AUGUST 1st 2014 ACCIDENT FOR WHICH THIS CLAIM IS BROUGHT, DEFENDANT WILLIAMS OWED THE PLAINTIFF A DUTY OF CARE OF SAFETY FROM HAZARDOUS DANGER, BUT NEGLIGENTLY PUT HIM AT RISK OF PHYSICAL BODILY HARM BY DIRECTING HIM TO PERFORM HAZARDOUS TASK ASSOCIATED WITH HIS JOB DUTIES AS A DETAIL CLEANER. AS A RESULT OF DEFENDANT WILLIAMS NEGLIGENCE THE PLAINTIFF WAS SEVERELY INJURED. THEREFORE, DEFENDANT WILLIAMS BREACHED HIS DUTY TO PROTECT THE PLAINTIFF FROM PHYSICAL BODILY HARM.

12. ON SEVERAL DIFFERENT OCCASIONS PRIOR TO THE AUGUST 1st 2014 ACCIDENT FOR WHICH THIS CLAIM IS BROUGHT, DEFENDANT LOWE OWED THE PLAINTIFF A DUTY OF CARE OF SAFETY FROM HAZARDOUS DANGER, BUT NEGLIGENTLY PUT HIM AT RISK OF PHYSICAL BODILY HARM BY DIRECTING HIM TO PERFORM HAZARDOUS TASK ASSOCIATED WITH HIS JOB AS A DETAIL CLEANER.

AS A RESULT OF DEFENDANT LOWE NEGLIGENCE THE PLAINTIFF WAS SEVERELY

INJURED. THEREFORE, DEFENDANT LOWE BREACHED HIS DUTY TO PROTECT THE PLAINTIFF FROM BODILY HARM.

13. DETAIL CLEANER IS A KITCHEN OR FOOD SERVICE WORK DETAIL THAT CONSIST OF CLEANING WALLS, OVENS, FREEZERS, GRILLS, FRYERS) AND ALL OTHER TASK SPECIFICALLY DIRECTED BY DEFENDANT MORRIS

14. OTHER JOB DUTIES THE PLAINTIFF OPERATED IN AT DEFENDANT MORRIS'S DISCRETION WERE, LINE SERVER, COOK, POTS AND PANS WASHER etc...

15. PLAINTIFF NEVER VOLUNTARILY (ON HIS OWN INITIATIVE) TOOK ON ANY CLEANING TASK OR TASK DESCRIBED IN PARAGRAPH NO 14 ON HIS OWN. ALL WERE CARRIED OUT AT THE ORDER(S) OF DEFENDANT MORRIS. (EXCLUDING COOK)

16. IN APRIL 2014 THE PLAINTIFF WAS ASSIGNED TO FOOD SERVICE BY DEFENDANTS WILLIAMS, AND LOWE.

17. AFTER WORKING AS A COOK, THE PLAINTIFF WAS ABRUPTLY ASSIGNED AS A DETAIL CLEANER.

18. PLAINTIFF COMPLAINED TO NORRIS AND ASKED TO BE REASSIGNED AS A COOK. SHE REJECTED HIS REQUEST, INFORMING PLAINTIFF HE WAS ASSIGNED AS A DETAIL CLEANER DUE TO A PENDING INSPECTION BY LINDA GIBSON.

19. DAYS LATER PLAINTIFF WAS ORDERED BY NORRIS TO CLEAN A 12ft to 15ft STAINLESS STEEL WALL LOCATED OVER THE COOKING MACHINERY.

20. DEFENDANT NORRIS ESCORTED OR ACCOMPANIED PLAINTIFF TO THE WEST END OF THE WALL (DIRECTLY OVER THE GRILLS) WHERE SHE SHOWED HIM WHAT SHE SAID WERE THE INITIALS "S.W."

21. THE PLAINTIFF ASKED HER WHAT THE INITIALS STOOD FOR. SHE TOLD HIM IT STOOD FOR STEPHEN WILLIAMS - THE UNIT WARDEN.

SHE THEN TOLD THE PLAINTIFF THAT DEFENDANT WILLIAMS HAD A CUSTOM OF

LEAVING HIS INITIALS ON THINGS, OR INTENTIONALLY UNSANITARY THINGS TO EXIST TO SEE HOW LONG IT WOULD TAKE IT TO BE CLEANED.

22. DEFENDANT MORRIS MADE CLEANING THE WALL PRIORITY. THE PLAINTIFF WAS GIVEN A BOTTLE OF STAINLESS STEEL CLEANER AND A PAIR OF LATEX GLOVES. NOTHING MORE.

23. A TASK OF SUCH MAGNITUDE REQUIRED A LADDER, SAFETY GOGGLES, A CHEMICAL APRON AND GLOVES. IT ALSO REQUIRED ADEQUATE FALL PROTECTION

24. PLAINTIFF HAD TO USE THREE (3) MILK CRATES STACKED ON TOP OF THE OTHER TO CLEAN THE WALL.

25. DEFENDANT MORRIS KNEW OR SHOULD HAVE KNOWN HAVING THE PLAINTIFF TO USE THE MILK CRATES PUT HIM AT RISK OF PHYSICAL HARM ASSOCIATED WITH HIS JOB DUTIES

26 PLAINTIFF DID NOT VOLUNTARILY USE THE MILK CRATES. AFTER REQUESTING A LADDER, NORRIS OPTIONED FOR THE CRATES TO BE USED. HER EFFORTS TO RETRIEVE A LADDER WERE UNSUCCESSFUL.

27 DEFENDANT NORRIS CREATED AND MAINTAINED AN UNSAFE WORK PLACE. FAILING TO PROVIDE ADEQUATE SAFETY EQUIPMENT, FALL PROTECTION AND THE LIKE THEREOF

28 DEFENDANT NORRIS VIOLATED OCCUPATIONAL SAFETY AND HEALTH CODES USCA 654 and 655 AS DESCRIBED IN PARAGRAPH NO. 7

29 PRIOR TO THE INSPECTION CONDUCTED BY LINDA GIBSON IN JUNE OR JULY 2014 THERE IS ABSOLUTELY NO RECORD OF DEFENDANT NORRIS ISSUING THE PLAINTIFF SAFETY EQUIPMENT

30 PRIOR TO THE INSPECTION CONDUCTED BY LINDA GIBSON IN JUNE OR JULY 2014 DEFENDANT(S) WILLIAMS, LOWE, AND NORRIS HAVE FAILED INSPECTIONS CONDUCTED BY

LINDA GIBSON AND OUTSIDE SOURCE(S).

31. ON ONE OCCASION THE RESULTS OF THE INSPECTION RESULTED FROM FOOD POISONING OF THE INMATE POPULATION AT TUCKER UNIT.

32. DEFENDANTS WILLIAMS, LOWE, AND MORRIS CREATED AND MAINTAINED A UNSAFE, UNHEALTHY WORK ENVIRONMENT.

33. WHILE PERFORM ANOTHER CLEANING TASK SPECIFICALLY ORDERED BY MORRIS. DEFENDANT LOWE CONDUCTED A ROUTINE INSPECTION OF THE KITCHEN

34. ACCOMPANIED BY MORRIS, DEFENDANT LOWE NOTICED A SUBSTANTIAL AMOUNT OF WATER ON THE FLOOR UNDER THE ELECTRIC OVENS IN THE BAKERY AREA

35. DEFENDANT LOWE LOOKED BEHIND THE OVENS AND NOTICED THE OVENS WERE PLUGGED INTO THE ELECTRICAL SOCKET. HE IMMEDIATELY ORDERED THE PLAINTIFF TO UNPLUG THE OVENS

36. DEFENDANT THEN ADVISED MORRIS AND THE PLAINTIFF THAT THE PLAINTIFF COULD HAVE BEEN ELECTRICUTED.

LOWE ORDERED MORRIS TO HAVE THE OVENS UNPLUGGED ANYTIME THE FLOOR(S) ARE BEING SCRUBBED.

37. DEFENDANT MORRIS AGAIN PUT THE PLAINTIFF AT UNREASONABLE RISK OF PHYSICAL HARM ASSOCIATED WITH HIS JOB DUTIES AS DESCRIBED IN PARAGRAPH NO. 10

38. DEFENDANT MORRIS PRACTICE OF CREATING AND MAINTAINING AN UNSAFE WORK PLACE (29 USC A 654, 655) OR MAINTAINING RECOGNIZABLE HAZARDOUS CONDITIONS IS FURTHER DEMONSTRATED BY PERMITTING INMATES TO BOIL WATER IN THE PRESSURE COOKERS (POTS) AND USE BUCKETS, PLASTIC AND METAL PITCHERS, SMALL METAL FOOD INSERTS, CUPS etc... TO FILL WITH HOT SCALDING WATER WITHOUT PROTECTIVE GEAR OR SUPERVISION.

39. ALTHOUGH THE WATER WAS PERHAPS USED FOR CLEANING PURPOSES, IT IS A SERIOUSLY RECOGNIZED HAZARD THAT GOES ON WITHOUT SUPERVISORY PRECAUTIONS

40. THE SAID HAZARDOUS PRACTICE IN THE ABOVE PARAGRAPH NO. 39 CONTINUES TO EXIST EVEN AFTER THE INTRODUCTION OF THIS COMPLAINT

ACCIDENT

41. ON OR ABOUT AUGUST 1st 2014 DEFENDANT MORRIS CALLED THE PLAINTIFF TO HER OFFICE

42. THE PLAINTIFF WAS GIVEN THE RESULTS OF THE PRIOR INSPECTION CONDUCTED BY LINDA GIBSON. WHILE REVIEWING THE DOCUMENT MORRIS' BEGAN EXPLAINING THINGS SHE WANTED PERSONALLY CARRIED OUT BY THE PLAINTIFF.

43. PLAINTIFF WROTE BRIEF NOTATIONS OF MORRIS'S ORDERS ON THE INSPECTION RESULTS see, EX 1

44. NORRIS'S SPECIFIC ORDERS WERE FOR PLAINTIFF TO DRAIN THE GREASE FROM THE FRYER, THEN FLUSH IT OUT WITH HOT WATER.

45. PLAINTIFF CHECK THE FRYER AND LEARNED THAT THE GREASE HAD ALREADY BEEN DRAINED, ONLY GREASY RESIDUE OF FOOD PARTICLES WERE IN IT.

46. A METAL ROD USED TO UNCLOG THE FRYER SLOT(S) WAS RETRIEVED

47. PLAINTIFF TOLD NORRIS THE METAL CONTAINER (OR PAN) USED FOR DISCARDED GREASE FROM THE FRYER WAS HEAVY AND MAY BE DIFFICULT TO EMPTY. PLAINTIFF ASKED HER TO HAVE SOMEONE HELP HIM CLEAN THE FRYER. See, EX 2

48. NORRIS DECLINED TO PROVIDE PLAINTIFF WITH ANY HELP. INSTEAD OPTIONED TO HAVE PLAINTIFF REMOVE THE METAL CONTAINER AND REPLACE IT WITH A FOOD INSERT. PLAINTIFF FOLLOWED ORDERS. See, EX 3

49. MORRIS ALSO DIRECTED THE PLAINTIFF TO USE A POT TO POKE THE GREASY CONTENTS FROM THE FRYER IN TO. SHE TOLD PLAINTIFF NOT TO POKE THE GREASY CONTENTS IN ANY OF THE DRAINS IN THE KITCHEN. BUT TO TAKE THE POT TO THE BACK DOCK AND DUMPED IN THE PIT.

50. PLAINTIFF USED A 5 GALLON BUCKET TO POKE WATER IN THE LEFT FRYER SLOT.

51. THE VALVE TO THE PIPELINE OF THE FRYER WAS OPENED. ONLY A MINIMUM AMOUNT OF THE GREASY WATER AND RESIDUE FILLED THE FOOD INSERT.

52. PLAINTIFF USED THE METAL ROD RETRIEVED EARLIER TO ATTEMPT TO UNCLOG THE SLOT OF THE FRYER.

53. AFTER WORKING TO UNCLOG THE SLOT PLAINTIFF EMPTIED THE GREASY WATER INTO THE POT.

54. PLAINTIFF PORED ANOTHER BUCKET OF HOT WATER INTO THE SLOT OF THE FRYER. AND REPEATED THE PROCESS DESCRIBED IN PARAGRAPH NO. 53

55. WHEN THE PLAINTIFF BEGAN POURING THE DISCARDED CONTENTS INTO THE POT, THE INSERT SLIPPED FROM THE RIM OF THE POT

56. GREASY HOT WATER WENT INTO THE PLAINTIFF'S LEFT BOOT.

57. PLAINTIFF REMOVED HIS BOOT AND SOCK AND HIS SKIN BEGAN TO SHRIVEL

58. DEFENDANT NORRIS HAD THE PLAINTIFF TO SOAK HIS FOOT IN A PAN OF COLD RUNNING WATER FOR 10 MINUTES. AFTERWARD HE WAS ESCORTED TO THE INFIRMARY.

59. NURSES CUNNINGHAM AND CARSWELL PUT BURN CREAM ON PLAINTIFF'S LEFT FOOT, WRAPPED IT, GAVE HIM MEDICATION AND WHEELED HIM TO CELLBLOCK 8A IN A WHEELCHAIR

60. HOWEVER, PLAINTIFF RECEIVED A NO DUTY SCRIPT, WAS PUT ON TREATMENT CALL OUT, AND SCHEDULED TO SEE DR. PEPPERS.

61. THE FOLLOWING DAY (AUGUST 2, 2014) AN UNUSUAL SIZED BLISTER DEVELOPED ON THE PLAINTIFF'S FOOT AND ANKLE.

62. AUGUST 4th 2014 THE BLISTER BURST

63. AUGUST 6, 2014 PLAINTIFF WAS EVALUATED BY DR. PEPPERS. SHE PREPPED HIM FOR SURGERY TO REMOVE THE BLISTER THE FOLLOWING DAY.

64. AUGUST 7th 2014 DR. PEPPERS SURGICALLY REMOVED THE MASSIVE BLISTER FROM PLAINTIFF'S FOOT AND ANKLE.

65. AUGUST 8th 2014 PLAINTIFF STARTED NON-SURGICAL DEBRIDEMENT TREATMENT. AN EXTREMELY PAINFUL PROCEDURE OF TREATMENT REQUIRED FOR THE MAGNITUDE OF HIS INJURY.

SUMMARY

66. THE FRYER IS A STAINLESS STEEL COOKING MECHANISM WITH THREE(3) SEPERATE TOP COMPARTMENTS OR SLOTS USE TO COOK FOOD. EACH SLOT IS COVERED BY A STAINLESS STEEL LID WHEN NOT IN USE. OFTENTIME COOKING GREASE IS LEFT IN THE FRYER SLOTS. EACH SLOT IS 24in. to 30in DEEP AT THE BOTTOM OF THE FRYER THREE(3) DOOR ARE LOCATED. TWO (2) OF THE DOORS (Left and Middle) LEAD TO TWO(2) LEVERS USED TO CONTROL THE FLOW OF GREASE RELEASED INTO A HIGH METAL CONTAINER (OR PAN) THAT OPENS TO THE SAND CONTAINER. See, EX 4 and 5

67. AS AFOREMENTIONED IN PARAGRAPH NO. 48 DEFENDANT MORRIS ORDERED THE PLAINTIFF TO REMOVE THE METAL CONTAINER

68. THE METAL CONTAINER WAS AN INTRINSIC PART OF THE FRYER, "SPECIFICALLY DESIGNED" FOR DISCARDED GREASE CONTENTS. OPTIONING TO REPLACE IT WITH A FOOD INSERT TO MAKE THE DISCARDED CONTENTS EASIER

TO DISPOSE DISREGARDED THE PALPABLE OR RECOGNIZABLE RISK THAT STEM FROM USING EQUIPMENT THAT WAS NOT DESIGNED FOR SUCH PURPOSE(S).

19. PLAINTIFF HAD ABSOLUTELY NO CONTROL OVER THE PARTICULAR EQUIPMENT SELECTED TO BE USED. HE SIMPLY USED THE MATERIAL(S) AND EQUIPMENT SUPPLIED TO HIM AND FOLLOWED THE INSTRUCTIONS OUTLINED TO HIM.

20. THIS IS EVIDENCED BY THE STATEMENT DEFENDANT NORRIS GAVE ASSISTANT DIRECTOR GRANT HARRIS IN A RESPONSE TO A GRIEVANCE (TU-14-0077) WRITTEN BY THE PLAINTIFF. IT STATES IN PERTINENT PART; see, Ex 6

"Captain Norris stated she always directed you in what to do and how to do it."

21. DEFENDANT NORRIS ADMITTED TO DIRECTING THE PLAINTIFF TO PERFORM THE HAZARDOUS TASK ASSOCIATED WITH HIS JOB DUTIES.

HE REMOVED THE CONTAINER AND

REPLACED IT WITH THE FOOD INSERT UNDER HER ORDERS. SHE KNEW OR SHOULD HAVE KNOWN THE TASK DIRECTED TO BE CARRIED OUT WOULD LEAD TO PLAINTIFF'S INJURY. NEVERTHELESS, SHE FAILED TO TAKE EASY AVAILABLE PRECAUTIONS.

72. DEFENDANT MORRIS'S BREACH OF DUTY TO TAKE SUPERVISORY OR PRECAUTIONARY MEASURES TO PROTECT AGAINST THE RECOGNIZED RISK WAS THE PROXIMATE CAUSE OF PLAINTIFF'S INJURY.

73. DEFENDANT MORRIS, THE FOOD SERVICE CAPTAIN AND PARTY CHARGED WITH THE RESPONSIBILITY OF OBSERVING AND REGULATING SAFETY FACTORS NEGLECTED TO DO SO.

IT IS GROSSLY UNJUST TO PLACE THE BLAME FOR A RESULTING ACCIDENT ON THE PLAINTIFF WHO FOLLOWED ORDERS AND HAD ABSOLUTELY NO PARTICIPATION IN THE CREATION OF THE UNSAFE SITUATION THAT LED TO HIS INJURY.

74. PLAINTIFF WAS NOT FREE TO DETERMINE HIS LEVEL OF TRAINING, OR TO REFUSE OR QUIT.

75. REFUSING OR QUITTING HIS JOB ASSIGNMENT WOULD BE DISOBEYING A VERBAL OR WRITTEN ORDER OF STAFF. AN INSTITUTIONAL RULE VIOLATION PUNISHABLE BY DISCIPLINARY (MAJOR DISCIPLINARY) ACTION. RESULTING TO THE LOSS OF CLASS STATUS, LOSS OF 365 DAYS GOOD TIME, AND THIRTY (30) DAYS IN PUNITIVE ISOLATION See, EX 7

76. DEFENDANTS WILLIAMS AND LOWE ARE RESPONSIBLE FOR MANAGING ALL OPERATIONS AND ENFORCING POLICIES AND PROCEDURES IMPOSING SAFETY AND HEALTH STANDARDS AT TUCKER UNIT.

77. ADMINISTRATIVE REGULATION 11.03 EXPRESSLY STATE IN PERTINENT PART; see EX 8

"The Unit shall operate a food service program which ensure the highest level of safety and health practices. Federal and State

occupational safety and health codes shall serve as standard requirements for all agency food service programs."

TO DEFENDANTS WILLIAMS, LOWE, AND MORRIS FAILED TO FOLLOW OCCUPATIONAL SAFETY AND HEALTH CODE(S) AS DESCRIBED IN PARAGRAPH NO. 7 SUCH VIOLATIONS DIRECTLY STEM FROM AS FOLLOW;

- (A) FAILURE TO ISSUE PROPER SAFETY EQUIPMENT TO INMATES HANDLING HAZARDOUS RATING PRODUCTS (0) or (1) FOR HEALTH, FLAMMABILITY AND REACTIVITY IN THE MSDS (Material Safety data sheet)
- (B) FAILURE TO LABEL CONTAINERS USED AS SECONDARY CONTAINERS FOR CHEMICAL SUCH AS BUT LIMITED TO; PURE BLEACH, OVEN CLEANER, STAINLESS STEEL CLEANER etc....
- (C) FAILURE TO FURNISH A WORK PLACE OR ENVIRONMENT FREE FROM RECOGNIZABLE HAZARDS THAT COULD RESULT TO SERIOUS PHYSICAL INJURY

79. THE SAID DEFENDANTS WILLIAMS, LOWE, AND NORRIS NEGLIGENTLY AND WILLFULLY CREATED AND MAINTAINED HAZARDOUS EXISTING CONDITIONS THAT ENDANGERED THE PLAINTIFF AND OTHERS WHICH INEVITABLY LED TO THE SERIOUS INJURY THAT INITIATED THIS COMPLAINT.

80. ADMINISTRATIVE REGULATION 11.03 IS A POLICY AND PROCEDURE (S) ADOPTED FROM OCCUPATIONAL SAFETY AND HEALTH CODE (S) (29 USCA 654 and 655) TO FACILITATE THE PRACTICES, MEANS, METHODS, PROCESSES, AND OPERATIONS OF THE FOOD SERVICE DEPARTMENT AT TUCKER UNIT.
IT EXPRESS STATES IN PERTINENT PART;

"The requirements are to provide a healthy environment for both staff and inmate workers."

81. THE ARKANSAS DEPARTMENT OF CORRECTION (ADC) VIOLATED SECTION 654 and 655 (29 USCA 654-655) "BY" and "THROUGH" THE WILLFUL AND NEGLIGENT ACTS OF EMPLOYEES WILLIAMS, LOWE, AND NORRIS. THEREFORE LIABLE TO CIVIL/TORT PENALTIES PURSUANT 29 USCA 666 see, EX 16, 17, and 18

82. IN THE GRIEVANCE (TU-14-00777) WRITTEN BY THE PLAINTIFF NORRIS CONTENTS IN HER RESPONSE THE PLAINTIFF WAS TRAINED TO CARRY OUT THE TASK THAT CAUSED HIS INJURY. NORRIS'S CONTENTIONS ARE FALSE.

83. THE SIGNATURE (OF THE PLAINTIFF) ON THE SAFETY MEETING FORM IS INCONCLUSIVE THAT PLAINTIFF RECEIVED ADEQUATE TRAINING TO CLEAN DISCARDED CONTENTS FROM THE FRYER USING EQUIPMENT (FOOD SERVICE INSERT) THAT WAS NOT DESIGNED FOR THE PURPOSE NORRIS OPTIONED TO USE IT FOR.

84. THE SAFETY MEETING FORM IS A MERE LAUNDRY LIST OF VAGUE INSTRUCTIONS THAT DOES NOT EXPLAIN "HOW" OR "WHY" DEVIATING FROM STANDARD USE OF EQUIPMENT IS IMPLEMENTED AND THE SAFETY PROCEDURE THAT GUIDE SUCH DEVIATIONS.

85. PLAINTIFF SUFFERED SECOND (2ND) AND THIRD (3RD) DEGREE BURNS TO 35% TO 40% PERCENT OF HIS LEFT FOOT

86. PLAINTIFF ALSO UNDERWENT THIRTY (30) DAYS OR MORE PAINFUL NON-SURGICAL DEBRIDEMENT PROCEDURES THAT WERE PERFORMED BY NURSE(S) A. VALENTINE, S. FLUCKER, NURSE RODGERS, CARSWELL, AND DR. PEPPERS.

87. AS A RESULT OF SAID INJURY THE PLAINTIFF SUFFERED PERMANENT NERVE DAMAGE AND SCARS.

88. THE NERVE DAMAGE IS SO SEVERE THE PLAINTIFF IS UNABLE TO FULLY BEND HIS TOES, NEITHER CAN HE STAND FOR PROLONG PERIODS OF TIME WITHOUT PIN AND NEEDLE SENSATIONS OCCURRING ON THE INJURED PORTION OF HIS FOOT.

89. THIS HAS CAUSED THE PLAINTIFF TO SUFFER TRAUMATIC EPISODES OF GRIEF, ANXIETY, DEPRESSION, IRRITATION, DYSPHORIA, NIGHTMARES AND THE LIKE.

90. PLAINTIFF SEEKS \$15,000 FOR PAST PAIN AND SUFFERING, \$15,000 FOR FUTURE PAIN AND SUFFERING and; 15,000 FOR PERMANENT PHYSICAL (and nerve) DAMAGE

Wherefore, PLAINTIFF PRAY FOR A
JUDGMENT AGAINST DEFENDANT AGENCY
IN THE AMOUNT SAID FOR THE INJURY
SUSTAINED DUE TO THE NEGLIGENT
ACTS OF JENNIFER MORRIS, STEPHEN
WILLIAMS, AND ASSISTANT WARDEN LOWE;
AND ALL OTHER JUST AND PROPER
RELIEF THE PLAINTIFF MAY BE ENTITLED
TO

Respectfully Submitted,

Ahmeen Munn

P.O. Box 970
Marianna, Ark. 72360

Sworn and Subscribed before me

Bruckey AR
(CITY) (STATE)

ON THIS 20th DAY OF February 2015
(MONTH) (YEAR)

COM EXP: April 13, 2018

Jena A. Caldwell
NOTARY PUBLIC

Tucker Unit Food Service Linda Gibson Inspection

7/11/14

Inmate dining

Fan needs cleaned

Couple of light bulbs out *maint*

Return air vent needs cleaned

Prep

1 light out over grill *maint*

Need clean grills

Nasty under grills

2 packages cookies hid under deep fryer

Greasy floor, fryer, everything you touch

Light cover missing above tilt grill *maint*

1 light out over steam kettle *maint*

1 light out over oven *maint*

Light covers need cleaning

No thermometer

1 light out over double ovens *maint*

Light cover needs cleaning

Oven needs cleaning

Need to clean behind oven

Vent a hood over oven needs cleaning _____ needs cleaning

Cooler #3

72 degrees *maint*

No curtain *will order*

Needs cleaning

Cooler #2

31 degrees

Cooler #1

1 pan chicken not dated

3day sample tray

8th no _____

9th _____ breakfast no dinner

10th _____ Lunch _____ no breakfast or dinner

Pot & Pan water needs changing

No sanitizer-None

Pans stacked wet

Pans in back storage need cleaning

Freezer #2

-2 degree

Door frozen *maint*

Freezer 1

-14 degrees

Ceil leaky -boxes of food in cases getting wet *maint*

10.6 in citrus breeze buddy jug

200 oz pure bleach in jug approve 32 oz _____

Diluted bleach not labeled 150 oz

Razor blue broken container oven clean closure _____

1/2 gallon _____

Levels is _____ 120 degrees beans a _____

Orange juice 68 cases -10 cans good

No _____ temps for food in serving line today - Ms. Harris

* No receipt of safety equipment being issued to inmates with chemicals

Fan needs cleaning

Need curtain for cooler

Dishwasher

Light cover needs cleaning

Inmate restroom needs cleaning-no soap or paper towels

Tool room

TFS -71-06 needs to be replaced

TFS -74-03 ok was checked out

Sugar and yeast good

a) All containers need labels to identify chemicals (b) broken

b) Any broken things should be disposed of properly

c) Inmate safety goggles to work all chemicals

Any and all items in inmate room at all times

Light cover missing *maint*

Diet line

Pinto Beans 110 degrees

Beef patties 140 degrees

Rice 130 degrees

_____ serving line

Drain cover needs cleaning

Hot Boxes

Thermometer on hot boxes not working *maint*

Hot Box Rice 80 degrees

Hot Box temp 142

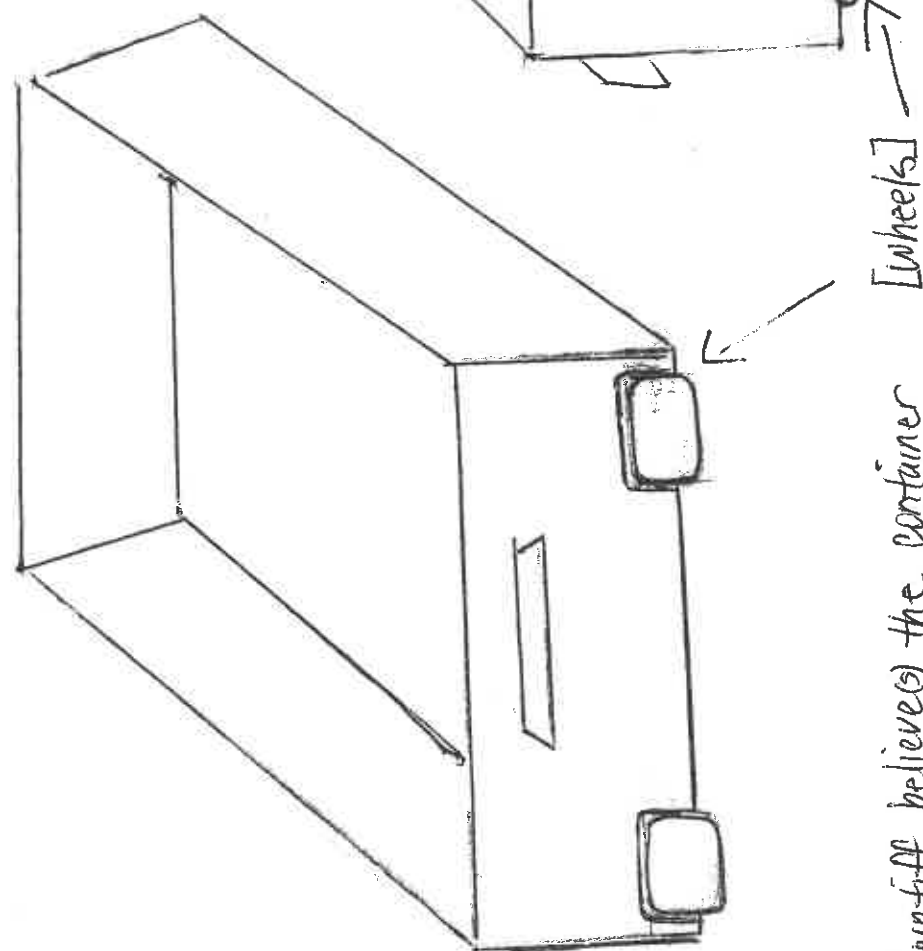
Hot box beans 120 degrees

Regular line

Beans 100 degrees

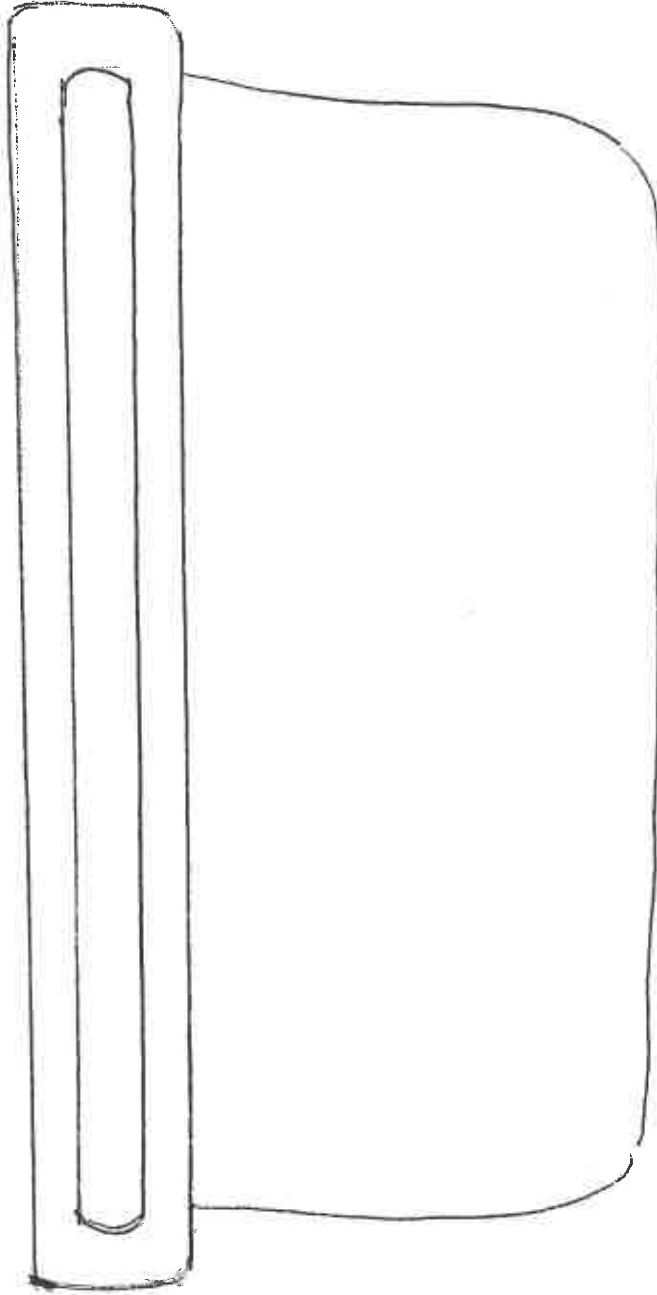
global

Metal Container/Pan
of fryer.
Discarded grease and
food contents goes into
the container/pan

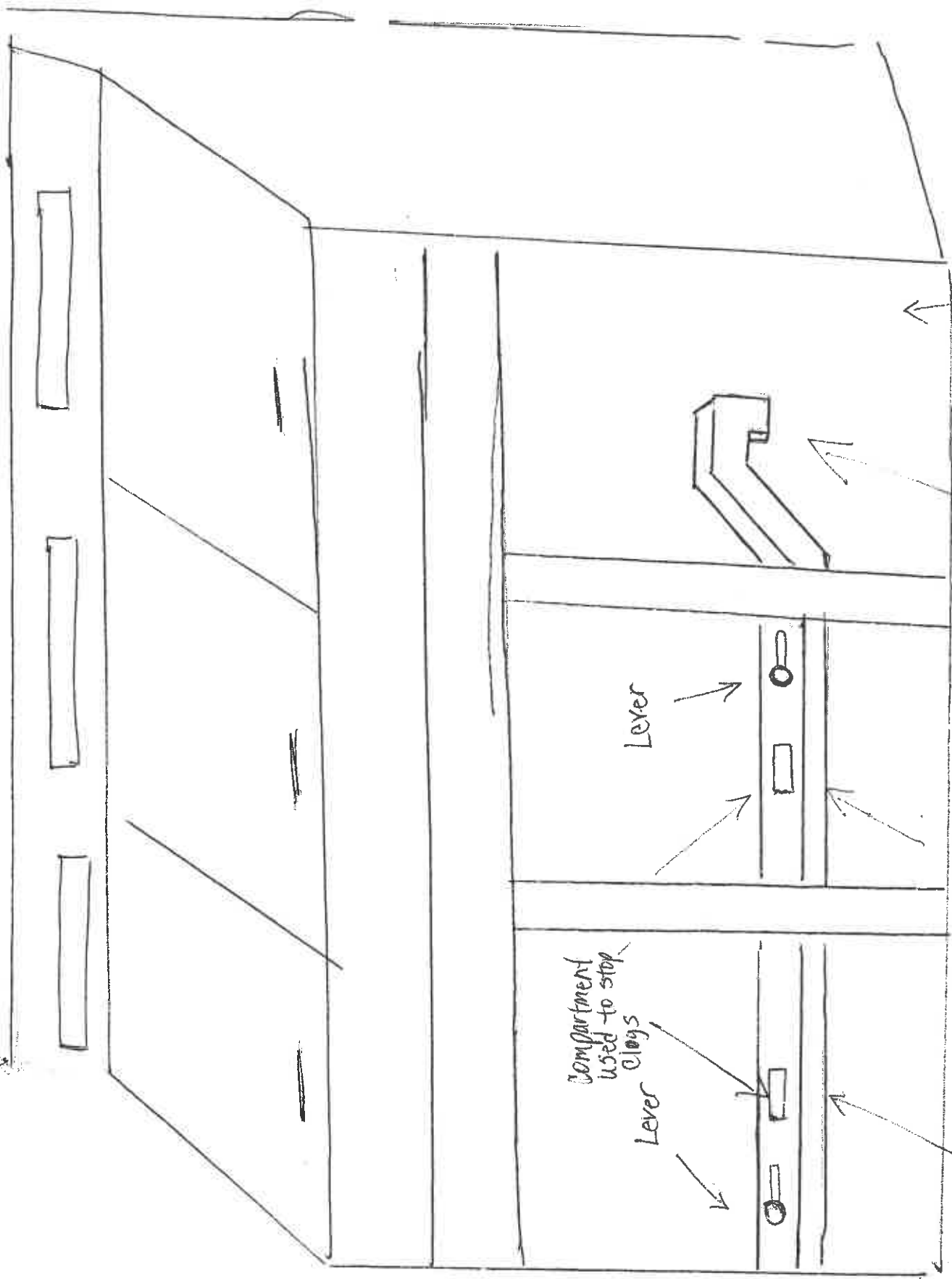


note: Plaintiff believes the container
to be three (3) feet long and
one (1) foot deep.

Metal insert used
for food containment (or storage)
and distribution



Note: Plaintiff believes the food
insert to be a foot and a half ($1\frac{1}{2}$)
long and approximately $11\frac{1}{2}$ to 12 inches
deep.



Area where
Metal Container
is located

ext area of
pipeline.
(Discarded contents)

Lever

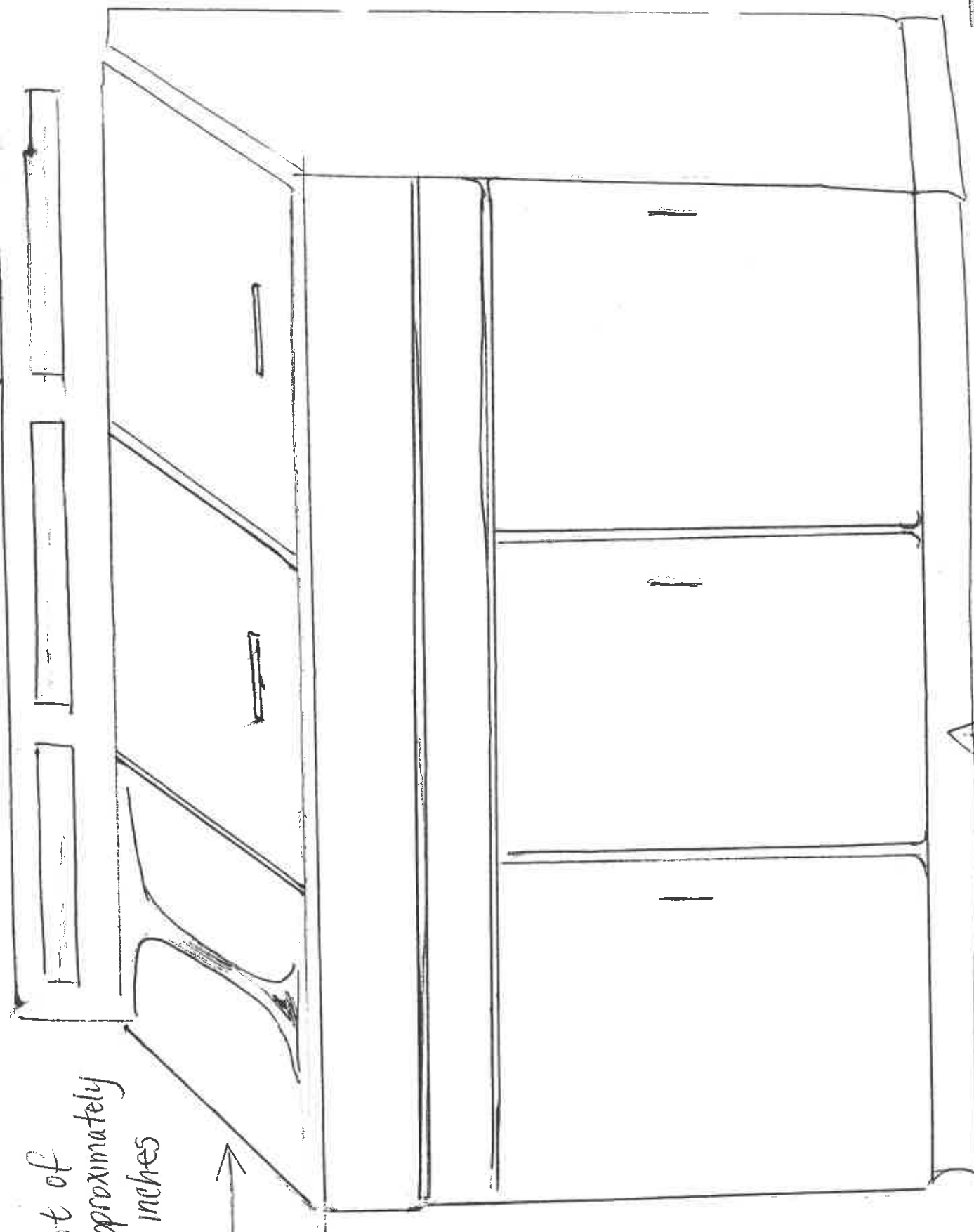
pipeline

Compartment
used to stop
clogs

Lever

pipeline

This is a
diagram of the
fryer without doors



Left slot of
fryer approximately
24 to 30 inches
deep

(27)

Three doors
leading to
control lever
and metal
container

door to
lever 1

33

This is a diagram
of the fryer with
doors.

metal container door

door to Lever 2

UNIT LEVEL GRIEVANCE FORM

(Attachment I)

Unit/Center

E.A.R.U

GRIEVANCE/RECEIVED

Name

Ahmeen Mumit

ADC#

95017

Brks #

10-18

Job Assignment

EAST AR REGIONAL UNIT

RECEIVED

OFFICE USE ONLY

NOV 19 2014

GRV. # TU-14-00777

Date Received: 11/19/14

GRV. Code #: 999

EX 6

11-3-14 (Date) STEP ONE: Informal Resolution

11-4-14 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why: Steve Williams, Asst. Warden Lowe and Jennifer Norris created a unsafe work place and environment

(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 mentalBRIEFLY 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): Steven William, Asst. Warden Lowe, and Jennifer Norris failed to provide a safe place to work and with adequate and safe equipment, with which to work and to inadequately train myself and other(s) to use chemicals, properly clean machinery, floors, freezers, ovens, choker, fryers, storage facilities, etc...Warden Steven Williams, Asst. Warden Lowe, and Cpt. Jennifer Norris knew or should have known placing myself and others in a position to perform a job or jobs known to be dangerous could result in injury. Each person mentioned is governed by the common-law duty to provide myself and others with a safe and secure work environment. They failed to use reasonable care to avoid foreseeable risk

Ahmeen Mumit

11-3-14

Inmate Signature

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 11-3-14 (date), and determined to be **Step One** and/or an Emergency Grievance Yes (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 11-3-14

PRINT STAFF NAME (PROBLEM SOLVER)

ID Number

Staff Signature

Date Received

Describe action taken to resolve complaint, including dates: 11-4-14 was unable to reach anyone on this issue

RECEIVED

Staff Signature & Date Returned 88 J. Mumit 11-4-14

INMATE GRIEVANCE

Inmate Signature & Date Received

This form was received on 11-4-14 (date), pursuant to **Step Two**. Is it an Emergency? NO (Yes or No).Staff Who Received Step Two Grievance: Date: 11-4-14Action Taken: Forwarded (Forwarded to Grievance Officer/Warden/Other) Date: 11-4-14If 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.

39

INMATE NAME: Mumit, Ahmeen

ADC #: 095017D

GRIEVANCE #: TU-14-00777

WARDEN/CENTER SUPERVISOR'S DECISION

In your grievance you stated, "Steven William, Asst. Warden Lowe, and Jennifer Norris, failed to provide a safe place to work and with adequate and safe equipment with which to work and to adequately train myself and other (s) to use chemicals, properly clean machinery, floors, Warden Steven Williams, Asst. Warden Lowe and Cpt. Jennifer Norris knew or should have known placing myself and others in a position to perform a job or jobs known to be dangerous could result in injury. Each person mentioned is governed by common law duty to provide myself and others with a safe and secure work environment. They failed to use reasonable care to avoid foreseeable risk.

Steven William, Asst. Warden Lowe, and Jennifer Norris, failed to provide a safe place to work and with adequate and safe equipment with which to work and to adequately train myself and other (s) to use chemicals, properly clean machinery, floors, Warden Steven Williams, Asst. Warden Lowe and Cpt. Jennifer Norris knew or should have known placing myself and others in a position to perform a job or jobs known to be dangerous could result in injury. Each person mentioned is governed by common law duty to provide myself and others with a safe and secure work environment. They failed to use reasonable care to avoid foreseeable risk.

Staff Named"

I am unsure as to what you are exactly stating, because your allegations are vague in nature. I have reviewed the safety meetings conducted by kitchen staff that covers various topics ranging from spills, food handling, cleaning of appliances, etc. which is documented on logs by you. Therefore, I find this grievance without merit.

Stephen J. Williams
Signature of Warden/Supervisor or Designee

Warden
Title

11/26/2014
Date

DEC 1 2 2014

INMATE'S APPEAL

INMATE GRIEVANCE SUPERVISOR
ADMINISTRATION BUILDING

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?

There are no documents and/or logs giving my consent or agreement to being properly trained to use chemicals or how to clean various things like deep friers in which I severely burden my foot (left foot). Not being properly trained to handle such, as well as Jennifer Norris, Asst Warden Lowe and Warden Williams negligence was the proximate cause of my injury.

Almeen Nunez

Inmate Signature

95017

ADC#

12-5-14

Date

RECEIVED

DEC 12 2014

INMATE GRIEVANCE SUPERVISOR
ADMINISTRATION BUILDING

IGTT430
3GD

Attachment VI

INMATE NAME: Mumit, Ahmeen

ADC #: 095017

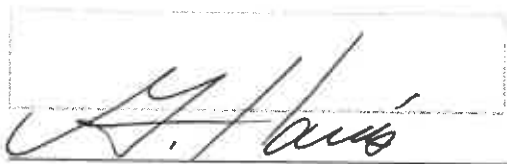
GRIEVANCE#: TU-14-00777

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION

Your complaint is Warden Steven William, Asst. Warden Lowe, and Jennifer Norris, failed to provide you a safe place to work with adequate and safe equipment to work and to adequately train you and others to use chemicals, properly clean machinery and floors.

After reviewing your appeal and all supporting documentation, I find according to Captain Norris Food service Supervisor, you were trained; you were issued safety gear to wear; safety meetings were held on Chemicals, equipment and the company who replaced the floors came down and gave the Kitchen workers the proper way to clean the floors to prevent slips and falls. Captain Norris also stated your job assignment was detailed cleaning in which she always directed you in what to do and how to do it. You have failed to provide any evidence to substantiate your allegations. Therefore, I find your appeal without merit.

Appeal denied



Director



Date

Ex 7

- staff uniforms, or unauthorized civilian clothing or identification. A
- 09-8. Manufacture of intoxicants. A
- 09-9. Counterfeiting, forging, or unauthorized possession of any document, article of identification, money, security or official paper. A
- 09-10. Possession of gambling paraphernalia not specifically authorized by the center/unit. C
- 09-11 Reserved number for historical records.
- 09-12 Possession of Tobacco Products. A
- 09-13. Possession/introduction/use of a cell phone or unauthorized messaging device may result in the loss of all good time and shall result in the loss of Inmate Telephone System privileges for one (1) year. A
- 09-14 Possession/introduction/use of unauthorized electronic Device (s), including flash drive, MP player, DVD, player, etc., may result in the loss of all good time. A

CATEGORY TEN
SEXUAL ACTIVITY

- 10-1. Engaging in sexual activity with another consenting person. PREA ISSUE A
- 10-2. Making sexual proposals to another person. PREA ISSUE A
- 10-3. Indecent exposure; may result in a referral for Criminal prosecution. PREA ISSUE. A
- 10-4. Bestiality. A
- 10-5. Masturbation in the presence of another inmate. A

CATEGORY ELEVEN
DISRESPECT TO STAFF

- 11-1. Insolence to a staff member. A
- 11-2. Using abusive/obscene language to staff. A
- 11-3. Making profane/obscene gestures to staff including masturbation. A

CATEGORY TWELVE
DISOBEDIENCE TO ORDERS

- * 12-1. Failure to obey verbal and/or written orders of staff. A

FNs

The rule violation with the asterisk (*) Verifies plaintiff's claim.

office and are reviewed with your appeal. Any documentation submitted will not be returned.

4. The disciplinary hearing administrator has five days from receipt of your appeal to respond.

5. If you disagree with the hearing administrator's response, you have 15 days to appeal to the Director of the department, whose decision will be the final step in the appeal process.

Major Disciplinary Sanctions

Major disciplinary sanctions are divided into three penalty classes, "A," "B" and "C." The disciplinary hearing officer may apply any or all of the sanctions from the penalty class of the most serious rule violated. The range of allowable sanctions is as follows:

1. Penalty Class "A"

- a. Punitive segregation for 1-30 days.
- b. Loss of earned good time up to 365 days. (Loss of *all* earned good time is allowable for offences listed that include the statement "may result in loss of all good time.")
- c. Loss of designated privileges, 1-60 days.
- d. Restitution based on replacement cost or the value of lost, intentionally misplaced or destroyed property.
- e. Reduce up to three (3) steps in class.
- f. Recommend to Classification Committee for change of assignment/unit.
- g. Extra duty up to two (2) hours per day for up to thirty (30) days.



2. Penalty Class "B"

- a. Punitive segregation for 1-15 days.
- b. Loss of earned good time of 1-150 days.
- c. Loss of designated privileges for 1-45 days.
- d. Restitution based on replacement cost or the value of lost, intentionally misplaced or destroyed property
- e. Extra duty up to two (2) hours per day for up to fifteen (15) days.

- f. Formal reprimand and/or warning
- g. Recommend to Classification Committee for change of assignment/unit.
- h. Reduce up to two (2) steps in class.

3. Penalty Class "C"

- a. Punitive segregation for 1-10 days.
- b. Loss of earned good time of 1-60 days.
- c. Loss of designated privileges for 1-30 days. Restitution based on replacement cost or value of lost, intentionally misplaced or destroyed property.
- e. Extra duty up to two (2) hours per day for up to ten (10) days.
- f. Formal reprimand/warning.
7. Recommend to Classification Committee for change of assignment/unit.
8. Reduce one (1) step in class.

	ARKANSAS DEPARTMENT OF CORRECTION		NUMBER:	11.03.0	PAGE NUMBER 1 of 4
	EAST ARKANSAS REGIONAL UNIT		SUPERSEDES:		ISSUING EMPLOYEE: 
	POLICY AND PROCEDURES		DATE:	03-10-95	WARDEN
CHAPTER:	Food Services		SUBJECT:	Safety and Sanitation for Food Service	
Revised on These Dates	05-19-09				
Annual Review on These Dates	05-18-09	4-29-10	06-08-11	06-11-12	

- I. AUTHORITY:** The Warden's authority to issue this document is contained in Administrative Regulation 001. This policy shall supplement all related Administrative Regulations and Departmental policies.
- II. PURPOSE:** To describe basic safety and sanitation requirements for the Unit's food service program. These requirements are intended to provide a healthy environment for both staff and inmate workers and diners.
- III. APPLICABILITY:** To all employees in the food service, safety and sanitation departments and to other employees involved in the acquisition, preparation, storage or distribution of foods.
- IV. DEFINITIONS:** As used in this document, the following definition shall apply:
- Outside Source Inspection: Inspections by a person or persons not regularly employed by the Unit. State employees from other agencies, representatives of federal agencies or independent contractors shall be considered outside sources.
- V. POLICY:** The Unit shall operate a food service program which shall ensure the highest possible level of safety and sanitary practices. Federal and state occupational safety and health codes shall serve as standard requirements for all agency food service programs. At a minimum, this policy requires the Unit to provide the following:
- A. A physical examination by qualified medical staff members to ensure that all employees, inmates, or other persons working in the food service area are free from transmissible disease. This examination shall be completed prior to job entry on duty and at least biannual thereafter.
 - B. Food handlers shall be required to comply with standard personal hygiene requirements. These requirements shall include:
 - 1. Use of clean clothing, hairnets, caps.

POLICY AND PROCEDURES	POLICY NO.: 11.03.0	PAGE NUMBER: 2 of 4
SUBJECT: Safety and Sanitation for Food Service	SUPERSEDES:	EFFECTIVE DATE: 03-10-95

2. Maintenance of clean hands and fingernails by washing hands after using toilet facilities.
 3. Freedom from open or infected wounds.
- C. Hand washing facilities shall be located in close proximity to all food preparation areas.
- D. The Unit shall maintain sanitary, temperature controlled storage facilities. These controls shall provide regulations to comply with the following temperature ranges:
1. Dry shelf storage -- 45 degrees to 80 degrees F.
 2. Refrigeration area -- 35 degrees to 40 degrees F.
 3. Frozen food areas -- 0 degrees F or below.

VI. PROCEDURES: Efficient safety and sanitary operations of food service department are extremely complex. Therefore, this section sets forth basic requirements only, which are mandatory for the Unit.

- A. **Physical Examinations:** Food services employees, both free world and inmate, shall:
1. Receive pre-entry on duty physical examinations by a member of the medical staff to:
 - a. Provide protection to the employee by indicating restrictions of duty assignments.
 - b. Prevent spread of communicable disease to diners.
 2. Be examined regularly (at least biannually) by an appropriate health authority to ensure continued compliance with worker health safety standards.
 3. Comply with all health related regulations required by an appropriate authority. These rules include:
 - a. Adequate personal hygiene.
 - b. Compliance with grooming rules regarding uniforms, hair care, use of caps or hairnets and aprons.
 4. Be provided with clean clothing changes daily.
- B. **Equipment Sanitation:** Food Service Equipment shall:
1. Be designed to comply with national and state safety codes.

POLICY AND PROCEDURES	POLICY NO.: 11.03.0	PAGE NUMBER: 3 of 4
SUBJECT: Safety and Sanitation for Food Service	SUPERSEDES:	EFFECTIVE DATE: 03-10-95

2. Be designed to enable efficient and thorough cleaning. This rule is especially important for equipment which is in direct contact with foods, either during or after preparation. Work tables, dining tables and similar pieces of equipment should be constructed of materials such as metal or stainless steel, avoiding woods or similar water absorbent components.
3. Be operated and maintained in accordance with the manufacturer's health and safety instructions.
4. Be designed to maintain foods at proper temperatures. Refrigerators, freezers, holding cabinets and serving tables must be equipped to maintain foods at proper temperatures to prevent bacteria growth. Diseases can result easily from improperly designed or operated equipment.

C. **Physical Plant:** Food services facilities are important ingredients of a safe and sanitary program. Facilities shall minimally:

1. Be designed to ensure easy cleaning. Floors, walls and ceiling should be constructed of materials which will encourage safe, sanitary operations.
2. Provide toilet and wash basins available to all food service workers.
3. Provide fire safety protection as required by local and state regulations. Ovens, grills, and similar equipment shall be arranged to enable the use of an adequate sprinkler system or extinguisher coverage.
4. Provide adequate fire protection and avenues for exit in case of emergencies.
5. Provide for adequate storage areas with appropriate temperature controls.

D. **Safety and Sanitation Inspections:** Inspections of the food service area are vital to ensure regular compliance with appropriate health and safety rules. The Unit shall require the following inspections at a minimum:

1. Daily safety and sanitation inspection by the Food Service Supervisor. The inspecting officer shall sign the daily report and submit it to the Food Service Manager for review and action.
2. Weekly safety and sanitation inspections shall be conducted by the manager of the food service department, a member of the medical staff and one person designated by the Warden. The inspection team shall:
 - a. Visit and inspect all areas of the food service department, including the storage area.
 - b. Examine the daily inspection forms for the previous week.
 - c. Visit the department on a regular, pre-announced schedule.

POLICY AND PROCEDURES	POLICY NO.: 11.03.0	PAGE NUMBER: 4 of 4
SUBJECT: Safety and Sanitation for Food Service	SUPERSEDES:	EFFECTIVE DATE: 03-10-95

- d. Examine recent inspections reports from outside agencies or departments regarding fire, safety and sanitation.
 - e. Prepare a written report of sanitary conditions and safety practices observed.
3. Outside source inspections shall be conducted at least annually. At a minimum these inspections shall include:
- a. A complete Unit fire inspection by the State or local Fire Marshall. The inspection shall cover all food services areas. A written report shall be forwarded to the Warden for review and necessary action. Copies of these reports shall be maintained for three years.
 - b. Bi-Annually a sanitation inspection of the food service department will be conducted by the Arkansas Department of Health. This inspection shall cover all segments of the food service operation relating to the health and safety of food service workers and those inmates and staff who utilize the food service program. A written report of findings shall be prepared and forwarded to the Warden for his review and necessary action. Copies of these reports shall be retained on file for three years.

REFERENCES: ACA Standards 4-4159; 4-4160; 4-4161; 4-4211M; 4-4212M;
4-4321M; 4-4322M; 4-4324M; 4-4325M; 4-4329M.
ADC AR 600

EX 9

UNIT LEVEL GRIEVANCE FORM

Attachment I

Unit/Center E. A. R. U.
Name A. Munnit
ADC# 95017 Brks # 10-18 Job Assignment Bks. Porter

FOR OFFICE USE ONLY
GRV. # EA-14-02093
Date Received: 11/20/14
GRV. Code #: 713

11-18-14 (Date) STEP ONE: Informal Resolution

11-19-14 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why: Ms. McDaniel's / Ms. Roby failed to do their job. My grievance was held until today in an attempt to let it expire. (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, and place, name of personnel involved and how you were affected. (Please Print):

Ms. V. Roby failed to do her job. Not providing me a grievance acknowledgment. Whereas I grieved how Steve Williams, Jennifer Norris, and Ant. Hinder Lowe failed to provide adequate safety equipment. And failed to properly train me and for others assigned to cleaning detail how to properly use chemicals, properly clean floors, protectors, pens, pressure cookers, deep fryers, storage rooms, closets etc... Each of them know or should have known placing myself and others in a position to perform a job or jobs put me at a risk of serious harm/injury. They have a duty of care under the color of law to reasonably secure my safety from foreseeable harm. Yet failed to do so. This grievance is also against Ms. McDaniel's for not doing her job... not providing a grievance acknowledgment.

Charm Munnit (Signature) 11-18-14 (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 11-18-14 (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: Grievance Officer Date 11-18-14

Col. Abell (PRINT STAFF NAME) 7416 (ID Number) Col. Abell (Staff Signature) 11-18-14 (Date Received)

Describe action taken to resolve complaint, including dates:
Over Ms. McDaniel, the grievance you are referring to was a complaint on another unit. The grievance was mailed to the other unit and a copy was emailed to the unit. It is not the responsibility of EAPU to acknowledge your grievance, but the grievance should be acknowledged by the other unit.

Print and Sign Staff Name & Date Returned: Charm Munnit Inmate Signature & Date Received: Charm Munnit
This form was received on 11/19/14 (date), pursuant to Step Two. Is it an Emergency Grievance? (Yes/No)
Staff Who Received Step Two Grievance: Charm Munnit Date: 11-19-14
Action Taken: Forward to EAPU (Forwarded to Grievance Officer/Warden/Other) Date: 11-19-14
If forwarded, provide name of person receiving this form: RECEIVED Date:

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

(24)
INMATE GRIEVANCE SUPERVISOR
ADMINISTRATION BUILDING

INMATE NAME: Mumit, Ahmeen

ADC #: 095017

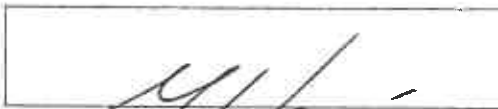
GRIEVANCE#:EA-14-02093

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION

I have received your formal grievance appeal dated 11/19/14 in reference to the grievance office failure to properly process your grievance from another unit.

After reviewing all supporting documentation, I have determined that I concur with the Warden's response of no merit. I am unable to substantiate your allegations that staff has failed to follow proper procedures.

Appeal denied.



Director

12-30-2014
Date

INMATE NAME: Mumit, AhmeenADC #: 095017DGRIEVANCE #: EA-14-02093

WARDEN/CENTER SUPERVISOR'S DECISION

Inmate Mumit, you grieved that Ms. Y. Roby and Ms. McDaniel did not provide you with an acknowledgement of a grievance that you wrote on Asst. Warden Lowe, Steve Williams, and Jennifer Norris. your complaint has been noted. Documentation shows that your grievance was mailed out on November 7, 2014 to Randall L. Williams Unit. After being informed that Warden Lowe was at Tucker unit, Mrs. Collins at Randall L Williams Unit was advised to send it to the Tucker Unit. On November 19, 2014 a copy of your acknowledgement was sent to Ms. McDaniel from Pearlie Johnson. According to your acknowledgement, it was completed on November the 19, 2014 the same day it was emailed to Ms. McDaniel. Ms. McDaniel then personally delivered the copy of the acknowledgement to you as you stated in your reason for proceeding to step two. Please be advised that it is not EARU grievance staff responsibility to acknowledge grievances concerning another unit. Without further evidence I find your complaint without merit.

[Signature]
Signature of Warden, Supervisor or Designee

Ward
Title

11/24/14
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?

Ms. Roby and Ms. McDaniel knew Warden S. Williams, Asst. Warden Lowe, and Cpt. Norris are all at Tucker Unit. As stated before they attempted to sabotage my complaint. Williams, Lowe and Norris placed me in a position of serious risk of physical harm. Their negligence was the proximate cause of such. Under the color of law they are responsible for providing a care of duty to render safety. Neither did so. Nor was I or others properly trained to use chemicals or perform designated job duties.

Ahmeen Mumit

96D17

11-25-14

Inmate Signature

ADC#

Date

RECEIVED

DEC 0 9 2014

INMATE GRIEVANCE SUPERVISOR
ADMINISTRATION BUILDING

(35)

ARKANSAS DEPARTMENT OF CORRECTION

Medical Restrictions/Limitations/Special Authorization(s)

MSF-207

PART 1 - RESTRICTIONS:

RESTRICT INMATE FROM:

- ☒ Restrict from assignment requiring strenuous physical activity in excess of hours per day. Allow 10 minute break after each hour.
- ☒ Restrict from assignment requiring prolonged crawling, stooping, running, jumping, walking, or standing, in excess of hours per day. Allow 10 minute break after each hour.
- ☒ Restrict from assignment requiring lifting of heavy materials in excess of lbs; and/or overhead work in excess of hours per day. Allow 10 minute break after each hour.

PART 2 - LIMITATIONS:

INMATE REQUIRES:

- * ☒ Bed Rest days. Reason:
- ☒ No Duty 10 days. Reason: medical may go to class/Group
- ☒ No Yard Call days. Reason: Can participate in Program
- ☒ No Sports days. Reason:
- ☒ One Arm/Hand Duty days.

PART 3 - AUTHORIZATIONS: INMATE IS AUTHORIZED TO:

- ☒ Report to the Infirmary for Special Treatments()
 - ☒ Soak:
 - ☒ Exercise: clean foot w sterile water prior to dressing
 - ☒ Other: daily wound care silvadine cream sterile gauz
- ☒ Bathe in the Infirmary
 - ☒ Sitz Bath
 - ☒ Cast
 - ☒ Other: elevate foot when sitting or laying down
- ☒ Have in Possession:
 - ☒ Cane
 - ☒ Crutches
 - ☒ Brace: (describe briefly)
 - ☒ Prescribed Footwear:
 - ☒ Orthopedic Appliance: (describe briefly)
 - ☒ Other: shower shoes
- * ☒ Go to Dining/Pill Window/Shower Only

This Medical Restriction(s)/Limitation(s)/Special Authorization(s) Starts: 08/08/2014 01:54:00 PM

This Medical Restriction(s)/Limitation(s)/Special Authorization(s) Ends: 08/20/2014 01:54:00 PM


Name: Mumit, AhmeenDOB: 09/21/1973ADC#: 095017

Jacqueline Rhodes Carswell

Distribution: Original - Medical Jacket

ARKANSAS DEPARTMENT OF CORRECTION

Medical Restrictions/Limitations/Special Authorization(s)

MSF-207

PART 1 - RESTRICTIONS:

RESTRICT INMATE FROM:

- ☐ Restrict from assignment requiring strenuous physical activity in excess of hours per day. Allow 10 minute break after each hour.
- ☐ Restrict from assignment requiring prolonged crawling, stooping, running, jumping, walking, or standing, in excess of hours per day. Allow 10 minute break after each hour.
- ☐ Restrict from assignment requiring lifting of heavy materials in excess of lbs; and/or overhead work in excess of hours per day. Allow 10 minute break after each hour.

PART 2 - LIMITATIONS:

INMATE REQUIRES:

- * ☐ Bed Rest days. Reason:
- ☒ No Duty 7 days. Reason: MAY GO TO CLASS
- ☐ No Yard Call days. Reason:
- ☐ No Sports days. Reason:
- ☐ One Arm/Hand Duty days.

PART 3 - AUTHORIZATIONS: INMATE IS AUTHORIZED TO:

- ☐ Report to the Infirmary for Special Treatments()
- ☐ Soak:
- ☐ Exercise:
- ☒ Other: daily wound care c silvadene cream
- ☐ Bathe in the Infirmary
- ☐ Sitz Bath
- ☐ Cast
- ☒ Other: Elevate foot when sitting or lying down
- ☐ Have in Possession:
- ☐ Cane
- ☐ Crutches
- ☐ Brace: (describe briefly)
- ☐ Prescribed Footwear:
- ☐ Orthopedic Appliance: (describe briefly)
- ☒ Other: Shower Shoe
- * ☐ Go to Dining/Pill Window/Shower Only

This Medical Restriction(s)/Limitation(s)/Special Authorization(s) Starts: 08/30/2014 11:49:00 PMThis Medical Restriction(s)/Limitation(s)/Special Authorization(s) Ends: 09/06/2014 11:49:00 PM*Valentine*Name: Mumit, AhmeenDOB: 09/21/1973ADC#: 095017

Anita Maria Valentine

Distribution: Original - Medical Jacket

(39)

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ARKANSAS DEPARTMENT OF CORRECTION

Medical Restrictions/Limitations/Special Authorization(s)

MSF-207

PART 1 - RESTRICTIONS:

RESTRICT INMATE FROM:

- ☐ Restrict from assignment requiring strenuous physical activity in excess of hours per day. Allow 10 minute break after each hour.
- ☐ Restrict from assignment requiring prolonged crawling, stooping, running, jumping, walking, or standing, in excess of hours per day. Allow 10 minute break after each hour.
- ☐ Restrict from assignment requiring lifting of heavy materials in excess of lbs; and/or overhead work in excess of hours per day. Allow 10 minute break after each hour.

PART 2 - LIMITATIONS:

INMATE REQUIRES:

- * ☐ Bed Rest days. Reason:
- ☒ No Duty 7 days. Reason: MAY GO TO CLASS
- ☐ No Yard Call days. Reason:
- ☐ No Sports days. Reason:
- ☐ One Arm/Hand Duty days.

PART 3 - AUTHORIZATIONS: INMATE IS AUTHORIZED TO:

- ☐ Report to the Infirmary for Special Treatments()
- ☐ Soak:
- ☐ Exercise:
- ☒ Other: daily wound care c silvadene cream
- ☐ Bathe in the Infirmary
- ☐ Sitz Bath
- ☐ Cast
- ☒ Other: Elevate foot when sitting or lying down
- ☐ Have in Possession:
- ☐ Cane
- ☐ Crutches
- ☐ Brace: (describe briefly)
- ☐ Prescribed Footwear:
- ☐ Orthopedic Appliance: (describe briefly)
- ☒ Other: Shower Shoe
- * ☐ Go to Dining/Pill Window/Shower Only

This Medical Restriction(s)/Limitation(s)/Special Authorization(s) Starts: 08/30/2014 11:49:00 PMThis Medical Restriction(s)/Limitation(s)/Special Authorization(s) Ends: 09/06/2014 11:49:00 PMName: Mumit, AhmeenDOB: 09/21/1973ADC#: 095017*Valentine*

Anita Maria Valentine

Distribution: Original - Medical Jacket

Please extend expiration date

9.12.14
Please extend
another 7 Days 9.20.14
Valentine

X 7 days 9.13.14
Valentine

PART 1 - RESTRICTIONS:

RESTRICT INMATE FROM:

- ☐ Restrict from assignment requiring strenuous physical activity in excess of hours per day. Allow 10 minute break after each hour.
- ☐ Restrict from assignment requiring prolonged crawling, stooping, running, jumping, walking, or standing, in excess of hours per day. Allow 10 minute break after each hour.
- ☐ Restrict from assignment requiring lifting of heavy materials in excess of lbs; and/or overhead work in excess of hours per day. Allow 10 minute break after each hour.

PART 2 - LIMITATIONS:

INMATE REQUIRES:

- * ☐ **Bed Rest** days. Reason:
- ☐ **No Duty** days. Reason:
- ☐ **No Yard Call** days. Reason:
- ☐ **No Sports** days. Reason:
- ☐ **One Arm/Hand Duty** days.

PART 3 - AUTHORIZATIONS: INMATE IS AUTHORIZED TO:

- ☐ **Report to the Infirmary for Special Treatments()**
 - ☐ **Soak:**
 - ☐ **Exercise:**
 - ☐ **Other:**
- ☐ **Bathe in the Infirmary**
 - ☐ **Sitz Bath**
 - ☐ **Cast**
 - ☐ **Other:**
- ☐ **Have in Possession:**
 - ☐ **Cane**
 - ☐ **Crutches**
 - ☐ **Brace: (describe briefly)**
 - ☐ **Prescribed Footwear:**
 - ☐ **Orthopedic Appliance: (describe briefly)**
 - ☒ **Other: clear to return to work wear normal shoes**
- * ☒ **Go to Dining/Pill Window/Shower Only**

This Medical Restriction(s)/Limitation(s)/Special Authorization(s) Starts: 09/19/2014 03:49:00 PM

This Medical Restriction(s)/Limitation(s)/Special Authorization(s) Ends: 09/19/2014 03:49:00 PM



Name: Mumit, Ahmeen

DOB: 09/21/1973

ADC#: 095017

Jacqueline Rhodes Carswell

Distribution: Original - Medical Jacket

(41)

Ex 14



ADMINISTRATIVE REGULATIONS

STATE OF ARKANSAS

BOARD OF CORRECTIONS

Section Number:

002

Page Number:

1 of 1

Board Approval Date:

8/22/88

Supersedes:

AR 002

Dated:

11/30/79

Reference:

Effective Date:

2/23/89

SUBJECT: Authority of Unit Wardens, Center Supervisors, Administrators, or Designees

I. POLICY:

The Director shall delegate authority to the Unit Wardens/Center Supervisors/Administrators or appropriate administrative designees to act on all matters related to the unit/center operational areas, to manage all programs, activities, inmates, personnel and volunteers connected with the unit/center/operational areas.

II. EXPLANATION:

All units of the Arkansas Department of Correction shall have a Unit Warden who is in charge and an Assistant Warden to whom is delegated the authority in the absence of the Unit Warden. All centers/operations have a Center Supervisor/Administrator who is in charge or, in his/her absence, a designee who has been approved for the delegated authority. One of these individuals must be on call at all times and in charge of the affairs of the unit/center/operations.

- A. During the absence of the Unit Warden from the unit's grounds, the Assistant Warden/designee shall be in complete charge of the unit.
- B. During the absence of the Center Supervisor/Administrator from the center/operations' grounds, a designee will be in complete charge of the center/operations.
- C. The Unit Warden/Center Supervisor/Administrator shall submit a list of staff members who may be designated as the duty Warden/designee in his/her absence from the unit/center/operations to the Director for review and approval. The list will consist of the employee's full name, job title, home address, and telephone number, and updated when changes occur.
- D. When the Unit Warden/Center Supervisor/Administrator is absent from a unit/center/operation for an extended period of time, the appropriate Assistant Director and/or the Director shall be notified.

AR002

(42)

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ADMINISTRATIVE REGULATIONS

STATE OF ARKANSAS

BOARD OF CORRECTIONS

Section Number:	Page Number:
001	1 of 2
Board Approval Date:	
11/16/90	
Supersedes:	Dated:
001	10/20/79
Reference:	Effective Date:
	12-10-90

SUBJECT: Administrative Regulations, Directives and Memoranda

I. AUTHORITY:

The Board of Correction is vested with the authority to promulgate Administrative Regulations by Act 50 of 1968 as amended by the Administrative Procedures Act (Act 434 of 1967 as amended).

II. PURPOSE:

This Administrative Regulation establishes the process by which the Arkansas Department of Correction formulates, amends and repeals Administrative Regulations, Directives, and Memoranda.

III. APPLICABILITY:

Administrative Regulations 001 applies to the Board of Correction, the Director, and such staff as the Director may charge with the responsibility of formulating, amending, and/or reviewing departmental regulations and policies.

IV. DEFINITIONS:

- A. Administrative Regulations: Official statements, approved by the Board of Correction and the Office of the Attorney General, and filed with the Secretary of State, of the general policies which guide the operation of the Arkansas Department of Correction.
- B. Administrative Directives: Official statements, authorized by the Director, which explain Administrative Regulations, laws, policies, and establish specific procedures for their implementation throughout the Department.
- C. Administrative Memoranda: Official statements specifying procedures for applying an Administrative Regulation or Directive, a law or policy to a particular area of operation. An Administrative Memorandum may also be issued to establish day-to-day operational procedures not specifically covered by Administrative Regulations, law or policy. The Deputy

Director, Assistant Director, Administrator, or Warden/Center Supervisor responsible for operation of that area must approve or author the Administrative Memorandum.

V. POLICY:

It shall be the policy of the Department to formulate such Administrative Regulations, Directives and Memoranda to provide for the lawful, safe, orderly, and responsible operation of the Department. Applicable staff shall be notified of, provided access to, trained if necessary and held responsible for abiding by these policies. The Warden/Center Supervisor is responsible for placement of Regulations, Directives and Memoranda that are applicable to the inmate population in areas where inmates will have access to them. It is the responsibility of the Warden/Center Supervisor to make sure the inmate population is aware of the guidelines applicable to them.

VI. PROCEDURES:

- A. The procedures for formulating, amending or deleting an Administrative Regulation, Directive, or Memorandum will be specified in an Administrative Directive.
- B. Those staff authorized to do so, shall issue Administrative Directives and Memoranda, as necessary to guide staff in implementation of Administrative Regulations and to regulate day-to-day operation in specific areas.
- C. Pre-Service and In-Service training shall be conducted to familiarize staff with all Administrative Regulations, Directives, and Memoranda. The issuing authority shall ensure that affected staff are notified of, provided access to, trained if necessary and held responsible for abiding by these policies.
- D. All Administrative Regulations, Directives and Memoranda should be reviewed, at least annually.
- E. Administrative Regulations and Directives shall be distributed to the Deputy Director and Assistant Directors, Administrators, Wardens/Center Supervisors and others identified by the Management Team. It is mandatory that a current Administrative Regulation manual be maintained by those on the distribution list, and that every employee sign for their copy or after being briefed about the Administrative Regulation.

EX 16

1 2 >
(2 screens)

29 U.S.C.A. § 654

United States Code Annotated Currentness

Title 29. Labor

Chapter 15. Occupational Safety and Health (Refs & Annos)

➔§ 654. Duties of employers and employees

(a) Each employer--

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this chapter.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this chapter which are applicable to his own actions and conduct.

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Ex 17

1 2 3 »
(3 screens)

29 U.S.C.A. § 655

United States Code Annotated Currentness

Title 29. Labor

* Chapter 15. Occupational Safety and Health (Refs & Annos)→ **§ 655. Standards**

(a) Promulgation by Secretary of national consensus standards and established Federal standards; time for promulgation; conflicting standards

Without regard to chapter 5 of Title 5 or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this chapter and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) Procedure for promulgation, modification, or revocation of standards

The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health and Human Services, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this chapter, the Secretary may request the recommendations of an advisory committee appointed under section 656 of this title. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health and Human Services, together with all pertinent factual information developed by the Secretary or the Secretary of Health and Human Services, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data

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or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6)(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: *Provided*, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for a temporary order under this paragraph (6) shall contain:

- (i)** a specification of the standard or portion thereof from which the employer seeks a variance,
- (ii)** a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,
- (iii)** a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,
- (iv)** a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and
- (v)** a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and

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specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health and Human Services certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health and Human Services designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health and Human Services, such examinations may be furnished at the expense of the Secretary of Health and Human Services. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health and Human Services, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health and Human Services, may by rule promulgated pursuant to section 553 of Title 5, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this chapter than the national consensus standard.

(c) Emergency temporary standards

(1) The Secretary shall provide, without regard to the requirements of chapter 5 of Title 5, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with subsection (b) of this section, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Variances from standards; procedure

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Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Statement of reasons for Secretary's determinations; publication in Federal Register

Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this chapter, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Judicial review

Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) Priority for establishment of standards

In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health and Human Services regarding the need for mandatory standards in determining the priority for establishing such standards.

EX 18

1 2 »
(2 screens)

29 U.S.C.A. § 666

United States Code Annotated Currentness

Title 29. Labor

Chapter 15. Occupational Safety and Health (Refs & Annos)

→ § 666. Civil and criminal penalties

(a) Willful or repeated violation

Any employer who willfully or repeatedly violates the requirements of section 654 of this title, any standard, rule, or order promulgated pursuant to section 655 of this title, or regulations prescribed pursuant to this chapter may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each willful violation.

(b) Citation for serious violation

Any employer who has received a citation for a serious violation of the requirements of section 654 of this title, of any standard, rule, or order promulgated pursuant to section 655 of this title, or of any regulations prescribed pursuant to this chapter, shall be assessed a civil penalty of up to \$7,000 for each such violation.

(c) Citation for violation determined not serious

Any employer who has received a citation for a violation of the requirements of section 654 of this title, of any standard, rule, or order promulgated pursuant to section 655 of this title, or of regulations prescribed pursuant to this chapter, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$7,000 for each such violation.

(d) Failure to correct violation

Any employer who fails to correct a violation for which a citation has been issued under section 658 (a) of this title within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 659 of this title initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than \$7,000 for each day during which such failure or violation continues.

(e) Willful violation causing death to employee

Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 655 of this title, or of any regulations prescribed pursuant to this chapter, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.

(f) Giving advance notice of inspection

Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

(g) False statements, representations or certification

Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(h) Omitted

(i) Violation of posting requirements

Any employer who violates any of the posting requirements, as prescribed under the provisions of this chapter, shall be assessed a civil penalty of up to \$7,000 for each violation.

(j) Authority of Commission to assess civil penalties

The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

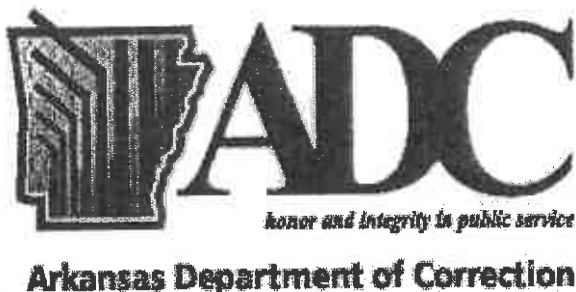
(k) Determination of serious violation

For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(l) Procedure for payment of civil penalties

Civil penalties owed under this chapter shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

EX 19



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

ADMINISTRATIVE DIRECTIVE

SUBJECT: Hazardous Chemicals Program

NUMBER: 10-40

SUPERSEDES: 08-86

APPLICABILITY: To all employees, contractors and inmates

REFERENCE: A.C.A. § 8-7-1001 to 8-7-1016

PAGE 1 of 8

APPROVED: Original signed by Ray Hobbs, Director **EFFECTIVE DATE:** 12/24/2010

I. POLICY:

The purpose of this policy is to comply with Act 556 of 1991 entitled the "Public Employees Chemical Right to Know Act." It is the policy of the Arkansas Department of Correction to establish written policy, procedures and practices concerning the procurement, use, storage, inventory and disposal of all hazardous chemicals/materials.

II. EXPLANATION:

The written Hazard Communication Program will be implemented such that employees on-site, as well as employees coming in from another site, will receive information as needed for each hazardous chemical the employees may be exposed to while working during normal operating conditions and in foreseeable emergencies. The written Hazard Communication Program is available, upon request, to employees, their designated representatives and the Director of the Arkansas Department of Labor. Posters giving notice of the "Arkansas Public Employee's Chemical Right to Know Act" (Act 556 of 1991) shall be displayed at all locations where notices are normally posted within units/facilities.

III. DEFINITIONS:

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- A. MSDS – Material Safety Data Sheet
- B. NFPA – National Fire Protection Association
- C. PERPETUAL INVENTORY – A daily accounting record of the receipt and usage of a product, which is updated with each transaction of receipt or usage. Perpetual inventory tracks the amount of a product that should be in physical inventory at any given time and is reconciled with physical inventory.

IV. PROCEDURES:

A. Procurement of Hazardous Materials

An effective procurement program is the first major step in the control of hazardous materials as defined by the MSDS sheet. All employees shall make every effort to replace utilization of hazardous materials with a product less likely to be abused or misused in a correctional environment. Special care shall be exercised by all employees who are involved in the purchase and/or use of hazardous materials, i.e., gasoline, insecticides, lye, antifreeze, caustic acids, cleaning fluids, paint thinners, etc. Whenever possible, gasoline powered equipment should be replaced with diesel or electric powered products.

B. Hazardous Chemicals/Materials Inventory Control

1. Each area supervisor shall be responsible for the control and accountability of all flammable, toxic, caustic and other hazardous materials/substances used and/or stored in their respective area. A perpetual inventory shall be maintained on each hazardous chemical/material. Attachment A – Chemical Inventory Form shall be used in all areas. This inventory must be available in the chemical storage/use area.
2. The Fire/Safety Officer/designee shall inspect, or cause to be inspected, all storage areas and inventories for control and accountability of hazardous chemicals/materials as a part of the security inspection system.
3. Products/diluted products with a hazardous rating (0) or (1) for health, flammability and reactivity, using the guidelines from the MSDS, do not meet the definition of toxic material. All containers must be labeled and MSDS readily available. An inventory of these products should be maintained in the primary storage area for general control purposes but is not required in the usable area.

C. Description of Labeling System

1. The area supervisor shall ensure labeling of in-house containers.
2. The employees receiving the chemical shall be responsible for ensuring labeling on shipping containers. In the event the chemical is not labeled, under no circumstances will the chemical be used until it has been properly labeled.
3. Chemical manufacturers and distributors are required to label each container of hazardous chemicals. Employees must not remove these labels. If the hazardous chemical is placed into a secondary container, the new container must be properly labeled including appropriate hazard warnings. The area supervisor will ensure the labels remain legible and the container labels are replaced if they are removed or defaced.
4. The original label or the reproduced label on a secondary container must be legible, in English and prominently displayed on the container. If the department has an employee or inmate who reads only another language, the information will be added to the label in their language.

D. Inventory List and Material Safety Data Sheets (MSDS)

1. A list of hazardous chemicals/materials, regardless of quantity, using the identity (name) that is referenced on the appropriate Material Safety Data Sheet (MSDS), shall be maintained. In addition, any chemical present in aggregate quantities of 55 gallons or 500 pounds will be reported by each facility supervisor, by June 15th, to the Chief Deputy Director, and forwarded by the Chief Deputy Director to the Arkansas Department of Labor on July 1 of each year.
2. A master chemical inventory list will be maintained in an area designated by unit policy.
3. The identity of chemicals on this list shall be referenced to their appropriate MSDS.
4. The Fire & Safety Officer or designee shall be responsible for maintaining a master book containing the hazardous chemicals/materials list with corresponding MSDS.

5. When the MSDS is not received at the time of shipment, the area supervisor and/or Fire & Safety Officer will follow the procedures listed below:
 - a. Contact the supplier and request a copy of the MSDS.
 - b. Place a hold on using the chemical until the MSDS is received and employees and inmates have been trained if this chemical introduces a new hazard to the workplace.
6. Material Safety Data Sheets shall be made available upon request.

E. Employee Training

The Unit Training Officer or designee is responsible for training all employees. The format of the training program to be used as described below:

1. Employees:
 - a. Employees will be trained on employee rights under the "Public Employees Chemical Right to Know Act" (Act 556 of 1991 and Department of Labor Safety Code 12).
 - b. The Unit Training Officer or designee will go over the MSDS on chemicals in the employees' specific work areas.
 - c. A question and answer period will follow the training session.
 - d. The training will be repeated at least annually for all affected employees.
 - e. Employer's responsibilities under the Public Employees Chemical Right to Know Act.
 - f. The operations in their work area when hazardous chemicals are present.
 - g. The location and availability of the written communication program, list of hazardous chemicals, MSDS and Arkansas Public Employees Chemical Right To Know Act.
 - h. The methods that may be used to detect the presence or release of a hazardous chemical in the work area.

- i. The physical and health hazards of the chemicals in the work area.
 - j. The measures employees can take to protect themselves from these hazards.
 - k. The details of the Hazard Communication Program developed by the unit, including an explanation of the labeling system, the MSDS's and how employees can obtain and use the appropriate hazard information.
1. When a new hazard is introduced into the workplace, the Unit Training Officer or designee will immediately hold a class to re-train affected employees regarding pertinent information.
 2. New Employees: Prior to their job assignment, new employees and transferred employees will go over steps "a" through "l" listed above.

F. Hazard on Non-Routine Tasks

1. The Maintenance Supervisor or designee shall be responsible for informing employees of the hazards of non-routine tasks, with the exception of fire related tasks. Then the Fire and Safety Officer shall be responsible.
2. If non-routine tasks are identified that expose employees to chemical hazards, the Maintenance Supervisor, or designee and, if need be, the Fire and Safety Officer will assess the hazards associated with the particular task and train the affected employees in accordance with the training requirements of this written hazard communication.

G. On-Site Contractors (Multi-Employer Workplaces)

1. The Maintenance Supervisor or designee shall be responsible for informing on-site contractors of hazards their employees may be exposed to while performing their work.
2. Contractors that perform services on the compound shall receive information and training regarding the unit's hazard communication program prior to any work activities. The training will be consistent with the training program outlined for unit employees. This will ensure that contractors are aware of any chemical hazards that they may encounter. This also ensures that contractors have access to the MSDS.

65

3. Contractors will be required to declare to Arkansas Department of Correction officials any hazardous chemicals brought onto the compound and provide ADC officials with access to the MSDS for these chemicals. ADC officials will then be responsible for providing any pertinent hazard information to affected employees.
4. If potential exposures exist, the employee(s) should request to review the appropriate MSDS for these chemicals. Employees should also ask for any pertinent hazard communication information deemed necessary to ensure their safety, health and welfare.

H. Inmate Training

Inmates will be trained during weekly safety meetings conducted by the area supervisor. If a new hazardous chemical/material is received, a safety meeting shall be conducted regarding proper use and hazards prior to the product being used. Safety meetings shall be documented and on file for review. A copy of the agenda for all weekly safety meetings and sign-in rosters shall be forwarded to the Fire/Safety Officer. The original safety meeting and sign-in roster shall be filed in date order by the supervisor of the department that conducted the meeting.

I. Storage

NFPA requirements shall be closely observed in the storage of hazardous chemicals/materials. Copies of this document are available from the Fire & Safety Officer.

1. Flammable liquids shall be kept in approved storage containers when not actually in use. Flammables, such as gasoline, should be stored outside the perimeter fence whenever possible. Only the amount required to complete a specific task should be inside the perimeter fence and shall be under strict control of the supervisor.
2. Inside storage rooms for flammable and combustible liquids shall be of fire resistant construction, adequate ventilation and spark-proof light switch.
3. Outside storage areas shall be graded to divert spills away from exposure or be surrounded with curbs or dikes at least six inches high. The area shall be protected against tampering or trespassing where necessary and shall be kept free of weeds, debris and other combustible materials not necessary to the storage.

66

4. Toxic and caustic materials shall be stored inside ~~securely~~ constructed locked containers or inside locked rooms available only to designated employees.

J. Use of Flammable Materials

1. Under no circumstances shall gasoline be used for cleaning. Other solvents, or other cleaning products with a flashpoint above 100 degrees Fahrenheit shall be used.
2. No inmate shall be permitted to use or possess any material determined hazardous unless the inmate is under the close supervision of qualified staff.
3. While using flammable liquids with a flashpoint below 100 degrees Fahrenheit, there must be adequate ventilation provided at a rate of not less than one cubic foot per minute per square foot of solid floor area.

K. Disposal of Hazardous Materials

All hazardous chemicals/materials shall be disposed of in accordance with local, state and federal regulations.

L. Written Hazard Communication Program

The written hazard communication program shall be reviewed at least annually to ensure its continued effectiveness. The program will be modified as changes and conditions warrant in order to maintain compliance with the "Public Employees Chemical Right To Know Act." Copies of the written hazard communication program are available to all employees and their designated representatives. The program is also available to the Director of the Arkansas Department of Labor and his representatives. A copy of this program may be obtained from the Unit Training Officer or the Fire & Safety Officer.

V. REFERENCES:

Attachment A – Chemical Inventory Log

10-40

10Dec17

67

ATTACHMENT A

CHEMICAL INVENTORY LOG _____ UNIT _____

CHEMICAL NAME:	AREA OF USAGE

MONTH/YEAR: _____ UNIT OF MEASUREMENT _____

PROTECTIVE EQUIPMENT TO BE ISSUED: _____

[illegible]

MAR 13 2015

RECEIVED
CLAIMANT

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

AHMEEN MUMIT (ADC 095017)

V.

NO. 15-0600-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


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 12 day of March, 2014, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Ahmeen Mumit (ADC 095017)
East Arkansas Regional Unit
PO Box 970
Marianna, AR 72360-0970


LISA MILLS WILKINS Ark. Bar #87190

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Ahmeen Mumit #95017

Claimant

NO. 15-0600-CC

Arkansas Department of Correction

Respondent

MOTION TO COMPEL REQUEST
FOR PRODUCTION OF DOCUMENTS

Arkansas Claims Commission
MAY 28 2015
RECEIVED

COMES NOW Claimant Ahmeen Mumit #95017, Pro'se, and for his Motion To Compell Request for Production of Documents states;

1. Claimant is an inmate in the Arkansas Department of Correction currently incarcerated at the East Arkansas Regional Unit

2. Ark. R. Civ. P. 37(a)(2) requires the court to be petitioned when a party in response to a request under Rule (34) fails to respond or objects a discovery request.

3. On March 20, 2015 Claimant filed a Request for Production of Documents and Admissions Propounded to Jennifer Norris

4. On April 7, 2015 Claimant filed a Request for Production of Document and Admissions Propounded to Stephen Williams

5. Respondents have responded to Claimant's discovery request indicating some of the documents were:

- (a) Unavailable at this time. Response will be Supplemented at a later date
- (b) Irrelevant and not likely to lead to any relevant evidence
- (c) Violated or jeopardize safety and security of the institution and;
- (d) Not entitled grievance document and internal affairs investigative reports.

6. Accordingly, Claimant contends that Respondent's objections are invalid as detailed in the Brief In Support of Motion To Compell pursuant Arkansas Rule of Civil Procedure 37

7. Claimant Attempted to resolve this discovery dispute by conferring with the Respondent's undersigned Counsel. The requested documents were not produced.

Wherefore, the Claimant pray this Motion To Compell Request for Production of Documents be granted and for all other just and proper relief which he may be entitled.

Respectfully Submitted,

Ahmeen Mumit

Ahmeen Mumit #95017

P.O. Box 920

Marianna, Ar. 72360

CERTIFICATE OF SERVICE

I, Ahmeen Mumit, Pro's Claimant, do hereby certify that on 21st day of May 2015 I mailed the document by U.S. Postal Service to

Lisa Wilkins
P.O. Box 8107
Pine Bluff, Ar. 71611

Ahmeen Mumit 72

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Ahmeen Mumit #95017

Claimant

NO. 15-0600-CC

Arkansas Department of Correction

Respondent

BRIEF IN SUPPORT OF MOTION TO
COMPEL REQUEST FOR PRODUCTION
OF DOCUMENTS

Claimant, Ahmeen Mumit #95017, an inmate currently incarcerated in the Arkansas Department of Correction's (ADC) East Arkansas Regional Unit in Briceville, Arkansas, alleges the violation of the common-law duty of care owed by the State to its prisoners. ADC negligently violated that duty "by" and "through" Jennifer Norris, Stephen Williams, and Donald Lowe negligence. Accordingly, Claimant seeks damages pursuant this cause of action.

STATEMENT OF FACTS

On March 20, 2015 and April 7, 2015

the Claimant served a request for production of documents pursuant to Rule (34) Ark. R. Civ. P. As set forth in the Claimant's motion, the Respondent objected to the discovery request. After attempting to resolve the discovery dispute in an affidavit to the undersigned Counsel, the requested documents were not produced.

ARGUMENT.

In responding to discovery request, respondents must produce document or other tangible things which are in their "possession, custody or control" Ark. R. Civ. P. 34(a). Responses must either state that inspection and related activities will be permitted as requested, or state an objection, including the reasons. Id. 34(b)(2).

Actual possession, custody or control is not required. "A party may be ordered to produce a document in possession of a non-party entity if that party has a legal right to obtain the document or has control over the entity who is in possession of the document." Soto v. City of Concord,

162 F.R.D. 603, 620 (N.D. Cal 1995). Allen v. Woodford, 2007 U.S. Dist. Lexis 11026, * 4-6, 2007 WL 309945, * 2 (E.D. Cal Jan. 30, 2007)

Such documents also include documents under the control of the party's attorney. Meeks v. Parson, 2009 U.S. Dist. Lexis 90283, 2009 WL 3303718 (E.D. Cal September 18, 2009); Axler v. Scientific Ecology Group, Inc., 196 F.R.D. 210, 212 (D. Mass. 2000) ("A party must produce otherwise discoverable documents that are in his attorneys' possession, custody or control."); Gray v. Faulkner, 148 F.R.D. 220, 223 (N.D. Ill 1992)

Production Request Propounded To Jennifer Norris

Production No. 8 Produce a complete copy of the operation and safety manual or procedures and instructions included with the make and model of the Fryer in question in Claimant Complaint

Response To No 2: Irrelevant and likely to lead to any relevant evidence.

Respondent's contentions are invalid. The operations and safety manual or instructions will detail not only the operations of the fryer's use, but the manufacturer's maintenance or cleaning requirements.

AR 11.03 IV(B)(3) expressly directed the Respondent to operate and maintain the fryer in accordance with the manufacturer's health and safety instructions. As set forth in the Claimant's Complaint No. 66 the Metal Container was-is an intrinsic part of the fryer specifically designed for discarded contents. It is also a safety feature. Therefore the operation and safety manual is not privileged information nor work product henceforth discoverable.

Respondent's boilerplate objection should be overruled. see Obiaju v. City of Rochester, Dep't of Law, 146 F.R.D. 293, 295 (W.D.N.Y. 1994)

Production No. 10: Produce complete copies of all chemical logs and the safety equipment issued to the inmates issued chemicals, from March 3, 2014 to October 1, 2014

Response To No. 10: Objection. Irrelevant and not likely to lead to any relevant evidence.

Claimant contends that the Chemical logs will prove that Respondent Jennifer Norris and her designee failed to issue the Claimant and others safety equipment when issuing him-them chemicals.

The inspection results of Linda Gibson's inspection, giving to the Claimant by Norris, verify that no safety equipment was being issued to inmates with chemicals.

The documents are not privileged information or work-product and is relevant to the claims in the Claimant's complaint No. 22, No. 29, hence forth discoverable.

Respondent's failed to explain how the Chemical logs are irrelevant, vague, ambiguous or whatnot. Blanket refusals in response to Rule 34 request for production are insufficient.

Burlington N. & Santa Fe Ry. Co. v. United States Dist. Court, 408 F.3d 1142, 1147 (9th Cir 2005);
Hickman v. Taylor 329 U.S. 495 (1947)

Production No. 11: Produce a complete copy of any and all written reprimands or disciplinary infractions in Jennifer Norris employee file directly related to neglect or failure to properly supervise or do job duties

Response To no. 11: Objection. Irrelevant and not likely to lead to any relevant evidence. Claimant is not entitled to any disciplinary information regarding any staff member as release of such information jeopardizes the safety and security of the institution.

Claimant does not seek personal information that may jeopardize the respondent's safety. Such as her telephone number, home address, social security number, names of children or spouse. Neither does Claimant seek the entire file of respondent. Only relevant documents directly related to negligence and repeated breaches of policies and procedures that prompted written reprimand(s). Evidence that Norris negligently breached the policies and procedures governing her employment as a supervisor of Food Service at the Tucker Unit could be probative of ADC's knowledge and disregard that she was not fit to hold a position of authority over inmates at Tucker Unit.

Inmates of Unit 14 v. Rebideau, 102 F.R.D. 122 (N.D.N.Y. 1984). Discovery is to be considered relevant where there is any possibility that the information sought may be relevant to the subject matter of the action." United States v. International Business Machines Corp., 46 F.R.D. 215, 218 (S.D.N.Y. 1974)

(emphasis in original). Relevant evidence is any "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. The requested document should thus be produced.

In the alternative if the respondent supplement response is a further objection, the Claimant request an "in camera" review of the documents to determine relevancy and necessary ~~to~~ redactions before being produced.

The Claimant has no other source to obtain the requested document except the respondent(s). The documents are "necessity" see. Frontier Refining Inc. v. Gorman-Rupp Co. Inc., 134 F3d 695, 702-703 (10th Cir 1998); Bohannon v. Honda Motor Co. Ltd., 127 F.R.D. 536, 538-39 (D.Kan. 1989)

Discovery of supervisory evaluations is extremely important in the need to support pattern and practice allegations Crawford v. Dominic, 469 F.Supp 260, 263 (E.D. Pa 1979).

Production No. 13: Produce complete copies of the written responses and documents submitted by Respondent Jennifer Norris to grievance # TU 14-00777.

Response to No. 13: Objection. Claimant has in his possession, or should have, all grievance documents to which he is entitled. He may seek one copy of his grievance from the grievance officer.

The requested information is relevant to the subject matter of Claimant's complaint. see. Scott v. Leavenworth Unified School District No. 453, 190 F.R.D. 583, 585 (D. Kan. 1999); Etienne v. Wolverine Tube Inc., 185 F.R.D. 653, 656 (D. Kan. 1999).

Respondent Norris admitted on an Inmate Grievance Investigation Worksheet that she "always" directed Claimant in what to do and how to do it. This evidence is relevant to the claim of Claimant was directed to deviate from the standard use of equipment (the metal container) and substituted it with a food insert that was not used for cleaning purposes. Claimant was not trained for such deviations.

Therefore all document request in production request No. 13 should be produced pursuant Ark. R. Civ. P. 26(b)(1) because those documents are not privileged information or work products, or confidential.

PRODUCTION REQUEST PRODUCE
TO STEPHEN WILLIAMS

Production No. 1: Produce complete copies of all notes, letters, statements, memorandas, emails, electronically stored communication between you (Stephen Williams) and Jenniter Norris directly relating to the August 1, 2014 accident

Response To No. 1: Objection. Such request is directed at a non-party, Stephen Williams. Discovery is only addressed to parties to the action.

This request for discovery is run pro tunc with Production Request No. 4 seeking all witness statement, incident reports (CO5's) and memorandas electronically filed and stored related to the August 1, 2014 injury of Claimant.

The respondent's undersigned counsel stated the documents were unavailable at this time. The response will be supplemented at a later date.

Wherefore all communication between Williams and Norris regarding the claimant's injury are relevant and should be produced.

Production No. 2: Produce complete copies of the internal affairs investigation, findings and conclusions, including all memorandas, letters, notes, photographs, charts, diagrams, transcripts and physical evidence relating to the August 1, 2014 accidental injury of Claimant.

Response To No. 2: Objection. Claimant is not entitled to internal affairs investigations.

The information in the internal affairs investigation is directly related to the August 1, 2014 injury of the Claimant.

This involve communication between the state's investigator and any witnesses providing an account of the accident, interviews of staff, photographs taken of the Fryer, Metal Container, food insert, and wall over the cooking machinery. Moreover, Claimant's medical records and statement from medical personnel mentioned in Claimant's Complaint.

Any privacy or Confidential or privilege assertions respondents may give in response to this Motion to Compell is not substantial, because it is not the kind of "highly personal" information warranting Constitutional safeguard.

It would be unreasonable to permit the state or respondent to determine what evidence in this case, when the Claims Commission principle duty is to protect the Claimant from abuses of power perpetuated by respondent's negligent acts.

Permitting respondent to determine what is discoverable insulate them from claims like this, making it virtually impossible for Claimant to develop the kind of information (case) needed to prosecute this claim.

The information (internal affairs investigation) is relevant and relevancy is broader

Construed at this stage of litigation and a request for discovery should be considered relevant if there is any possibility the information sought may be relevant to the subject matter of this action.

Smith v. MCI Telecommunications Corp., 137

F.R.D. 25, 27 (D. Kan. 1991). The claimant does not have to prove a prima facie case to justify a request which appears reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, any contentions of privacy, privilege or confidentiality asserted by the respondent should be considered a potential barrier because the state have produced internal affairs investigations in civil cases regarding Due Process claims and pro'se litigants that have taken voice analysis test to exonerate themselves from accusations of rape.

Nevertheless the results of the internal affairs investigation may reveal other circumstance which might clarify the intent of the parties.

Universal Motor Fuels, Inc. v Johnston 260 Kan. 58, 123, 917 P.2d 877, 881 (1996) (quoting

Richardson v. Northwest Central Pipeline Co. 241 Kan. 752, 758, 740 P.2d 1083 (1987))

Snouden v. Connaught Laboratories, Inc. 137 F.R.D. 336, 341 (D. Kan. 1991).

Production No. 38 Produce complete copies of any and all civil or tort claims filed against Stephen Williams, Jennifer Norris, and Donald Lowe relating to the allegations of negligence, failure to provide a safe work place or lack of supervisory precautions.

Response To no. 38 Objection. Irrelevant and not likely to lead to any relevant evidence.

This discovery request center around the subject matter detailed in Claimant's complaint and is thus relevant. Past tortious claims filed against the respondent(s) may lead to evidence revealing a pattern of negligent practices. The very neglect of care that resulted to the Claimant's injury.

Claimant urge the commission to caution the respondent's use of boilerplate responses or objections. Nearly all of the objections to Claimant's discovery are boilerplate objections. It is well settled that boilerplate objections are inadequate and tantamount to not making any objection at all.

Burlington N. Santa Fe Ry Co., 408 F.3d at 1149; Walker v. Lakewood Condo. Owners Ass'n, 186 F.R.D. 584, 587 (C.D. Cal 1999)

See also Marti v. Baires, NO. 1:08-CV-00653-AWI-SKO (PC) 2012 WL 2029720*5-6 (E.D Cal 2012)

Production no. 4: Produce complete copies of all weekly inspections conducted by you (Stephen Williams) or your designee of the Food Service (kitchen) area, dating from March 3, 2014 to October 1, 2014

Response To no. 4: Objection. Irrelevant and not likely to lead to any relevant evidence.

Again the respondent used a boiler plate objection. The weekly inspections conducted by Stephen Williams and Donald Lowe are vital to the Claimant's claim. The inspection results will prove that both Williams and Lowe knew about Norris's negligent act of creating and maintaining an unsafe work place or environment, yet did absolutely nothing to correct her negligent behavior. Producing the documents is in accordance with SAR 11.03 (Food Service) (1)(2) pg. 3 of 4 that suggest the Warden (Williams) will conduct the inspections with Norris (or her designee) and a member of the medical staff weekly.

Claimant's First Set of production request propounded to Jennifer Norris should run "nunc pro tunc" to this production request. Respondent's counsel agree to produce the results of the inspections at a later date. The request is exactly the same. It makes no sense to agree to \$5

produce the documents in one instance, then object to such in the next. Production No. 14

As set forth in previous compelling section in this brief, the information sought is not privileged, confidential, or work product, and it relevantly coincide with the subject matter outlined throughout Claimant's Complaint.

The blanket objection(s) of Respondent should waive any additional contentions

Marti V. Baires, No. 1:08-cv-00653-AWI-SKO-PC,
2012 U.S. Dist. LEXIS 77962, at *50, 2012 WL 2029720
(E.D. Cal June 5, 2012)

Production No. 5: Produce complete copies of photographs, duplicates, or negatives of the aluminum pot and food insert that led to Claimant's injury.

Response To No. 5: None.

The aluminum pot and food insert is in the respondent's possession and control. And is therefore a tangible object that can be photographed. The Claimant can not enter the Tucker Unit to inspect and photograph the items himself

The Claimant petition the Commission to direct the respondent to produce photographs of the pot and food insert. Or in the alternative, produce photographs of a replica of each discoverable tangible thing in question.

The actual or replica photographs of the aluminum pot and metal food insert is admissible trial evidence. It will allow the Commission to visually assess the items that respondent Norris ordered Claimant to use to clean the fryer.

The respondent is in possession and control of the items and have the power to produce the photographs.

Allen v. Woodford, NO. CV-F-05 1104 OWN LJO, 2007 WL 309945 *2 (E.D. Cal. Jan 30, 2007) (citing *In re Bankers Trust Co.*, 61 F.3d 465, 469 (6th Cir 1995); accord *Bevarie v Schwarzenegger*, No. 06 CV 00661 LAB (NLS) 2011 WL 719206, at *4 (S.D. Cal.

Feb 22, 2011); *Evans v Tilton*, NO. 1:07 CV 01804 DLB-PC 2010 WL 1136216, at *1 (E.D. Cal. Mar 19, 2010).

All of the production request detailed in this Motion To Compell are relevant. The photographs Claimant seek deal directly with valid subject matters in Claimant's complaint. All of the respondent's objections should be overruled.

In light of that the Claimant reserves the right to respond to any objections filed by the respondent to Admissions No. 8, No. 9, No. 11, and No. 12 propounded to Jennifer Norris.

Wherefore, the Claimant pray that his Motion To Compell Request For Production of Documents is granted in it's entirety, including all other relief the Claimant is entitled.

Respectfully Submitted

Ahmeen Mumit

Ahmeen Mumit #95017

P.O. Box 970

Marianna, Ar. 72360-0970

CERTIFICATE OF SERVICE

I, Ahmeen Mumit #95017, Pro'se litigant hereby certify on this 21st day of May 2015, that a copy of the foregoing pleading was mailed by United States Postal Service to the following;

Ms. Lisa Mills Wilkins
DOC Attorney Supervisor
P.O. Box 8707
Pine Bluff, Ark. 71611

Ahmeen Mumit
Ahmeen Mumit

Lisa Wilkins
P.O. Box 8707
Pine Bluff, Ar. 71611

Arkansas
State Claims Commission
MAY 11 2015

RECEIVED

May 1, 2015

Re: Ahmeen Mumit #95017
Claim #15-0600-cc (Conferring Affidavit)

Mrs. Wilkins,

April 29, 2015 I received your responses (dated April 27, 2015) to my Admission and Request For Production of Documents.

You failed to properly respond to discovery request.

The first set of Production Request (file marked March 26, 2014) Nos. 1, 2, 3, 4, 5, 9 and 14 are in your client's possession and should have been immediately obtained and submitted. You submitted absolutely nothing at all.

Production Request Nos. 6 and 12 requested photographs of the Fryer (it's make and model), Metal Container and the Stainless
(1)

Steel wall over the cooking machinery.
The make, model, guidelines and instructions to/of the Fryer is commensurate with AR 11.03 VI B(3) which expressly state that equipment is to be used, operated, and maintained in accordance with the manufacturer's "safety instructions". The requested manual(s) is relevant to my complaint.

Furthermore, the requested photographs of the Fryer, Metal Container and Stainless steel wall is within the guidelines of discovery. Rule (3) of Civil Procedure (Rule 34).

Since I can not enter the Tucker Unit to inspect and photograph the things myself, it is your responsibility to produce such.

Productions Request 7, 8, 10, 11, and 13 were objected to.

Mrs. Wilkins, objections on the grounds that the request are irrelevant and not likely to lead to any relevant evidence is incorrect. Moreover, such boilerplate objections are improper. *Paulson v. Case Corp.* 168 F.R.D. 285, 289 (C.D. Cal 1996)

Your response(s) or objections don't fulfill the burden of explaining the objection(s).
(2)

I am requesting immediate submission of the requested document(s).

Production Request file marked April 16, 2015 No. 1 specifically deal with communication regarding the August 1, 2014 accident. Such is clearly relevant under Rule 26(b)(1). And is not confidential or privilege information. That brings me to Production Request No 2. I requested all relevant documents of any internal affairs investigation conducted regarding the accident and violation of policy by Jennifer Morris.

Even when the information sought is privilege or confidential, the confidential privilege or privacy can be invaded when the need for the information outweighs whatever privacy right the respondent (or others) may have.

Finally, the remaining Production Request No. 3, 4, 5 6, and 7 are all relevant to my claim(s).

Ms. Wilkins, this is my attempt to confer and resolve the discovery dispute.
(3)

If you fail to produce the requested discovery, I will promptly file a Motion To Compell and Sanction for your deliberate refusal to comply with discovery rules.

You have submitted absolutely nothing. Moreover, the court has not approved a stipulation granting additional time beyond that prescribed — 30 days. Nor have I consented to any stipulation.

The ploy being used to throw the legitimate prosecution of my claim(s) is an outright abuse of the discovery process.

I have enclosed both March 24, 2015 and April 14, 2015 Production Requests with this affidavit in the attempt to confer.

Respectfully Submitted,

Ahmeen Mumit

Ahmeen Mumit #95017

P.O. Box 970

Marianna, Ar. 72360

CERTIFICATE OF SERVICE

I certify that a copy of the Conferring Affidavit has been served this 1st day of May 2015, on the Respondent by United State Postal Service

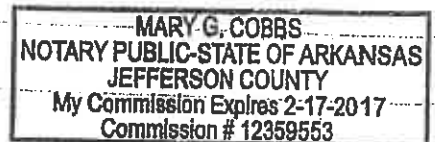
Lisa Mills Wilkins
P.O. BOX 8707
Pine Bluff, Ar. 71611

Ahmeen Mumit
Ahmeen Mumit #95017

Sworn and Subscribed before me, a Notary Public, on this 01 day of May 2015

Mary G. Cobbs
NOTARY PUBLIC

cc: Brenda Wade
101 East Capitol Ave, Suite 410
Little Rock, Ar. 72201-3823



Mrs. Lisa Wilkins
P.O. Box 8707
Pine Bluff, Ar. 71611

Arkansas Claims Commission
OCT 27 2015
RECEIVED

October 20, 2015

Ahmeen Mumit # 95017

Claim # 15-0600-CC

v.

AR. Dept. of Correction

CONFERRING AFFIDAVIT

Dear Mrs. Wilkins,

You have failed to respond to my Second Set of Interrogatories and Request for Production of Document Propounded to Respondent.

The pleadings were filed September 8, 2015. The October 8, 2015 deadline has passed without a reason for your failed response.

As stated according to Ark. R. Civ. Pro. any objection(s) to the Interrogatories have been waived.

Finally, Mrs. Wilkins you have repeatedly violated the Ark. R. Civ. Pro. throughout the proceedings of this case. Refusing 94

to provide discovery, ignoring a court order and whatnot.

This is my good faith effort to resolve the dispute over discovery. If my effort is ignored I will file the necessary motions to compel.

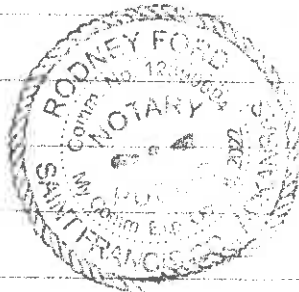
Respectfully Submitted

A. Mumit

Ahmeen Mumit #95017

P.O. Box 970

Marianna, Ar. 72360



SWORN and SUBSCRIBED BEFORE ME, a NOTARY PUBLIC on this 20 day of Oct. 2015

Com exp: Oct. 18, 2022 Rodney Ford
NOTARY PUBLIC

AM/
cc: Mrs. Brenda Wade, Claims Commission Director.
Mrs. Jeannie Roberts, Arkansas Democrat Gazette

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Ahmeen Mumit #95017

Claimant

15-0600-02
Arkansas Dept. of Correction

Respondent

MOTION TO COMPEL A RESPONSE
TO CLAIMANT'S FIRST SET OF
INTERROGATORIES PROPOUNDED
TO RESPONDENT JUNE 25, 2015

Arkansas Claims Commission
OCT 13 2015
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COMES NOW Ahmeen Mumit #95017, Pro'se, and for his Motion To Compell A Response To Claimant's First Set of Interrogatories Propounded To Respondent states;

1. Claimant filed his First Set of Interrogatories June 25, 2015

2. Respondent failed to respond to the Claimant's Interrogatories in the prescribed thirty (30) day time period pursuant to Ark. R. Civ. P. 33(b)(3).

3. Accordingly, any objections to the Interrogatories are untimely and should be waived by the Claims Commission

4. Respondent has made absolutely no good faith showing for the failure to respond. Neither has any additional time been ordered by the Claims Commission.

5. Respondent's attorney, Ms. Lisa Wilkins, has deliberately and recklessly abused the discovery process. She will continue to "thumb her nose" until the Claims Commission issue legal and monetary sanctions to deter her behavior.

Wherefore, Claimant prays his Motion To Compell be granted, including all other relief he is entitled

Respectfully Submitted,
Ahmeen Mumit
Ahmeen Mumit #95017
P.O. Box 970
Marianna, Ar. 72360

CERTIFICATE OF SERVICE

I, Ahmeen Mumit #95017, Prose Litigant, do hereby certify that a copy of the foregoing pleading was mailed on this 30th day of September 2015 by United States Postal Services to the following:

Ms. Lisa Mills Wilkins
ADC Attorney
P.O. Box 8707
Pine Bluff, Ar. 71611

Ahmeen Mumit
Ahmeen Mumit #95017

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Ahmeen Mumit #95017

Claimant

v
AR Dept. of Correction 15-0600-cc

Respondent

MOTION FOR ORDER COMPELLING
DISCOVERY FOR FAILURE TO
SUPPLEMENT RESPONSES

Arkansas Claims Commission

OCT 27 2015

RECEIVED

COMES NOW Ahmeen Mumit #95017, Pro'se, and for his Motion For Order Compelling Discovery For Failure To Supplement Responses states;

1. The Claims Commission has jurisdiction to issue an order compelling discovery pursuant to Ark. R. Civ. Pro. 37 (a)(e)
2. The Claimant filed his Motion For Discovery Deadline or Cut OFF Date(s)
3. The Claims Commission granted Claimant's motion, issuing an order to Respondent to supplement discovery thirty (30) days from the date of the order. See Ex. A
4. The order was issued July 9, 2015, the Respondent did not supplement discovery by August 9, 2015, and still have not complied. 99

5. Ark. R. Civ. Pro. 37(e) state in pertinent part;

If a party fails to supplement responses as required by Rule 26(e) and another party suffers prejudice, then upon motion of the prejudiced party (made before or at trial) the court may make any order to protect the moving party, imposing any sanction allowed by subdivision 37(b)(2)(A)-(C).

6. The Claimant has suffered prejudice throughout the proceedings in this case. Respondent and their attorney Mrs. Lisa Wilkins did not respond to Claimant's First Set of Interrogatories, deliberately ignored the Order to Supplement discovery and failed to respond to Claimant's Second Set of Interrogatories and Request For Production of Documents.

7. The Claims Commission is aware of Mrs. Wilkins and her client's repeated violation of Ark. R. Civ. Pro. yet remain silent. It is a travesty of justice to allow the violations to continue without legal or monetary sanctions.

8. The subdivision of (b)(2)(A)-(C) expressly state, "any Designated facts shall be taken to be established"

9. It is an undisputed fact that

- (a) Jennifer Norris gave Claimant the results of Linda Gibson inspection and ordered him to clean out the fryer.
- (b) Claimant was not properly trained
- (c) Respondent failed to issue safety equipment to Claimant (and other inmates) each time he was issued chemicals
- (d) Respondent violated the strict liability theory. Claimant was ordered to use defective equipment to clean the fryer, and that defective equipment proximately caused his severe injury.

10. Respondent and their attorney has provided the Claims Commission absolutely no reason for the violation of the Ark. R. Civ. Pro.

11. The Claimant has made every good faith effort to obtain discovery without and with action from the Claims Commission. All to no avail. Mrs. Wilkins and her client will continue to abuse this process and level her discriminatory practices against Claimant until the Claims Commission break it's silence.

12. There is absolutely no way the Claimant can adequately prepare to argue his case without the documents the Respondent and their attorney refuse to turnover.

Wherefore, Claimant pray his Motion For Order Compelling Discovery For Failure To Supplement Responses is granted, including any and all other relief he is entitled.

Respectfully Submitted,

Ahmeen Mumit

Ahmeen Mumit #95017

P.O. Box 970

Marianna, Ar. 72360

CERTIFICATE OF SERVICE

I, Ahmeen Munit #45017, Pro'se Litigant, do hereby certify that a copy of the foregoing pleading was mailed on this 27th day of October 2015 by United State Postal Service to the following:

Mrs. Lisa Wilkins
ADC Attorney
P.O. Box 8707
Pine Bluff, Ar. 71611

Ahmeen Munit
Ahmeen Munit #45017

cc: Mrs. Jeannie Roberts

Ex. **A**

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

July 9, 2015

Mr. Ahmeen Mumit, #095017
P.O. Box 970
Marianna, AR 72360

Re: Ahmeen Mumit, #095017
Claim #: 15-0600-CC
Vs.
AR Dept. of Correction

Dear Mr. Mumit:

The Claims Commission has reviewed your "Motion for Discovery Deadline or Cutoff Dates" and has made the decision to grant this pleading. The Respondent has thirty (30) days from this letter to supplement responses.

Sincerely,

A handwritten signature in cursive script that reads "Brenda Wade".

Brenda Wade
Director

BW/

cc: Ms. Lisa Wilkins, Attorney, DOC

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Ahmeen Munit #95017

Claimant

v
AR Dept. of Correction 15-0600-CC

Respondent

CLAIMANT'S SUPPLEMENT MOTION
FOR ORDER COMPELLING DISCOVERY
FOR FAILURE TO SUPPLEMENT
RESPONSES AND FOR PROTECTIVE ORDER

Arkansas
State Claims Commission
NOV 05 2015

RECEIVED

COMES NOW Ahmeen Munit #95017, Pro'se,
and for his Supplement Motion For Order
Compelling Discovery For Failure To Supplement
Responses and For Protective Order states;

1. Pursuant Ark. R. Civ. P. Rule 37(c)
and Rule 26(c) the Claims Commission
has authority to sanction and issue a
protective order in the above-styled claim.

2. Claimant filed a Motion For
Discovery Deadline or Cutoff Date(s) June
25, 2015.

3. The Claims Commission issued an Order July 9, 2015 Ordering the Respondent to supplement discovery request thirty (30) days from the date of the Order. — August 9, 2015. Respondent failed to comply.

4. October 19, 2015 the Claims Commission advised the Claimant that a hearing date (Wednesday December 9, 2015 at 9:00 A.M.) is scheduled for the present case.

5. All material or discovery documents must be submitted to the Claims Commission on or before Wednesday November 25, 2015.

This is to ensure that the Commissioners have ample time to review the "entire content" of the Claimant's claim to prepare for the hearing.

6. The Commissioners can not adequately review the evidence in this case without the Respondent and their attorney providing answers to "all" interrogatories and turning over "all" requested documents in their "entirety." Any partial submitting of discovery requested renders the Commissioners

ability to properly weigh the evidence and facts inadequately. Furthermore, it prejudice the Claimant's defense.

7. In Viking Ins. Co. of Wisconsin v. Jester 1992, 310 Ark. 37, 836 S.W.2d 371.

The insurer failed to obey the court order requiring the insurer to produce its "entire" auto accident claim file.

The insurer's employees violated complying within the prescribed time and provided absolutely no explanation.

The court sanctioned the insurer, declaring default against the company as to liability and striking the answers provided to discovery request.

6. The actions of Respondent and their attorney, Mrs. Wilkins, in this case is strikingly similar as to discovery violations.

The Commission's order directing Respondent to supplement responses to Claimant document request was issued to stop the unnecessary delay of proceedings.

The State's attorney withheld the documents pending the outcome of an alleged Internal Affairs investigation.

9. Claimant believed this to be a legal ploy to annoy and oppress him. Compelling him to research, draft, and file interrogatories inquiring about the name of the alleged Internal Affairs investigator investigating the August 1, 2014 accident.

The Respondent failed to produce evidence of the investigation. To this day no response has come from the Interrogatories Claimant filed June 25, 2015.

10. Respondent and their attorney flagrant disregard to comply with discovery rules and the Commission's Order is an embarrassment to the judicial system.

And to topple that with the outright refusal to respond to Claimant's Second set of Interrogatories and Request for Production of documents (filed September 8, 2015), sends the message that the Arkansas Department of Correction can endanger the safety of Claimant, admit to causing his injury and systematically sabotage the legal proceedings in this case to avoid prosecution.

11. Ark. R. Civ. P. Rule 37(e) Failure To Supplement Responses states in pertinent part;

"the court may impose any sanction allowed by subdivision (b)(2)(A)-(C) of this rule."

Claimant moves the Commission to impose the provisions of subdivision (b)(2)(A)-(C) by ordering the following;

- (a) Striking any defense the Respondent use to oppose Claimant's designated claim and;
- (b) Ordering Respondent to submit "all" production of documents requested in their "entirety" in ten (10) days or suffer judgment by default as to liability.

PROTECTIVE ORDER

12. Claimant moves the Commission to issue a protective order prohibiting Respondent from using any documentation or references thereof

related to the August 1, 2014 accident, in any pleading(s) or at the subsequent hearing (December 9, 2015 at 9:00 A.M.) until "all" requested discovery documentation is turned over to the Commission and Claimant.

This should also include any and all video, audio, or other electronic recordings(s) or photographs.

13. The terms set forth in this motion are commensurate with Ark. R. Civ. P. Rule 26(c)(2). Allowing discovery to be obtained and used only under specific terms and conditions.

Respondent should not be permitted to use any documents relating to the matter in question without turning copies of "all" documentation to the Commission and Claimant.

Permitting Respondent to do so prejudice the Commissioner review of the "entire content" of the Claim and renders Claimant's defense useless.

Wherefore, Claimant pray his Supplement Motion For Order Compelling Discovery For Failure To Supplement Responses and For Protective Order is granted including all other relief he is entitled.

Respectfully Submitted

Ahmeen Mumit
Ahmeen Mumit #95017
P.O. Box 970
Marianna, Ar. 72360

CERTIFICATE OF SERVICE

I, Ahmeen Mumit #95017, do hereby certify that a copy of the foregoing pleading was mailed by United State postal Service to the following on this 21st day of October 2015

Mrs. Lisa Wilkins
P.O. Box 8707
Pine Bluff Ar. 76111

cc: Jeannie Roberts

Ahmeen Mumit
Ahmeen Mumit *ll*

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

AHMEEN MUMIT (ADC # 095017)

V.

NO. 15-0600-CC

ARKANSAS DEPARTMENT OF CORRECTION

Arkansas State Claims Commission
CLAIMANT
NOV 04 2015
RECEIVED
RESPONDENT

**RESPONSE TO MOTION FOR PRODUCTION OF DOCUMENTS NOT PREVIOUSLY
PRODUCED**

COMES NOW the Respondent, Arkansas Department of Correction, and for its Response to the Motion for Production of Documents not Previously Produced, and responds as follows:

1. Nothing is requested to be produced in this Motion for Production of Documents.

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

CERTIFICATE OF SERVICE

I certify that a copy of the DISCOVERY RESPONSE has been served this 4 day of November, 2015, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

AHMEEN MUMIT (ADC # 095017)

EARU

P. O. Box 970

BRICKEYS, AR 72360-0970

Lisa Mills Wilkins

LISA MILLS WILKINS Ark. Bar #87190

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Arkansas
State Claims Commission
NOV 09 2015
CLAIMANT
RECEIVED

AHMEEN MUMIT (ADC # 095017)

V.

NO. 15-0600-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

**RESPONSE TO CLAIMANT'S SUPPLEMENT MOTION FOR ORDER COMPELLING
DISCOVERY FOR FAILURE TO SUPPLEMENT RESPONSES AND FOR
PROTECTIVE ORDER**

COMES NOW the Respondent, Arkansas Department of Correction, and for its Response to Claimant's Supplement Motion for Order Compelling Discovery for Failure to Supplement Responses and for Protective order, and responds as follows:

1. Claimant has filed in excess of a dozen pleadings including motions for discovery deadline cut off, second sets of discovery, discovery to persons who are not parties to the action, motions to compel on matters which would be supplemented when information is available, all which take up valuable time and resources of the commissioners and staff needlessly.
2. Claimant has requested much information which is duplicated and irrelevant in his duplicative and redundant pleadings which cloud the issues, such as salmonella reports and pictures of the fryer when his claim is all about a pan of hot greasy water slipping out of his hands and spilling into his left boot.
3. Claimant's feeble attempts at litigation are clouding the issues and creating an excessive amount of work which is bordering on harassment of this office and the Respondent.
4. Respondent has filed responses supplements to all known pleadings. Barring any further communication, no others will be sent unless succinctly spelled out what is missing, not simply referred to by a particular date and number.
5. Respondent has other claims to address and has expended all the time, efforts and attention this one is warranted without further explanation of what is missing.
6. Not all information will be provided due to the policy of the ADC and Arkansas law. Claimant has failed to state what information he is missing which is vital to his case that has not been provided.
7. Furthermore, the reasons requested for a protective order are not well grounded in the law and not substantiated by the facts. Claimant has failed to properly move for a protective order and this should be denied.

WHEREFORE, for the reasons submitted, Respondent prays that the Motion for Order Compelling Discovery and Protective Order be denied.

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 RESPONSE has been served this 5 day of September, 2015, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

AHMEEN MUMIT (ADC # 095017)

EARU

P. O. Box 970

BRICKEYS, AR 72360-0970



LISA MILLS WILKINS Ark. Bar #87190

STATE CLAIMS COMMISSION DOCKET
OPINION

45,000.00

15-0600-CC

Amount of Claim \$ _____

Claim No. _____

Ahmeen Mumit # 095017

Attorneys

Pro se

Claimant

Claimant

vs.

AR Department of Corrections

Lisa Wilkins, Attorney

Respondent

Respondent

State of Arkansas

March 4, 2015

Date Filed _____

Type of Claim _____

Negligence, Pain & Suffering,
Personal Injury

FINDING OF FACTS

This claim was filed for the negligence, pain & suffering and personal injury in the amount of \$45,000.00 against Arkansas Department of Corrections.

Present at a hearing December 9, 2015, 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 liability 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 liability on the part of the Respondent.

Date of Hearing December 9, 2015

Date of Disposition December 9, 2015

Chairman

Commissioner

Commissioner

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Ahmeen Mumit #95017

Claimant

Arkansas Dept. of Correction

15-0600-CC

Respondent

Motion For Reconsideration
OF Commission's Decision

Arkansas
State Claims Commission
JAN 11 2016

RECEIVED

Comes now, Ahmeen Mumit #95017, for his Motion For Reconsideration of Commission's Decision states;

Statement of Subject Matter
and Appellate Jurisdiction

The Claims Commission has subject matter jurisdiction because the complaint raised the question whether Respondent breached the duty owed to protect the Claimant from unreasonable risk of physical harm.

The Claims Commission has appellate jurisdiction under A.C.A. 19-10-211 because the dismissal of Claimant's claim was a final judgment. Judgment was entered on December 9, 2015

Statement of Issues Presented For Review

- 1) Whether the Claims Commission erred in not finding the Department of Corrections liable for the negligence of Supervisor Jennifer Norris (Norris) for breaching policy by replacing the fryer's metal container with a food insert, which was the proximate cause of Claimant's injury.
- 2) Whether the Claims Commission erred in not finding the DOC liable for negligence under the theory of strict liability.
- 3) Whether the Claims Commission erred in not finding the DOC liable for failure to train Claimant.

Statement of Case

This is a negligence claim brought by an inmate in the Arkansas Department of Corrections, who at the time of the claim was housed at Tucker Unit in Tucker Arkansas. He alleges that he was in

put at risk of physical harm by being ordered to perform a hazardous task associated with his job duty. The Claims Commission dismissed the claim on the grounds of failure to prove Respondent liable by a preponderance of evidence.

Statement of Facts

Claimant alleged under the penalty of perjury that he was called to Jennifer Norris (Norris) office, by her, and given the results of a prior inspection sheet. Norris assigned him the task of cleaning out the kitchen fryer. The Claimant wrote Norris's instructions on the inspection sheet, whereas the specific instructions of "what to do" and "how" she wanted the fryer cleaned were as stated "drain grease from fryer and flush with hot water." see Exhibit A

The fryer has a metal container that is used for disposing greasy contents. Norris had Claimant remove the metal container and replace it with a food insert. Norris then had the Claimant retrieve a large pot to pour the greasy contents from the fryer into after flushing it.

In performing the task, the food insert slipped from the rim of the pot and

went into Claimant's left boot, thus severely burning his left foot.

The Claims Commission held that the Respondent was not liable for Claimant's injuries due to the lack of evidence.

Summary of Argument

The Claimant's documentary evidence, testimony, Jennifer Norris's (Norris) admissions, and judicial confession in pleadings is a preponderance of evidence of negligence, wherefore the judgment should have been in Claimant's favor. Dismissal was therefore improper on the record before the Claims Commission.

Argument

Point 1

The Respondent Should Have Been
Liable For Breaching The Legal Duty
Owed To Claimant

The Department of Corrections is under a duty to provide inmates with a safe place to work and with environment

that is reasonably safe for performing required task. see Bridgewater v. State, 442 So. 2d 1214 (La. App. 1st Cir 1982) and Reed v. State, Department of Corrections 351 So. 2d 788 (La. App. 1st Cir 1977).

The Claimant testified that after he learned the metal container to the fryer would be difficult for him to empty, he asked Norris to have someone help him with disposing the metal container contents. For unknown reasons Norris refused Claimant's request for help, instead she ordered him to replace the metal container with a food insert. Defected piece of equipment. Replacing the metal container with a food insert took Claimant out of a position of safety and placed him in a position of "known" danger. therefore assuming the risk of injury.

As the leading kitchen supervisor at the Tucker Unit, Norris is familiar with policy. AR 11.03 plainly states in pertinent part;

Food service equipment shall be operated and maintained in accordance with the manufacturer's health and safety instructions. See ~~Exhibit~~ **H**

The policy used the words "operated" and "maintained."

Our focus is on the uses of the word "maintained." From the gist of the procedures of the policy (to ensure safety and health) maintained is understood to mean cleaning or keeping in a state of efficiency according to the manufacturer's safety instructions.

The record is silent as to what these safety instructions are. The Respondent failed to produce the instructions during the discovery stage of the claim.

In light of that failure we must turn to the legal test of liability for negligence.

Legal liability for negligence is based upon conditions involving unreasonable risk to another, and the established test of negligence is the conduct of a reasonably prudent person in like circumstances. See *Sam v. Englewood Ready-Mix Corp.*, 22 Ohio App. 2d 168, 259 N.E. 2d 507, 51 O.O. 2d 315 (1969), and *Hall v Hartford Accident and Indemnity Company*, 276 So. 2d 795 (La. App. 4th cir 1973) writ refused 281 So. 2d 753 (La. 1973). The Claimant may recover damages for an injury resulting from a negligent act of Norris if a reasonable 121

prudent person should have anticipated, under the same or similar circumstances, that injury to the claimant or someone else probably would result.

The question is whether Morris's actions or conduct were negligent.

The metal container of the fryer was used solely for discarded grease contents. It was equip with wheels and a built in handle in the front (see Exhibit B) to make it more accessible to remove from the fryer's lower compartment. The metal container was the only safe piece of equipment to store or discard grease or greasy water.

Although the metal container may have been heavier and more difficult to lift than the insert, using the insert for the purpose designated by Morris created a unreasonable risk.

The insert had to be removed, after being filled with hot water, from the lower compartment; grabbed by handless edges, drag across the floor, picked up and emptied into the pot.

The risk of danger was clearly foreseeable. A prudent person in the same or similar

Circumstances would have provided the Claimant the necessary help needed to coordinate lifting the metal container and disposing the greasy water.

Replacing the container with the insert put the Claimant in a position to use defective equipment to perform his job assignment, which was the proximate cause of his injury.

The foreseeable risk of injury to the Claimant who was assigned to clean the fryer created a corresponding duty to warn or take precautions to protect him. See, *Hill v. Ludin S. Associates*, 260 La. 542, 256 So. 2d 620 (1972).

Norris, the lead kitchen supervisor, asked that the work be done, knew that it was being done, and knew that policy instructed that the fryer be maintained or cleaned according to policy rather than deviating from it. Norris also knew that if she deviated from any portion of the policy, for whatever reason, the Claimant would be scalded by water from the insert, nevertheless she failed to take easily available precautions

Under the above facts, as a matter of law, the Department of Corrections breached its duty to provide a safe work place, safe equipment or otherwise take Supervisory or precautionary measures to protect against the risk posed.

Bridgewater v. State, 422 So. 2d 1214 (La. App. 1st Cir 1982) writ denied 432 So. 2d 383 (La 1983)

In Bridgewater, the safety device on a shearer had been removed and never replaced. If the guard had not been removed the accidental injury could not have occurred. The accident was reasonably foreseeable because of the absence of the safety device. The risk involved was held to be within the scope of duty owed by the State to the inmate.

Contributory Negligence

We now turn to the question of whether the Claimant was contributory negligent.

Contributory negligence is defined as conduct falling below the standard of care which Claimant should perform for his own protection. The Partur volume on this

Contributory negligence defense has the burden of proving it. *Smolinski v. Taulli* 276 So.2d 286 (La. 1973).

In the case of an inmate, the State has the burden of proving a preponderance of evidence the prisoner failed to exercise care commensurate with the hazard he faced. *Lee v. State Through the Department of Institutions*, 294 So. 2d 553 (La. App. 1st Cir 1974)

The State did not carry its burden in this case.

Norris testified that because Claimant put an excessive amount of water in the insert, that caused his injury.

The Claimant offered contrary testimony and evidence.

He testified that he did not put an excessive amount of water in the insert, that he was well aware of the level of water in it, and knew if it was filled beyond capacity it would be too dangerous to handle. With that knowledge, he testified he was not worried about the amount of water, he was simply following the orders of his supervisor (Norris).

The record show that he did not "voluntarily" assume the risk that led

to his injury. Norris ordered him to clean the fryer. She also ordered the insert (and pot) be used to do it.

There is contrary testimony in the record given by her denying ever giving the Claimant orders to use the (two pieces of) equipment. However, she confessed to doing so in a pleading. see Exhibit C

Proof

Judicial Confession Made In Pleading

In the Respondent's Motion To Dismiss dated August 12, 2015, paragraph 4 stated, "She (Norris) replaced the larger pan with a smaller pan approximately 14" by 11.5."

This is proof that the Claimant did not voluntarily use the insert (or pot).

Paragraph 7 of the motion stated "She (Norris) ordered for a smaller pan."

The courts have long settled "An admission in a pleading falls within the scope of a judicial confession and is "full proof" against the party making it." see, Cheatham 126 v. City of New Orleans 378 So. 2d 364 (La. 1979)

and Smith v. Board of Trustees of La 398 & 2d
1045 (La. 1981).

As indicated the Claimant was not contributory negligent. There is no evidence to support Norris's assertion that he put an excessive amount of water in the insert, or voluntarily used the equipment.

The Claimant had nothing whatsoever to do with creating or maintaining the dangerous situation. He simply used the equipment supplied to him and followed the instructions outlined to him.

He was not free to determine he would or would not perform the job known to be dangerous. See Stilley v. State, 376 So. 2d 1007 (La App. 1st Cir 1979) writ refused 378 So. 2d 1389 (La 1980).

One of the purposes of establishing (AR 11.03) policy is to impose a standard of care upon the party who knows or should have known the dangers of not following the procedures of that policy, and who is in the best position to eliminate the danger. When the party charged with the responsibility (Norris) of enforcing safety factors

fail to do so, the blame can not be placed on the Claimant for incurring the resulting accidental injury, especially considering the fact he followed his supervisor's orders. see Hall v. Hartford Accident Indemnity Company 278 So.2d 795 (La. App. 4th Cir 1973) writ refused 281 So.2d 753 (La 1973).

Norris's actions or conduct amounted to negligence, whereas the Claimant, as a matter of law, may recover damages for the injury resulting from her negligent conduct. Ray v Phelps, 488 So.2d 406 (La. App. 3rd Cir 1986); Brewington v. Louisiana Dept. of Corrections 447 So.2d 1184 (La. App. 3rd Cir 1984) writ denied 449 So.2d 1348 (La. 1984)

The decision of the Claims Commission should be reversed for the above reasons.

Points 2 and 3

Strict Liability and Failure To Train

Finally, we turn to the question of whether the Department of Correction is liable under the theory of strict liability and failure to train the claimant.

In Lones v City of Baton Rouge - Parish of East Baton Rouge 388 So. 2d 737 (La. 1980) the Claimant's burden of proof for strict liability is proving that the thing which cause injury was in the care or custody of the Respondent, that the thing had a vice or defect, that it occasioned an unreasonable risk of injury and that his injury was caused by the defect. (Citations Omitted [388 So. 2d at 739])

1. The Department of Corrections had the fryer in its care and custody which was involved in this accident.
2. The fryer was of a dangerous nature whereas its safety feature — metal container — was removed and replaced and did not provide a safety mechanism to prevent such injury as the one that occurred in the instant case; and
3. The the defect or vice (insert) created an unreasonable risk of injury to the Claimant and that his injury was caused by this vice or defect.
4. The Claims Commission erred in not finding the Department of Correction liable as a matter of law, absent victim fault.

The Claimant proved custody, defect, and causation. It was Norris's choice to use the insert (defected vice) to clean the fryer and was a substantial factor in causing Claimant's injury. Norris knew using the insert was defective. There were other options available which would have prevented the risk while performing the task. Victim fault must rise to the level of causing the accident before it will bar recovery. Rozell v. Louisiana Animal Breeders Co-Operative Inc. 496 So.2d 775 (La. 1986).

The Respondent's failed to establish victim fault and was thus liable under the theory of strict liability. The Claims Commissioner's decision should be reversed for the above reason(s).

Failure To Train

Norris testified that the Claimant was trained to perform the task in question. — clean the fryer.

To support this assertion the State produced several safety meeting sheets as proof. A close look at the record or topics of discussion of each safety meeting sheet

Clearly show the Claimant received absolutely no training or instructions during any safety meetings to perform the task Norris ordered to be carried out. see Exhibits D thru G.

The equipment used (insert and pot) were pieces of equipment designated solely for food storage and preparation. No other purpose.

In the interrogatories filed by the Claimant June 25, 2015, it stated;

Interrogatory No. 1: State if the Claimant was trained to use equipment (a food insert) designated for food service for cleaning purposes.

The Respondent's response stated;

Response to Interrogatory No. 1: Yes.

The Respondent or Norris failed to produce any proof. This is evidenced by the answer given to interrogatory No. 4

Interrogatory No. 4: State the names of the staff member that trained the Claimant to use food service equipment for cleaning purposes. 131

Response to Interrogatory No. 4: The food service supervisor.

The Respondent or Norris provided no names of any food service supervisor because she knew the Claimant was not trained to perform the task she ordered him to do. He was simply directed to take on a task he had never perform. He was not given any safety instructions, precautionary measures, or warning. Norris merely ordered the Claimant to use defected equipment to clean the fryer. She failed to provide reasonably safe equipment and a safe work place as legally required as a matter of law, see: *Bridgwater v. State*, 434 So. 2d 383 (La. June 27, 1983); *Reed v State Through the Department of Corrections* 351 So. 2d 788 (La. App. 1st Cir 1977).

The Claims Commission's decision should be reversed for the above reason(s).

Damages May Be Recovered
For Respondent's Liability

From the preponderance of evidence presented, the State's contention that the Claimant's accident would not have occurred if he

avoided putting an excessive amount of water in the insert, that he was trained to perform the job assignment of cleaning the fryer with food service equipment is supported by absolutely no evidence. Damages should have been awarded.

The Claimant sought \$15,000 for pain and suffering; \$15,000 for future pain and suffering and; \$15,000 for permanent physical and nerve damage.

There was no evidence introduced into the to prove that the Claimant was not severely injured. The greasy hot water undoubtedly caused him pain and suffering. He experienced being burned. He experienced grief and anxiety from the traumatic accident. The pain and grief culminated in the intense pain of having his foot non-surgically debrided for 30 days or more.

The medical personnel that offered testimony about pain medication the Claimant received, and Silvedine burn cream administered after each debridement procedure offered no evidentiary medical rebuttal. It is speculative and superficial to assume

that the Claimant did not undergo mental trauma. He testified that Dr. Peppers sedated him and surgically removed a large blister from his left foot. There was no evidence introduced in the record rebutting such.

Furthermore, the Respondent failed to provide any sworn statement or declarations from the nurses (Anita Valentine, S. Flucker, Carswell and Rodgers) or Dr. Peppers denying the treatment he alleged he underwent involving the aforementioned medical staff.

Claimant sustained a permanent scar and nerve damage. This was unrefuted.

The amount of damages sought should have been awarded. Or alternatively reduced to half of the full amount.

For the reason(s) above in this appeal or reconsideration the Claims Commission's decision should be reversed.

Wherefore, for the reasons stated above and the evidence submitted, the Claimant is entitled to a reconsideration or reversal of the Claims Commission's decision.

Respectfully Submitted

Ahmeen Munit

Ahmeen Munit #45017

P.O. Box 970

Marianna, Ar. 72360-0970

Certificate of Service

I certify that a copy of the above Motion For Reconsideration of Commission's Decision has been served this 5th day of January 2016, on the Respondent by United States Postal Service, regular postage to:

Lisa Mills Wilkins
Attorney Supervisor
P.O. Box 8707
Pine Bluff, Ar. 71611

Ex A

Tucker Unit Food Service Linda Gibson Inspection

7/11/14

Inmate dining

Fan needs cleaned

Couple of light bulbs out *maint*

Return air vent needs cleaned

Check Return Vent(s) daily

Prep

1 light out over grill *maint*

Need clean grills

Nasty under grills

2 packages cookies hid under deep fryer

Greasy floor, fryer, everything you touch

Light cover missing above tilt grill *maint*

1 light out over steam kettle *maint*

1 light out over oven *maint*

Light covers need cleaning

Grills under surface must be maintained

Drain grease from fryer and flush with hot water.

No thermometer

1 light out over double ovens *maint*

Light cover needs cleaning

Oven needs cleaning

Need to clean behind oven

Vent a hood over oven needs cleaning

Clean oven(s) every other day to eliminate build up of food residue.

_____ needs cleaning

Cooler #3

72 degrees *maint*

No curtain *will order*

Needs cleaning

Cooler #2

31 degrees

Cooler #1

1 pan chicken not dated

3 day sample tray

8th no _____

9th _____ breakfast no dinner

10th _____ Lunch _____ no breakfast or dinner

Pot & Pan water needs changing _____ ?

No sanitizer-None _____ ?

Pans stacked wet _____ ?

Pans in back storage need cleaning _____ ?

Freezer #2

-2 degree

Door frozen *maint*

Freezer 1

-14 degrees

Ceil leaky -boxes of food in cases getting wet *maint*

10.6 in citrus breeze buddy jug

200 oz pure bleach in jug approve 32 oz _____

Diluted bleach not labeled 150-oz

Razor blue broken container oven clean closure _____

1/2 gallon _____

Levels is _____ 120 degrees beans a _____

Orange juice 68 cases -10 cans good

No _____ temps for food in serving line today- Ms. Harris

* No receipt of safety equipment being issued to inmates with chemicals

Fan needs cleaning

Need curtain for cooler

Dishwasher

Light cover needs cleaning

Inmate restroom needs cleaning-no soap or paper towels

Tool room

TFS -71-06 needs to be replaced

TFS -74-03 ok was checked out

Sugar and yeast good

(a) all containers need
labels to identify
chemical(s)
broken

(b) Any broken bottles
spouts etc... need to
be discarded or replaced

(c) clearance of safety
goggles (s) with
all chemical(s)

Soap and Paper towels in
inmate restroom at all
times

Light cover missing *maint*

Diet line

Pinto Beans 110 degrees

Beef patties 140 degrees

Rice 130 degrees

serving line

Drain cover needs cleaning

Hot Boxes

Thermometer on hot boxes not working *maint*

Hot Box Rice 80 degrees

Hot Box temp 142

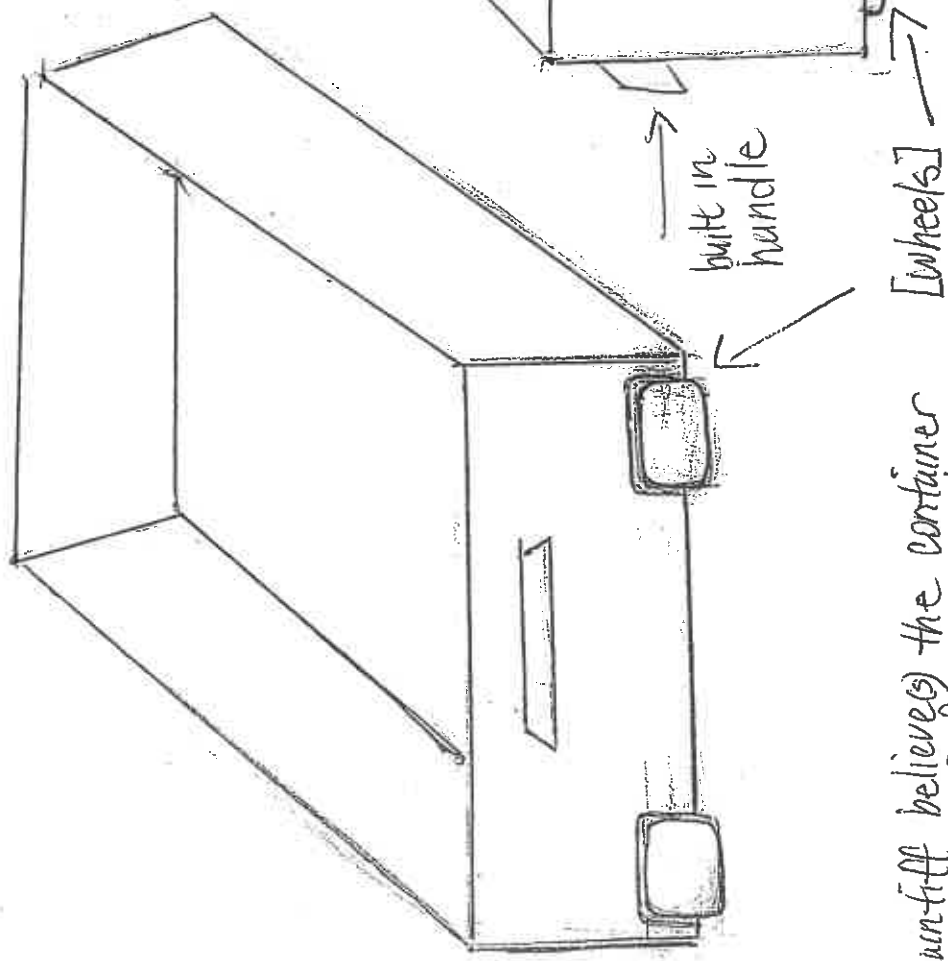
Hot box beans 120 degrees

Regular line

Beans 100 degrees

global

Metal Container/Pan
of fryer.
Discarded grease and
food contents goes into
the container/pan



note: Plaintiff believes the container
to be three (3) feet long and
one (1) foot deep.

EXC

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

AHMEEN MUMIT (ADC #095017)

CLAIMANT

V.

NO. 15-0600-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 files a claim for personal injury, pain and suffering, failure to follow policy, and negligence. He seeks \$45,000.00 in damages. Claimant has failed to state a cause of action under ARCP 12(B)(6) and the claim should be dismissed.
2. Claimant alleges that on August 1, 2014, he was injured when a pan of hot water slipped out of his hands and poured into his left rubber boot while he was working in the kitchen. He states this incident is a violation of OSHA, a safety violation, he was improperly trained, and the pan was altered from the original size used making it more dangerous to hold.
3. OSHA does not cover this violation and is not applicable to the ADC because Claimant is not an employee of the ADC and the OSHA exempts state agencies. **"State and Local Government Workers:** Workers at *state and local government agencies are not covered by Federal OSHA*, but have OSHA protections if they work in those states that have an OSHA-approved *state program*." **"OSHA Coverage:** The OSH Act covers most *private sector employers and their workers*, in addition to some public sector employers and workers in the 50 states and certain territories and ALL ABOUT OSHA jurisdictions under federal authority. Those jurisdictions include the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Northern Mariana Islands, Wake Island, Johnston Island, and the Outer Continental Shelf Lands." The ADC is a state agency and therefore, is not covered. Arkansas does not have an OSHA approved state program. All About OSHA, U. S. Dept. of Labor, 3302-02R, 2012.
4. Claimant fails to state how it was a safety violation. He told his supervisor that the pan was too heavy for one person to carry the greasy water and she agreed and instead of having two people in the small working space, she replaced the larger pan with a smaller pan approximately 12" by 11.5". By his own admission, Claimant was able to remove the pan successfully due to accommodation requested, but the pan slipped from his hands and water poured into the rubber boots he had been assigned to wear as a safety precaution.
5. The Weekly Safety Meeting he signed on 7-7-14, advises him to "Clean surfaces coated in detergent, soap or wax before buildup. Clean up all oil spills in an approved manner." See Exhibit "A". If Claimant knew that the pan contained greasy water and could have checked the edges of the pan and cleaned the edges of the pan before picking it up to alleviate any risk of slippage.

15-0600-CC-1

6. Claimant states that he was improperly trained. The safety records indicate that he attended the safety meetings each week before the start of his shift which covered topics of Slips, trips and falls, electricity and safety, and chemical control. He fails to state how he was not trained. He states that the accident occurred when the pan slipped from his hands and poured into his boot. See Exhibit "B". He fails to state what additional training would have prevented this accident.
7. The pan was a smaller pan than originally used in the fryer. This was an accommodation for the Claimant to be able to hold the pan without the use of another inmate in the small area. Sgt. Norris believed this to be a better safety accommodation than two officers trying to coordinate hand and eye of the pan of hot greasy water in a small space and taking it to disposal than one person. She opted for a smaller pan which one person would hold one about one foot square more or less.
8. Claimant maintains that he suffered 2nd and 3rd degree burns on his left foot and toes. This is incorrect. He suffered only 2nd degree burns across the top of his left foot and the 2nd – 5th toes. This did not require surgical procedure, but the blister was removed on August 6, 2014, and he was treated with Silvedine burn cream and given a lay in and shower shoe script for two weeks which was extended until September 9, 2014, when it was discontinued. He made no other complaints about his foot until March 9, 2015, three days after he filed this Complaint at the claims commission when he alleged that 'pain in left foot' and 'needle stick sensation to left foot for the past few months after a burn injury in August 2014 State after standing a long period of time is when the pain starts.' It was noted he ambulated with steady gait. The burn was well healed. Strong, palpable pedal pulses. Told to place sick call as needed.
9. Claimant alleges that he suffers from traumatic episodes of grief, anxiety, depression, irritation, dysphoria, nightmares and the like. He has not seen mental health for any reason since February 1, 2013. There is no basis for this claim or evidence to support it.
10. Respondent prays that the claim be dismissed.

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

CERTIFICATE OF SERVICE

I certify that a copy of the above MOTION TO DISMISS has been served this 12 day of August, 2015, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

AHMEEN MUMIT (ADC #095017)
EARU
P. O. BOX 970
MARIANNA, AR 72360-0970

Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190

15-0600

Ex D

Am

WEEKLY SAFETY MEETING

DATE: 7-7/14 AREA: Kitchen FACILITY: Kitchen

TIME MEETING CONDUCTED: BEGINNING: _____ ENDING: _____

TOPIC OF DISCUSSION Slips, Trips and Falls Injuries

Causes of slips, trips and falls: Running on the job is a cause of slip, trip and fall injuries. Injuries can also occur by not being on the constant lookout for hazards. Poor lighting, icy spots in winter, spills and electrical cords or hoses left in walkways are among many other contributors to slip, trip and fall injuries. Improper footwear can lead to less traction and injury.

PREVENTION

Pay close attention to conditions and remember that wet cement can be very slick. Wear proper waterproof shoes or boots that have good traction. Do not run. Put tools, equipment and materials back where they belong. Practice good housekeeping. If you spill something, clean it up. And if you spot a potential slipping or tripping hazard, eliminate it if possible or bring it to your supervisor's attention. Clean surfaces coated in detergent, soap or wax before buildup. Clean up all oil spills in an approved manner. Clean up trash and debris and put in proper barrels. Do not leave tools around where people can trip over them. Use wet floor signs where needed. When working on slippery surfaces move slowly and deliberately, pay attention to your footing and be careful.

INMATES ATTENDING

INMATE NAME	INMATE ADC#	INMATE NAME	INMATE ADC#
J. Barber	14223	R. Hayes	140958
S. Kerns	137911	Cordell	102225
S. Ward	100522	D. Williams	151741
Mumit	95017	Am	73098
J. Flint	147693		
Brown	104632		
C. Chestern	905624		
Wright	117292		
Elms	132585		
Jones	103729		
Tidwell	123755		
Harden	114285		
J. Jackson	78665		
Piggie	105805		

S. Leane

Supervisor Signature

Date

CC: Assistant Warden
Fire and Safety
File

ADC
Exhibit
A

15-0600

143

Kydon

TIME MEETING CONDUCTED: BEGINNING: 12:20pm ENDING: 1:00pm

CHEMICAL CONTROL

1. Do not mix chemicals and make sure chemical bottles are labeled with correct chemicals.
2. If a chemical is spilled, make sure you clean up the spill
3. Make sure protective gear is worn when handling hazardous chemicals. (i.e. gloves, mask, etc)
4. Make sure chemicals are stored correctly
5. Know the location and how to use the MSDS sheets in case of chemical contact.

[illegible]

15-0600-CC

7-1-74

3-17 144

PM

TIME MEETING CONDUCTED: BEGINNING: _____ ENDING: _____

TOPIC OF DISCUSSION
ELECTRICITY AND SAFETY

You can be injured or killed by electric shock. This type of shock happens when the flow of electric current (called amperage) flows from the source through your body to ground (virtually any conductor leading the current to a place of lower voltage).

SAFETY TIPS.

1. Only qualified people should repair or install electrical wiring or appliances.
2. Properly grounded 3-prong outlets and plugs are to be used.
3. Avoid electrical outlets and equipment if you, or the area are wet.
4. Use tools and machinery only in the way it was intended by the manufacturer.
5. Wear hand, foot, and eye protection where suitable.
6. Don't overload circuits or extension cords.
7. Read warning signs and obey them.
8. Use ground fault circuit interrupters whenever possible.
9. Report then replace or repair all electrical equipment.

INMATES ATTENDING

[illegible]

Supervisor Signature

Date _____

15-0600-00

Ex. G

WEEKLY SAFETY MEETING

DATE: 10-16-14 AREA: Kitchen FACILITY: Tucker

TIME MEETING CONDUCTED: BEGINNING: 2:30 ENDING: _____

TOPIC OF DISCUSSION
ELECTRICITY AND SAFETY

You can be injured or killed by electric shock. This type of shock happens when the flow of electric current (called amperage) flows from the source through your body to ground (virtually any conductor leading the current to a place of lower voltage).

SAFETY TIPS.

1. Only qualified people should repair or install electrical wiring or appliances.
2. Properly grounded 3-prong outlets and plugs are to be used.
3. Avoid electrical outlets and equipment if you, or the area are wet.
4. Use tools and machinery only in the way it was intended by the manufacturer.
5. Wear hand, foot, and eye protection where suitable.
6. Don't overload circuits or extension cords.
7. Read warning signs and obey them.
8. Use ground fault circuit interrupters whenever possible.
9. Report then replace or repair all defective or damaged equipment.

INMATES ATTENDING

INMATE NAME
Wilbert, Champ
Harris, D.
Buchanan, M.
Jonathan Busher
DeMokars, Yousuf
Lyle Coleman
Isaac Poole
D. Williams
Cody Newman
C. Hall
J. Schmall
Ali
James
Ward
T. Harris
G. White
Paul
G. Mumford
McLina, Z.
Kimberly
Ernest Brown

INMATE SIGNATURE

Christy Lane
Supervisor Signature

31
Date 10/16/14 146

15-0600-00

Ex. H

POLICY AND PROCEDURES	POLICY NO.: 11.03.0	PAGE NUMBER: 3 of 4
SUBJECT: Safety and Sanitation for Food Service	SUPERSEDES:	EFFECTIVE DATE: 03-10-95

2. Be designed to enable efficient and thorough cleaning. This rule is especially important for equipment which is in direct contact with foods, either during or after preparation. Work tables, dining tables and similar pieces of equipment should be constructed of materials such as metal or stainless steel, avoiding woods or similar water absorbent components.
 3. Be operated and maintained in accordance with the manufacturer's health and safety instructions.
 4. Be designed to maintain foods at proper temperatures. Refrigerators, freezers, holding cabinets and serving tables must be equipped to maintain foods at proper temperatures to prevent bacteria growth. Diseases can result easily from improperly designed or operated equipment.
- C. **Physical Plant:** Food services facilities are important ingredients of a safe and sanitary program. Facilities shall minimally:
1. Be designed to ensure easy cleaning. Floors, walls and ceiling should be constructed of materials which will encourage safe, sanitary operations.
 2. Provide toilet and wash basins available to all food service workers.
 3. Provide fire safety protection as required by local and state regulations. Ovens, grills, and similar equipment shall be arranged to enable the use of an adequate sprinkler system or extinguisher coverage.
 4. Provide adequate fire protection and avenues for exit in case of emergencies.
 5. Provide for adequate storage areas with appropriate temperature controls.
- D. **Safety and Sanitation Inspections:** Inspections of the food service area are vital to ensure regular compliance with appropriate health and safety rules. The Unit shall require the following inspections at a minimum:
1. Daily safety and sanitation inspection by the Food Service Supervisor. The inspecting officer shall sign the daily report and submit it to the Food Service Manager for review and action.
 2. Weekly safety and sanitation inspections shall be conducted by the manager of the food service department, a member of the medical staff and one person designated by the Warden. The inspection team shall:
 - a. Visit and inspect all areas of the food service department, including the storage area.
 - b. Examine the daily inspection forms for the previous week.
 - c. Visit the department on a regular, pre-announced schedule.

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 45,000.00

Claim No. 15-0600-CC

Attorneys

Ahmeen Mumit, #095017 Claimant
vs.

Pro se Claimant

Department of Corrections Respondent
State of Arkansas

Lisa Wilkins, Attorney Respondent

Date Filed March 4, 2015

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

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 December 9, 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 December 9, 2015 order remains in effect.

Date of Hearing January 14, 2016

Date of Disposition January 14, 2016

Hanover Chairman
Strother Commissioner
Bill Lancaster Commissioner

BEFORE THE ARKANSAS CLAIMS REVIEW SUBCOMMITTEE

Ahmeen Mumit #45017

Claimant

15-0600-CC

Arkansas Department of Correction

Respondent

APPEAL TO ARKANSAS CLAIMS
REVIEW SUBCOMMITTEE

Arkansas
State Claims Commission
JAN 28 2016

RECEIVED

Statement of Subject Matter
and Appellate Jurisdiction

The Claims Review Committee has subject matter jurisdiction because the complaint raised the question whether Respondent breached the duty owed to protect the Claimant from unreasonable risk of physical harm while performing an assigned job duty.

The Claims Review Committee has appellate jurisdiction under A.C.A. 19-10-211 because the dismissal of the Claimant's claim was a final judgment entered on December 9, 2015 and the Reconsideration dated January 14, 2016

Statement of Issues Presented For Review

1. Whether the Claims Commission erred in not finding the Department of Corrections liable for the negligence of supervisor Jennifer Norris (Norris) for breaching policy by replacing the Fryer's metal container with a food insert, which was the proximate cause of Claimant's injury
2. Whether the Claims Commission erred in not finding the Department of Corrections (DOC) liable for negligence under strict liability
3. Whether the Claims Commission erred in not finding the DOC liable for failure to train Claimant
4. Whether the Claims Commission prejudice Claimant by failing to compel Respondent to properly supplement discovery responses.

Statement of Case

A. This is a negligence claim brought by an inmate in the Arkansas Department of Correction. He alleges that he was put at risk of physical harm by being

ordered to perform a hazardous task associated with his job assignment. which ultimately resulted to his injury.

The Claims Commission dismissed the Claim on the grounds of failure to prove liability of Respondent by a preponderance of evidence.

B. The Claimant testified under oath that Jennifer Morris ordered him to clean the kitchen fryer by flushing it out with hot water and emptying the greasy contents from the machinery in a pit on the back deck of the unit kitchen.

The Claimant submitted an inspection sheet Morris gave him (from a prior inspection) that he wrote Morris's instruction of "what to do" and "how to do it."

The instructions stated; "drain grease from fryer and flush with hot water."

The fryer has a metal container it's greasy contents are stored and disposed. Morris ordered the Claimant to replace the metal container with a food insert. The Claimant was also ordered to use a large cooking pot to pour or store the greasy contents from the fryer and dispose. In performing the task, the food insert slipped from the rim of the

Hot and greasy hot water went into the Claimant's left foot severely scalding his foot. The Respondent contend Claimant's injury resulted from putting an excessive amount of water in the foot insert.

The Claims Commission held the Respondent was entitled to dismissal for Claimant's lack of preponderance of evidence.

C. Summary of Argument

The Claimant's documentary evidence, testimony, Jennifer Morris's admissions or judicial confession in pleadings is a preponderance of evidence of negligence warranting liability, therefore the judgment should have been in Claimant's favor. Dismissal was thus improper on the record before the Claims Commission.

Standard of Review

The Department of Corrections is under a duty to provide inmates with a "safe place to work" and with "safe equipment" that is reasonably safe for performing required task. See Bridgwater v. State, 442 So. 2d 1214 (La App. 1st Cir 1982) writ denied 432 So. 2d 383 (La 1983). and Reed v State Department 152

of Correction 351 So 2d 788 (La. App. 1st Cir 1977)

Argument

Point I

Respondent Should Have Been Held
Liable For Breaching The Legal Duty
Owed To Claimant

The Claimant testified that Norris called him to her office and gave him specific instruction or orders to clean the Fryer. He stated after he learned the metal container of the Fryer would be difficult to empty alone because of its weight, he asked Norris to have someone help him. For reasons unknown, Norris refused Claimant's request for help, instead she ordered him to replace the metal container with a food insert. Defected piece of equipment.

Replacing the metal container with the food insert took the Claimant out of a position of safety and placed him in a position of "known danger", therefore assuming the risk of injury. see, Dawson v. State of Louisiana, Through the Department 157

of Corrections 452 So. 2d 357 (La 1st Cir 1984)

Norris is the lead Kitchen Supervisor at the Tucker Unit. She is responsible for enforcing policy.

Claimant submitted Arkansas Regulation 11.03 Safety and Sanitation for Food Service. Norris is familiar with this policy.

The focal point of Claimant's argument regarding AR 11.03 is section ~~VI~~ Procedures (VI(B)(3)). It states in pertinent part;

"Food service equipment shall be operated and "maintained" in accordance with the manufacturer's health and safety instructions."

The uses of the word "maintained", from the gist of the policy procedures, is understood to mean cleaning and keeping in a state of efficiency according to the manufacturer's safety instructions.

The record is silent as to what the actual safety instructions are. The Respondent failed to produce the instructions in the discovery phase of the claim.

We must turn to the legal test of negligence in light of Respondent's failure to produce the Safety Instructions.

Legal liability for negligence is based upon conditions involving unreasonable risk to another, and the established test of negligence is the conduct of a reasonably prudent person in like circumstances. See, *Sam v. Englewood Ready-Mix Corp.*, 22 Ohio App 2d 1108, 259 N.E. 2d 507 51 O.O 2d 315 (1969) and *Hall v Hartford Accident and Indemnity Company* 278 So.2d 295 (La App. 4 Cir 1973) writ refused 281 So.2d 753 (La 1973). The Claimant may recover damages for an injury resulting from a negligent act of Norris if a reasonably prudent person should have anticipated, under the same or similar circumstances, that injury to the Claimant probably would result.

The question is whether Norris's conduct amounted to negligence.

The metal container to the Fryer was used solely for discarded grease contents. No other purpose. It's equip with four (4) wheels and a built in handle in the

front, making it easy to remove from the lower compartment of the fryer.

Although the metal container may have been more difficult to lift than the Food Insert, using the Food insert as a substitute created a dangerous situation of foreseeable risk of injury.

Norris admitted to "always directing Claimant in what to do and how to do it." She knew the Food insert had to be filled with hot water, grabbed by handleless edges, pulled from the fryer's lower compartment across the floor, picked up and it's contents emptied into the pot.

A prudent person in similar or the same circumstances would have provided the necessary help needed to coordinate lifting the metal container and disposing it's contents. Norris ordered the Claimant to use defective equipment to perform his assigned task, which proximately caused his injury.

As a matter of law, under the above facts, the DOC breached it's duty to provide a safe work place and safe equipment, or otherwise take supervisory or precautionary measures to protect

against the risk posed. *Brewington v. Louisiana Dept. of Corrections*, 447 So.2d 1184 (La App 3rd Cir 1984) writ denied, 449 So.2d 1348 (La 1984). *Bridgewater v. State Through Dept. of Corr.*, 434 So 2d 383 (La 1983)

In *Bridgewater*, the safety device on a shearer was removed and never replaced. If the guard had not been removed the accidental injury could not have occurred. The accident was reasonably foreseeable because of the absence of the safety device.

It is undisputed that the metal container (safety feature) was removed and replaced with a food insert. Had it not been used for the purpose designated the Claimant's accidental injury would not have happened. The risk involved was within the scope of the duty owed by the Respondent to the Claimant. Norris conduct was negligent.

In *Brewington*, the inmate was scalded because the DOC used the trough in which the inmate was injured to make it easier to clean the drainage system, rather than providing enclosed sewer pipes or trough covers which were harder to

clean. The Doc created the risk because it consider making it easier to clean the drainage system outweighed the foreseeable risk of injury to the inmate.

In Claimants case, who job duty to clean the fryer, the corresponding duty of Respondent was to take precautions to protect him from unreasonable injury. Hill v Lundin & Associates, Inc., 2d La. 542, 256 So. 2d 620 (1972)

1 Contributory Negligence

Now we turn to the question of whether the Claimant was contributory negligent.

Contributory negligence is defined as conduct falling below the standard of care which Claimant should perform for his own protection. The party relying on the contributory defense has the burden of proving it. Smolinski v. Taulli, 276 So. 2d 286 (La 1973)

In the case of Claimant, the State has the burden of proving by a preponderance

of evidence the Claimant failed to exercise care commensurate with the hazard he faced. Lee v. State Through Dept. of Corr. 294 So.2d 553 (La App. 1st Cir 1974)

The Respondent did not carry it's burden in this case.

Norris testified that Claimant's injury resulted from an excessive amount of water put in the food insert.

The Claimant offered contrary testimony and documentary evidence contradicts Norris's assertion.

The Claimant testified during the hearing that he did not put an excessive amount of water in the food insert, he was well aware of the level of water in it. He further testified he knew if it was filled beyond capacity it would be too dangerous to handle. With that knowledge, he assured the Commissioner's that he was not worried about that factor, he followed the orders of Norris of "what to do" and "how to do it".

The record clearly show the Claimant

did not "voluntarily" assume the risk that led to his injury. Norris ordered him to clean the fryer. She also ordered the insert (and pot) be used to do it. This is sustained by the confession made in a pleading.

Confession Made In Pleading

In the Respondent's Motion To Dismiss dated August 12, 2015 Norris plainly admit to replacing the metal container with the food insert. Paragraph no. 4 stated;

"She (Norris) replaced the larger pan with a smaller pan approximately 12" by 11.5"

This is full proof that the Claimant did not voluntarily assume the risk of using the defective equipment — Food insert and pot.

Paragraph no. 7 stated;

"She (Norris) optioned for a smaller pan."

The courts have long settled "An admission in a pleading falls within the scope of a judicial confession and is a full proof" against the party making it." Cheatham v. City of New Orleans, 378 So. 2d 369 (La 1979); Smith v. Board of Trustees of La 398 So. 2d 1045 (La 1981)

There is absolutely no evidence introduced in the record to support Morris's assertion that the Claimant put an excessive amount of water in the food insert, or voluntarily used the defective equipment. He had nothing whatsoever to do with creating or maintaining the dangerous situation. He simply used the equipment supplied to him and followed the instructions outlined to him.

Claimant was ^{not} free to determine whether he would or would not perform the job known to be dangerous. Stilley v State, 376 So 2d 1007 (La App. 1st Cir 1979) writ refused 378 So. 2d. 1389 (La 1980)

The primary purpose for establishing AR 11.03 is to impose a standard of care (or duty) upon the party who knows or should have known the dangers of

using defective equipment, or dangerous conditions created in the work place by not following policy and procedure.

Norris was in the best position to eliminate the danger which result to the Claimant's injury. She was charged with the responsibility of enforcing safety factors but failed to do so.

The blame can not be placed on the Claimant for incurring the resulting accidental injury, especially considering the fact he followed Norris's orders. Hall v. Hartford Accident Indemnity Company 278 So. 2d 795 (La App. 4th Cir 1973) writ refused 281 So 2d 753 (La 1973).

Norris's conduct amounted to negligence. As a matter of law, the Claimant is entitled to recover damages for his injury.

Poy v. Phelps, 488 So. 2d 468 (La App. 3rd Cir 1986).
Brewington v. Louisiana Dept. of Correction 447 So. 2d 1184 (La. App 3rd Cir 1984) writ denied 449 So. 2d 1348 (La. 1984)

The Claims Commission's decision should be reversed for the above reasons.

Point II

Department of Correction Should Have Been Held Liable Under Strict Liability

The next question we turn to is whether the Department of Correction is/was liable under Strict Liability.

The burden of proof for strict liability is proving that the thing (fryer) which cause injury was in the care or custody of the Respondent, that the thing had a defect or vice (food insert), that it occasioned an unreasonable risk of injury and that injury was caused by the defect. Jones v. City of Baton Rouge - Parish of East Baton Rouge 388 So.2d 737 (La 1980)

The DOC was negligent. Although the DOC is not required to anticipate every possible danger that could occur to an inmate, it is clearly foreseeable that using a food insert to dispose it's grease contents, rather than it's designated safety equipment (metal container) could cause injury to the claimant.

The food insert was not designed to be used as cleaning equipment, neither was the pot.

The law says once the Claimant proves custody, defect, and causation the Respondent can be held liable under Strict Liability. *Loescher v. Parr* 374 So. 2d 441 (La 1975).

1. The Department of Correction had the fryer in its custody which was involved in this accident.
2. The fryer was of a dangerous nature whereas its safety feature - metal container - was replaced with a food insert which had no safety mechanism to prevent such an injury that occurred in this instant case; and
3. The defect or vice (food insert) created unreasonable risk of injury to the Claimant
4. The injury of Claimant occurred by the vice or defect (food insert).

It was Norris's decision to use the defective equipment (food insert and pot) to clean the fryer, which proximately caused the Claimant's injury.

She knew the equipment was defective. There were other options available that could have prevented the accident, but she failed to take those pre-emptive measures.

The Respondent failed to establish victim fault. Victim fault must rise to the level of causing the accident to bar recovery. *Rozell v. Louisiana Animal Breeders Co-Operative Inc.* 496 So. 2d 275 (La. 1986).

As a matter of law the Respondent is liable under strict liability. Therefore, the Claims Commission's decision should be reversed for the above reasons.

Failure To Train Claimant

Point III

During the hearing Norris testified that the Claimant was trained to use food service equipment (food insert and pot) to perform the task that lead to his injury.

To support this assertion the State produced General weekly safety meeting sheets. Neither document reveal any training, safety instructions or precautionary warning guiding the use of food service equipment designated solely for food storage (Food insert) and preparation (pot) for cleaning machinery — the fryer.

The topics of discussion and dates on each weekly safety meeting sheet submitted are as follows;

- July 7, 2014 Topic of Discussion; Slips, trips and Falls Injuries
- July 16, 2014 Topic of Discussion; Chemical Control
- July 30, 2014 Topic of Discussion; Electricity And Safety
- October 16, 2014 Topic of Discussion; Electricity And Safety

In an interrogatory filed by the Claimant June 25, 2015 asked the Respondent to produce the names of the food service supervisors that allegedly trained

the Claimant to use food service equipment for the purpose Norris designated it to be used for.

The interrogatory is as follows;

Interrogatory No. 4: State the names of the staff member that trained the Claimant to use food service equipment for cleaning purposes.

The Respondent's answer to the interrogatory is as follows;

Response to Interrogatory No. 4: The Food Service Supervisor.

The Respondent gave an evasive response. No names were produced. Because the Claimant was not trained to perform the task Norris ordered him to do. She negligently and recklessly directed him to clean the fryer with a food insert and pot. He was given absolutely no safety instructions, precautionary warning, explaining procedure when deviating from standard uses of equipment. Norris failed to provide reasonably safe equipment or safe

work place, thus as a matter of law the Dept. of Corrections is liable for the failure.

Bridgewater v. State 434 So. 2d 383 (La June 27, 1983)

The Claims Commission decision should be reversed for the above reason(s)

Claimant Was Prejudiced
By The Claims Commission
Fail To Compell Discovery
Documents From Respondent

Finally, we turn to the Respondent's improper Supplement responses and the Claims Commission's refusal to Compell Respondent to produce the material sought in Claimant's production request.

Respondent's Counsel advised the Claimant (in a response pleading April 27, 2015 and June 4, 2015) that the booklets, reports, emails, memorandums and other documents were "unavailable at the time" of the production request due to an on-going internal affairs investigation. 108

After the investigation "all" documents not objected to would be produced.

The discovery documents were not produced.

June 25, 2015 Claimant filed a "Motion For Discovery Deadline or Cutoff Dates."

July 9, 2015 the Claims Commission issued an order directing the Respondent to supplement "all" responses by August 9, 2015.

The order was deliberately ignored. Rather than supplement discovery responses, the Respondent filed a Motion To Dismiss.

The Respondent had a duty to obey the Commission's order as written until it was either set aside or overturned. see, *Potter v Easley*, 288 Ark. 133, 703 S.W.2d 442 (1986).

Respondent offered no explanation or request for extension for non-compliance.

October 27, 2015 the Claimant filed a Motion For Order Compelling Discovery for Failure to Supplement Responses.

November 5, 2015 the Claimant filed a Supplement Motion for Order Compelling Discovery for Failure to Supplement Responses

and for Protective Order.

Respondent responded (November 5, 2015) by providing four (4) Weekly Safety meeting Sheets, a incident report (005) written by Norris, a witness statement written by inmate Samuel Ward, and a photograph of Claimant's foot moments after the injury.

The remaining production request were not produced.

The Respondent objected to the document request stating; "Overly broad and cumbersome." "Unlikely to lead to any relevant information. Claimant spilled water in his boot."

Under Arkansas Rules of Civil Procedure 26(b)(1) the Claimant have a legal right to anything which is in any way "relevant" to any party's claim or defense.

By not compelling the requested information the Claimant could adequately defend his case. According to Case law, one of the purposes of discovery is to provide a device for ascertaining not only facts, but information as to the existence or whereabouts of facts relative to the issues between both party's. *Hickman v. Taylor* 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947) 170

The outcome of the hearing would have been different had the documents been produced. The information could not be obtained from any other sources. In light of that the material should have been compelled. Franks v. National Dairy Products Corporation, 41 F.R.D. 234 (D.C. Texas 1966) aff'd 414 F.2d 682 (5th Cir 1969)

The judgment of the Claims Commission should be reversed for the errors indicated in this appeal. Unduly restricting discovery weakened the Claimant's defense. The Claims Review Committee must presume that the error is indeed prejudicial unless it can be shown with assurance that the record discloses that it was harmless. It was not. Arkansas State Highway Commission v Parks, 240 Ark. 719 401 S.W. 2d 732, 26 A.L.R. 3d 775; Allen v. Arkansas State Highway Commission 247, Ark. 857 448 S.W. 2d 27.

The Claims Commission's decision should be reversed on the ground stated above

Damages May Be Recovered For Respondent's Liability

The Claimant proved by a preponderance of evidence present, the State was liable for his injury.

The Respondent's assertion that the Claimant's injury would not have occurred had he not allegedly put an excessive amount of water in the food insert, that he was trained to use food service equipment (a food insert and cooking pot) to perform the task of cleaning out the fryer is supported by absolutely ~~no~~ evidence. Damages should have been awarded

Claimant sought \$15,000 for pain and suffering, \$15,000 for future pain and suffering and; \$15,000 for permanent nerve damage and physical scarring.

The record show no introduction of evidence into the record that Claimant was not severely injured. The greasy hot water undoubtedly caused him pain and suffering. He experienced being severely burned. He experienced grief and anxiety from the traumatic accident. The pain and

grief culminated in the intense pain of having to be sedated and a huge blister (dead skin) removed from his left foot. Afterward undergoing 30 or more days of non-surgical debridement. A very painful procedure used to treat burns of the magnitude Claimant suffered.

The medical personnel that offered medical information, merely gave a overview of the pain medication and silvazine burn cream administered after each debridement procedure.

She offered no testimony or evidentiary medical rebuttal. It is speculative and superficial to assume the Claimant did not undergo physical and mental injury from the accident.

He testified Dr. Peppers sedated him. His Complaint stated nurses Valentine, Flicker Carswell and Rodgers treated his injured foot. No declaration(s), statement or whatnot was offered disputing the claim.

The Claimant sustained permanent scarring and nerve damage. The nerve damage is so severe he can not stand for

prolong periods of time due to pin and needle sensations in his injured foot. This was undisputed during the hearing

The amount of damages sought should have been awarded in it's entirety, or alternatively reduced to half of the full amount. Brewington v. Louisiana Dept. of Correction 447 So. 2d 1184 La App. 3d Cir 1984) writ denied 449 So 2d (La 1984)
Cheatham v. City of New Orleans 378 So. 2d 369 (La 1979).

Summary

The Dept. of Correction owed the Claimant a duty of care that was violated or breached "by" and "through" the negligent conduct of Norris.

Replacing the metal container of the fryer with a food insert breached AR 11.03 which was the proximate cause of Claimant's injury.

The Dept. of Correction breached the strict liability obligation. The fryer was in the custody of the DOC, the

defect or vice (food insert) occasioned a unreasonable risk, and that vice or defect (food insert) proximately caused the Claimant's injury.

The Safety meeting sheets and Norris's testimony failed to prove Claimant was trained to use a Food insert and pot to clean machinery such as the Fryer.

Norris negligently and recklessly issued Claimant defective equipment to perform the required task. And provided no safety precautions, which created a unsafe work place.

Claimant had the right to obtain any and all discovery documents accordingly related to his claim.

He was prejudiced by the Claim's Commission failure to compel the Respondent to properly supplement discovery responses.

Wherefore, the Claimant prays for the above reasons) Set forth in this Appeal that the decision of the Claims Commission be reversed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Appeal To Arkansas Claims Review Committee was sent this 25th day of January 2016, by United State Postal Service; regular postage

Ahmeen Mumit

Ahmeen Mumit