

State Claims Commission

Please Read Instructions on Reverse Side of Yellow copy
Please print in ink or type

JAN 04 2017

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED
RECEIVED

- Mr.
- Mrs.
- Ms.
- Miss

Teresa Clark Claimant

Do Not Write in These Spaces	
Claim No.	17-0454-CC
Date Filed	January 04, 2017 (Month) (Day) (Year)
Amount of Claim \$	22,568.00
Fund	DFA
Loss of Profit	

State of Arkansas, Respondent
Arkansas Department of Finance

COMPLAINT

Teresa Clark the above named Claimant, of 7629 Verdell Blvd, Morrill
(Name) (Street or R.F.D. & No.) (City)

AR 72113 501-812-9112 County of Rulaski represented by B. Norman Williamson
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

of 1315 W. 2nd Street Little Rock AR 72201 501-944-8185 501-818-0015 says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas Department of Finance and Administration Amount sought: [redacted]

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

Explanation: Teresa Clark brings this complaint alleging that the Chief Fiscal Officer for the state of Arkansas erred in upholding the Arkansas Department of Correction's decision to terminate her employment. Clark maintains that the State Employee Grievance appeal panel made a reasonable decision to reinstate her employment to the Arkansas Department of Corrections and therefore, the Chief Fiscal Officer violated Arkansas law by reversing that decision. Further details are laid out in a brief attached to this complaint form.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

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

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

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 verify believes that they are true.

Teresa Clark (Print Claimant/Representative Name) Teresa Clark (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock, AR (City) (State)



on this 25th day of May 2016
(Date) (Month) (Year)

Kathleen Roberson (Notary Public)

SF1-R7/99

My Commission Expires: 8/26/2023
(Month) (Day) (Year)

IN THE ARKANSAS CLAIMS COMMISSION

TERESA CLARK.

Claimant,

v.

STATE OF ARKANSAS,

Defendant.

COMPLAINT

BACKGROUND

Teresa Clark was employed by the Arkansas Department of Corrections (Agency) as a Correctional Sergeant. On March 19, 2014, Clark transferred an inmate (Inmate M) from one barracks at the correctional facility to another barracks within the same correctional facility because Clark felt that Inmate M was threatening another inmate (Inmate W). Inmate M subsequently filed a complaint alleging that Clark transferred her as a result of retaliation. After the inmate complained of retaliation, Agency initiated an investigation into the alleged incident. Agency required Clark to obtain statements from inmates showing that Inmate M was threatening Inmate W. Several inmates wrote statements stating that Inmate M had threatened inmate W. Agency performed a follow up investigation after the inmates provided a statement and found that Clark allegedly

coerced inmates into writing statements saying that Inmate M threatened Inmate W.

In order to resolve the inconsistency, Agency administered a Computer Voice Stress Analysis (CVSA) to Clark and to some of the inmates who provided statements. Agency concluded that the results of the CVSA indicated that Clark was untruthful and that the inmates were truthful.

On September 8, 2014, Agency terminated Clark's employment for retaliating against employees or inmates who have filed grievances, or have otherwise engaged in protected activity; and for falsification of written/verbal statements/information.

Following the termination, Clark presented her case to Agency's Internal Review Committee arguing that the CVSA upon which Agency based its termination showed inconsistent results between Clark's answers and the inmates' answers. Clark and the inmates were asked some of the same questions. On several questions where Clark was found truthful for providing a particular response, the inmates were asked the same question and also found truthful for providing a response inconsistent with Clark's response. Agency could not provide an explanation for the inconsistencies and admitted that the test was not 100 percent accurate. Based on Clark's arguments, Agency's Internal Review Panel unanimously recommended that Agency reverse Clark's termination.

Agency's Interim Director, Larry Norris, decided not to follow the recommendation. In addition, Norris also added that Clark failed to perform or carry out work related instructions and that Clark's work performance was unsatisfactory.

On April 20, 2015, Clark appealed her termination to the State Employee Grievance Appeal Panel (SEGAP). The Panel reversed Agency's termination on the grounds that the inmates who alleged that Clark coerced them to provide statements lacked credibility and that the results of the CVSA exam were inconsistent.

On June 8, 2015, Chief Fiscal Officer of the State of Arkansas, Larry Walther, reversed SEGAP's decision to reinstate Clark. Walther concluded that the panel was right about the inconsistent CVSA exam, but concluded that Clark's failure to carry out reasonable work requests and unsatisfactory work performance warranted termination.

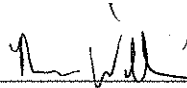
ARGUMENT

A directive from SEGAP should not be disturbed unless it is clearly erroneous, or arbitrary, capricious and unreasonable or contrary to policy. Clark maintains that SEGAP's directive to reinstate her employment was not clearly erroneous, arbitrary, capricious and unreasonable not contrary to policy. Agency initially based its termination on Clark's retaliation and falsification. Once Agency

saw that those policy violations would not stand, it added additional policy violations to strengthen its position. Despite the addition of policy violations, Agency's termination was based on the totality of violations presented and SEGAP found that the most significant of those violations were in error. SEGAP made a reasonable decision to reverse Agency's termination on those grounds. Director Walther erred in reversing SEGAP.

On those grounds, I ask that this Commission find in favor of Clark and order the State to compensate Clark for any pay and benefits lost as a result of her termination from Agency.

Respectfully submitted,



B. Norman Williamson
ABA# 2010269
1315 W. 2nd Street
Little Rock, AR 72201
Phone: (501)944-8185
Fax: (501)568-0015
Email: Norman@NickelsLawFirm.com

FEB 06 2017

IN THE ARKANSAS STATE CLAIMS COMMISSION

TERESA CLARK

RECEIVED
CLAIMANT

Vs.

CLAIM NO. 17-0454-CC

STATE OF ARKANSAS

RESPONDENT

**RESPONSE DENYING LIABILITY FOR CLAIM AND SETTING FORTH
AFFIRMATIVE DEFENSES AND MOTION TO DISMISS
AND BRIEF IN SUPPORT**

COMES NOW the Respondent, State of Arkansas, by and through counsel, Greg Ivester, and for his Response Denying Liability for Claim and Setting Forth Affirmative Defenses and Motion to Dismiss and Brief in Support, states as follows:

ANSWER

1. The Respondent denies all liability to the Claimant.
2. The Respondent admits that Claimant was employed by the Arkansas Department of Corrections as a Correctional Sergeant.
3. The Respondent admits that Claimant's employment with the Department of Corrections was terminated on or about September 8, 2014.
4. The Respondent is without sufficient information to form a belief as to any and all of the remaining allegations as contained in the Claimant's Claim.

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

5. Pursuant to Ark. Code Ann. § 19-10-208 (a)(5), Commission Rule 1.5(d) and (e), Rule 2.1, and Rule 12(b)(6) of the Arkansas Rules of Civil Procedure, the Respondent moves to dismiss Claimant's Claim for failure to state a cause of action against the Respondent in ordinary and concise language.
6. A cause of action is a legal theory upon which a lawsuit is based. Each

cause of action has certain parts (elements) which must be contained in a written complaint and a plaintiff must allege sufficient facts in ordinary and concise language to establish each of the elements of a particular cause of action.

7. Arkansas is a state that requires fact pleading. *See* Rule 8 of the Arkansas Rules of Civil Procedure. A pleading which sets forth mere conclusions is not sufficient under the Rules of Civil Procedure. *Perrodin v. Rooker*, 322 Ark. 117, 908 S.W.2d 85 (1995).

8. Based upon the explanation in the Claim, it appears that Claimant is alleging that the Respondent violated Arkansas law by reversing the State Employee Grievance Appeal Panel (SEGAP) recommendations to reverse the Arkansas Department of Corrections (“Agency”) decision to terminate Claimant’s employment with the Agency. However, the Claimant fails to state sufficient facts in ordinary and concise language as to how the reversal of the SEGAP’s decision violates any law of the State of Arkansas. Statements contained in the claim that “the Chief Fiscal Officer violated Arkansas law by reversing that decision” and “Director Walther erred in reversing SEGAP” merely recite conclusions. Such self-serving statements containing language which allude to an alleged violation of Arkansas law do not qualify as sufficient facts to demonstrate the existence of a violation of Arkansas law, nor do such statements meet the pleading requirements under the Arkansas Rules of Civil Procedure.

9. Additionally, the Claim fails to include an itemized outline of the amount of actual damages claimed. Under the Arkansas Claims Commission Rule 1.5(e), Claimant should be held to strict proof in regard to her damages.

AFFIRMATIVE DEFENSES AND BRIEF IN SUPPORT

At-Will Employment

10. The Respondent pleads in the affirmative that Arkansas law provides that an

employee may be terminated at will. *See Crain Indus., Inc. v. Cass*, 305 Ark. 566, 810 S.W.2d 910 (1991); *See also Gladden v. Arkansas Children's Hospital*, 292 Ark. 130, 728 S.W.2d 501 (1987).

11. There are two basic exceptions to the at-will doctrine: (1) where an employee relies upon a personnel manual that contains *an express agreement* against termination except for cause; and (2) where the employment agreement contains a provision that the employee will not be discharged except for cause, even if the agreement has an unspecified term. *Gladden*, 292 Ark. at 136, 728 S.W.2d 501. The Claimant did not plead any facts upon which to base either of these two exceptions.

Immunity

12. Pursuant to Ark. Code Ann. § 19-10-305, the Respondent is immune from civil liability lawsuits for non-malicious acts occurring within the course of his employment. *See Beaulieu v. Gray*, 288 Ark. 395, 705 S.W.2d 880 (1986). The Claimant did not plead any facts demonstrating that the Respondent acted maliciously in the performance of his duty concerning the instant matter.

13. The Claimant's failure to sufficiently plead such facts is not a mere technical violation of the Rules; this failure unduly prejudices the Respondent in being able to prepare an adequate responsive pleading.

14. Accordingly, for the foregoing reasons, the Respondent pleads dismissal of the Claimant's Claim pursuant to Claims Commission General Rules of Practice and Procedure 1.5(d) and (e), 2.1, and Rule 8(a) and 12(b)(6) of the Arkansas Rules of Civil Procedure.

15. The Respondent pleads the following additional affirmative defenses: failure to join a necessary party under Rule 19 of the Arkansas Rules of Civil Procedure, and wrong party sued.

16. The Respondent reserves the right to amend its Answer and Motion herein.

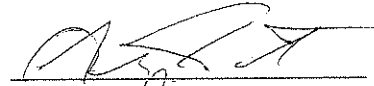
17. Should the Commission approve the Claim, the amount awarded should be paid from: Agency – 0630; Fund Center 241; Cost Center 397671; GL Accounting 5110003000;

Internal Order I0630164.

WHEREFORE, Respondent prays that based on the foregoing the Arkansas State Claims Commission grant its dismissal of the claim herein; and for any and all other relief to which it is or may become entitled.

Respectfully Submitted,

STATE OF ARKANSAS



Greg Ivester, Attorney
Office of Revenue Legal Counsel
P.O. Box 1272, Room 2380
Little Rock, AR 72203
Telephone: 501.682.7030

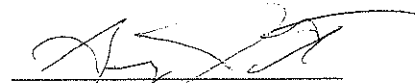
CERTIFICATE OF SERVICE

I, Greg Ivester, on this 6th day of February, 2017, do hereby certify that I have served a true and correct copy of the above and foregoing document upon the Claimant by depositing the same in the U.S. Mail, postage prepaid, addressed as follows:

Arkansas State Claims Commission
101 E. Capitol Ave., Suite 410
Little Rock, AR 72201
VIA HAND DELIVERY

Mr. B. Norman Williamson
1315 W. 2nd Street
Little Rock, AR 72201

By:


Greg Ivester (ABN 2007257)

IN THE ARKANSAS STATE CLAIMS COMMISSION

TERESA CLARK,

Claimant

v.

STATE OF ARKANSAS,

Defendant

Arkansas Claims Commission

FEB 23 2017

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Claimant's Response to Respondent's Motion to Dismiss

Claimant Stated Sufficient Facts To Support Her Claim

Defendant argues that Claimant fails to state sufficient facts in ordinary and concise language as to how the reversal of the SEGAP's decision violated any law of the State of Arkansas. In her argument, Claimant cited Department of Finance and Administration Office of Personnel Management Policy providing that a directive from SEGAP should not be disturbed unless it is clearly erroneous, or arbitrary, capricious and unreasonable. Claimant provided a plethora of facts that show that SEGAP's decision was reasonable and the CFO, therefore, violated OPM policy by reversing the decision. Plaintiff will discuss in the section below how the CFO's reversal also violated Arkansas state law.

(THU) FEB 23 2017 16:47/ST.16:47/NO.6860119434 P 2

FROM ARKANSAS AFSCME COUNCIL 88

Claimant Established an Exception to At-Will Employment

Arkansas case law provides two basic exceptions to the at-will doctrine: (1) where an employee relies upon a personnel manual that contains an express agreement against termination except for cause; and (2) where the employment agreement contains a provision that the employee will not be discharged except for cause, even if the agreement has an unspecified term. *Gladded v. Arkansas Children's Hospital*, 292 Ark. 130, 728 S.W.2d 501 (1987). Additionally, Arkansas law establishes an exception where an employecc is fired in violation of a well-established public policy of the state. The public policy of a state is found in its constitution and statutes. *Wal-Mart Stores, Inc. v. Baysinger*, 306 Ark. 239, 812 S.W.2d 463 (1991).

The facts in the instant case satisfy the public policy exception. AR Code § 21-1-702 (2014) provides:

The Office of Personnel Management (OPM) of the Division of Management Services of the Department of Finance and Administration shall establish a procedure for the filing, hearing, adjudication, and appeal of grievances by state agencies.

The procedure established by OPM provides:

All appeals to the CFO shall be determined solely on the Administrative Record. The CFO shall review the Administrative Record, including the appeal and any response to the appeal, and shall determine whether the Panel's decision is clearly erroneous.

In the instant case, Claimant alleged facts that show that the State Employee Grievance Appeal Panel's decision to reinstate Claimant's employment was not clearly erroneous and therefore the CFO violated OPM policy and, by extension, Arkansas statute 21-1-702 (2014).

Respondent Is Not Immune

Respondent states that Ark. Code. Ann. 19-10-305 protects insulates respondent from civil liability lawsuits for non-malicious acts. Ark. Code Ann. 19-10-305 provides:

Officers and employees of the State of Arkansas are immune from liability and from suit, except to the extent that they may be covered by liability insurance, for damages for acts or omissions, other than malicious acts or omissions, occurring within the course and scope of their employment
The aforementioned code protects officers and employees from liability,

however, Claimant is not suing an officer or employee, she is suing the State of Arkansas. The Arkansas State Claims Commission has exclusive jurisdiction of claims against the "State" and its agencies, boards, commissions or institutions.

Based on the foregoing reasons, Claimant ask the Arkansas Claims Commission not to dismiss her claim.

Respectfully Submitted,

B. Norman Williamson
1315 W. 2nd Street
Little Rock, AR

(THU)FEB 23 2017 16:48/ST.16:47/No.6860119434 P 4

FROM ARKANSAS AFSCME COUNCIL 38

Phone: (501)944-8185
Fax: (501)568-0015
norman@nickelslawfirm.com

CERTIFICATE OF SERVICE

I, B. Norman Williamson, certify that on Feb 29, 2017, I have served a copy of the above document upon Respondent by U.S. Mail to the address below:

Greg Ivester, Attorney
Office of Revenue Legal Counsel
P.O. Box 1272, Room 2380
Little Rock, AR 72203

By: 
B. Norman Williamson

(THU) FEB 23 2017 16:48/ST. 16:47/No. 6860119434 P 5

FROM ARKANSAS AFSCME COUNCIL 38

MAR 06 2017

IN THE ARKANSAS STATE CLAIMS COMMISSION

RECEIVED
CLAIMANT

TERESA CLARK

VS.

CLAIM NO. 17-0454-CC

STATE OF ARKANSAS

RESPONDENT

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

Comes now the Respondent, by and through counsel, Greg Ivester, and for its Reply to Claimant's Response to the Respondent's Motion to Dismiss, states as follows:

1. The Claimant's Response to the Respondent's request for dismissal, again, fails to state a claim upon which relief can be granted under Ark. R. Civ. P. Rule 12(b)(6), and requires dismissal as a matter of law.
2. The Claimant responds to the Respondent's request for dismissal claiming she "provided a plethora of facts that show that SEGAP's decision was reasonable," and that the "CFO violated OPM policy" by reversing its decision. Even assuming such allegations as true, the Claimant has only demonstrated that the CFO allegedly violated OPM policy. Moreover, such statements are conclusory, self-serving, and insufficient to state a claim upon which relief can be granted under Rules 8(b) and 12(b)(6) of the Arkansas Rules of Civil Procedure.
3. In support of her argument that the Claim contains sufficient facts under Rule 12(b)(6), the Claimant relies on language in OPM policy, which provides that "a determination by SEGAP **should** not be disturbed unless it is clearly erroneous, or arbitrary, capricious and unreasonable." The Claimant's Claim contends that the CFO could not have possibly found that SEGAP's determination was erroneous, arbitrary, capricious, and unreasonable. The Claimant disregards the fact that the language at issue uses the term "should," rather than "shall," and determines that by failing to follow OPM policy, the CFO allegedly violated Arkansas law.

4. Assuming arguendo, the CFO actually violated OPM policy, such violation would not result in a violation of Arkansas law. Again, Claimant's statements are conclusory and self-serving, and insufficient to state a claim upon which relief can be granted under Rules 8(b) and 12(b)(6) of the Arkansas Rules of Civil Procedure.

5. The Claimant appears to contend that the CFO's failure to follow OPM policy is a violation of Ark. Code Ann. § 21-1-701 *et seq.* This is incorrect. Arkansas Code Annotated § 21-1-701 *et seq.* provides an appeal process for purposes of affording Arkansas state employees the opportunity to settle employment disputes, among other things. The fact that the Claimant's appeal went all the way up to the CFO of the Department of Finance and Administration, is proof that the State complied with the process set out in § 21-1-701 *et seq.* As such, the Claimant has now exhausted any and all remedies available to her under § 21-1-701 *et seq.*, which provides that the "CFO's decision shall be binding on all parties and the matter is at that point considered final." Here the Claimant admits that the CFO considered the facts and determine that her "failure to carry out reasonable work requests and unsatisfactory work performance warranted termination." The fact that Claimant does not like or agree with the CFO's decision is not relevant to this matter

6. In her Response, the Claimant states that she has "established an exception to the at-will employment." Again, this statement is conclusory, self-serving, and fails to provide sufficient facts in ordinary and concise language under the rules to support such a claim. Instead, the Claimant provides the language of the two basic exceptions to the at-will doctrine. The Claimant also provides citations to the case law which support those exceptions. Neither exception is applicable herein, because the Claimant provided no proof or testimony that she had such an employment agreement or contract. Moreover, the Claimant failed to allege a cause of action for wrongful termination, nor did she set out facts in ordinary and concise language to support the elements of such a claim.

7. In her Response, the Claimant, incorrectly, attempts to bring herself within one other narrow exception to the employment-at-will doctrine-the public policy exception. This exception was established in *Sterling Drug, Inc. v. Oxford*, 294 Ark. 239, 743 S.W.2d 380 (1988). In *Sterling Drug, Inc.*, the court held that “an at-will employee has a cause of action for wrongful discharge if he or she is fired in violation of a well-established public policy of the state.” For example, an employer cannot fire an employee for refusing to violate the law, for exercising his or her statutory right, such as the right to file for workers’ compensation, or for exposing an illegal activity. Although Claimant attempts to argue that Ark. Code Ann. § 21-1-702 is a well-established policy in Arkansas, Claimant has not provided any statutory or constitutional provisions that would support such an argument. Therefore, this argument is misplaced because the Claimant was not “fired in violation of Ark. Code Ann. § 21-1-702;” rather, she was fired as a result of her “failure to carry out reasonable work requests and unsatisfactory work performance, which the CFO determined warranted her termination.” The facts in this case are distinguishable from all cases wherein the public policy exception was found to apply.

8. The foregoing notwithstanding, it is unnecessary to explore an at-will issue, except to point out again that the general rule in Arkansas is that an employer or an employee may terminate an employment relationship at will. See *Crain Indus. Inc. v. Cass*, 305 Ark. 566, 810 S.W.2d 910 (1991); See also *Gladden v. Arkansas Children's Hospital*, 292 Ark. 130, 728 S.W.2d 501 (1991). Because the Claimant was an at-will employee, she could have been fired for any reason, no reason, or even a morally wrong reason. See *Smith v. American Greetings Corp.*, 304 Ark. 596, 804 S.W.2d 683 (1991).

9. Claimant did not enclose any additional documentation or evidence which may be considered upon filing her Response.

10. Claimant’s Response failed to provide any information relevant to the matter herein.

Claimant has yet to state in ordinary and concise language a cause of action or legal theory upon which her Claim is based.

11. The Claimant's letter did not address the allegations set forth in the Respondent's Motion to Dismiss. Therefore, the Claim herein fails to state a cause of action against the State of Arkansas in ordinary and concise language as required under Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.

12. If required to move forward, the Claimant's failure herein to plead sufficient facts as are required by the Arkansas law, will result in prejudice to the State because the Respondent will: (1) be forced to speculate as to the legal basis of Claimant's Claim and (2) forced to educate the Claimant regarding the laws of the state of Arkansas.

13. The Respondent renews its request for dismissal of the Claim herein pursuant to Arkansas Claims Commission Rule 1.5(d) and Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.

WHEREFORE, the Respondent prays that based on the foregoing the Arkansas State Claims Commission grant its request for dismissal; and for any and all other relief to which it is or may become entitled.

Respectfully Submitted,

DFA/REVENUE DIVISION
STATE OF ARKANSAS

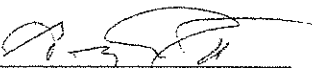
By: 
Greg Ivester, (ABN 2007257)

CERTIFICATE OF SERVICE

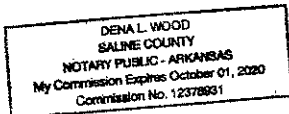
I, Greg Ivester, on this 6th day of March, 2017, do hereby certify that I have served a true and correct copy of the above and foregoing document upon the individuals represented below by depositing the same in the U.S. Mail, postage prepaid, addressed as follows:

Arkansas State Claims Commission
Brenda Wade
101 E. Capitol Ave., Suite 410
Little Rock, AR 72201
VIA HAND DELIVERY

Mr. B. Norman Williamson
1315 W. 2nd Street
Little Rock, AR 72201

By 
Greg Ivester





BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

TERESA CLARK

CLAIMANT

VS

CLAIM NO. 17-0454-CC

DEPARTMENT OF FINANCE AND
ADMINISTRATION

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the motion to dismiss filed by the Department of Finance and Administration (the "Respondent") against Teresa Clark (the "Claimant"). The motion has been submitted to the Claims Commission for ruling without a hearing. Based upon a review of the Respondent's motion, the Claimant's response, the Respondent's reply, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(a).
2. Claimant has failed to state a claim upon which relief can be granted.
3. Respondent's Motion to Dismiss is granted pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure and Rule 1.5 of the Claims Commission General Rules of Practice and Procedure. As such, Claimant's claim is denied and dismissed.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Henry Kinslow
Bill Lancaster
Jimmy Simpson, Co-Chair
Sylvester Smith
Mica Strother, Co-Chair

DATE: March 16, 2017

IN THE ARKANSAS CLAIMS COMMISSION

TERESA CLARK)
)
Claimant,)
)
 v.)
)
DEPARTMENT OF FINANCE)
AND ADMINISTRATION,)
)
Defendant.

Arkansas
State Claims Commission

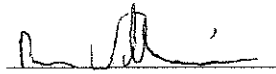
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MOTION FOR RECONSIDERATION

Plaintiff, by her attorney, move the Commission to reconsider her claim against the Department of Finance and Administration. Claimant filed a claim against the Department on the grounds that the Director of the Department improperly reversed a directive from the State Employee Grievance Appeal Panel reinstating Claimant to her job at the Arkansas Department of Corrections and granting Claimant backpay from time lost. On March 16, 2017, The Arkansas Claims Commission dismissed Claimant's claim on the ground that Claimant failed to state a claim for which relief can be granted. The Commission failed to specify why Claimant failed to state her claim.

Sincerely,



B. Norman Williamson
ABA 2010269
1315 W. 2nd Street
Little Rock, AR 72201
Phone: (501)944-8185
Fax: (501)568-0015
norman@nickelslawfirm.com

MAY 10 2017

IN THE ARKANSAS STATE CLAIMS COMMISSION

RECEIVED
CLAIMANT

TERESA CLARK

VS.

CLAIM NO. 17-0454-CC

STATE OF ARKANSAS

RESPONDENT

RESPONSE TO MOTION FOR RECONSIDERATION AND MOTION TO DISMISS

Comes now the Respondent, by and through its counsel, Greg Ivester, and for its Response to Motion for Reconsideration and Motion to Dismiss states:

1. The Respondent denies any and all allegations as contained in Claimant's Motion for Reconsideration.

2. The Claimant's Motion for Reconsideration should be dismissed for the following reasons:

- (i) The Claimant has again failed to state facts upon which relief can be granted under 12(b)(6) of the Arkansas Rules of Civil Procedure.
- (ii) The Claimant has failed to meet the standards set out in Rule 7.1 of the Arkansas State Claims Commission's Rules, which provides that motions for reconsideration will only be entertained if they set forth new or additional evidence which was not available to the moving party at the time of the scheduled hearing.
- (iii) The Claimant alleges no new evidence in support of her request for reconsideration, but rather asserts that the Commission failed to specify "why the Claimant failed to state her claim." It appears Claimant is seeking legal advice from the Commission regarding how to comply with its Rules as well as how to comply with the Arkansas Rules of Civil Procedure. Such a request is not proper.
- (iv) The Commission relied upon the facts as contained in the parties' pleadings and made a proper determination that Claimant had failed to comply with Ark. R. Civ. P. 12(b)(6).

3. The Claimant failed to provide a copy of her Motion for Reconsideration to the Respondent as required under Ark. R. Civ. P. 5(c). The Respondent only learned of the instant Motion when Respondent's office contacted the Commission on May 5, 2017, to inquire as to whether any new pleadings had been filed in the matter.

4. Because the Claimant has failed, again, to provide any facts upon which relief can be granted under Ark. R. Civ. P. 12(b)(6); and because the Claimant has failed to provide any new or additional evidence as required under Arkansas State Claims Commission Rule 7.1, the Claimant's Motion for Reconsideration should be dismissed with prejudice.

WHEREFORE, the Respondent respectfully requests that the Claimant's Motion for Reconsideration be dismissed with prejudice; and for any and all other relief to which it is or may become entitled.

Respectfully Submitted,

DFA/REVENUE DIVISION
STATE OF ARKANSAS

By: 

Greg Ivester, (ABN 2007257)
Revenue Legal Counsel
P.O. Box 1816 W. 7th
Little Rock, AR 72203
Phone (501) 682-7030
Facsimile: (501) 682-7599

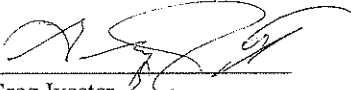
CERTIFICATE OF SERVICE

I, Greg Ivester, on this 10th day of May, 2017, do hereby certify that I have served a true and correct copy of the above and foregoing document upon the individuals represented below by depositing the same in the U.S. Mail, postage prepaid, addressed as follows:

R. B. Norman Williamson
Attorney for the Claimant
1315 W. 2nd Street
Little Rock, AR 72201

Arkansas State Claims Commission
Kathryn Irby, Director
101 E. Capitol Ave., Suite 410
Little Rock, AR 72201

VIA HAND DELIVERY

By 
Greg Ivester

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**TERESA CLARK****CLAIMANT**

v.

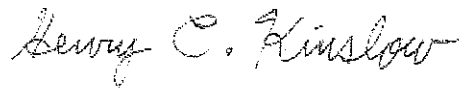
CLAIM NO. 17-0454-CC**STATE OF ARKANSAS****RESPONDENT****ORDER**

Now before the Arkansas State Claims Commission (the "Claims Commission") is the motion filed by claimant Teresa Clark (the "Claimant") for reconsideration of the Claims Commission's order denying and dismissing Claimant's claim against the State of Arkansas (the "Respondent"). Based upon a review of the Claimant's motion for reconsideration, the Respondent's response to the motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(a).
2. On March 16, 2017, the Claims Commission entered an order granting the Respondent's motion to dismiss and denying and dismissing Claimant's claim against Respondent for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.
3. On May 2, 2017, the Claimant filed a motion for reconsideration, seeking more information as to why Claimant's claim was dismissed pursuant to Ark. R. Civ. Proc. 12(b)(6). Claimant does not provide any "new or additional evidence," as required by Rule 7.1 of the Claims Commission General Rules of Practice and Procedure. As such, Claimant's motion for reconsideration is DENIED.

4. Claimant's claim was denied and dismissed by the Claims Commission for failure to state a claim. As stated by Respondent in its motion to dismiss, Claimant alleges that Respondent violated Arkansas law but does not state how reversal of the SEGAP decision violates Arkansas law. To the extent that Claimant is arguing that Respondent violated Ark. Code Ann. § 21-1-702, Claimant has stated no facts to support that argument. Ark. Code Ann. § 21-1-702 requires the Office of Personnel Management (OPM) to establish a procedure for hearing and adjudicating grievances, which OPM did and which Claimant benefited from, as her grievance was appealed up to the Chief Fiscal Officer. The fact that Claimant is displeased with the outcome of the grievance process does not constitute a fact sufficient to state a claim upon which relief can be granted.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth
Henry Kinslow, Co-Chair
Bill Lancaster
Sylvester Smith
Mica Strother, Co-Chair

DATE: May 25, 2017

JUN 16 2017

IN THE ARKANSAS STATE CLAIMS COMMISSION

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TERESA CLARK

CLAIMANT

v.


CASE # 17-0454-CC

DEPARTMENT OF FINANCE
AND ADMINISTRATION

DEFENDANT

CLAIMANT'S MOTION TO APPEAL TO THE GENERAL ASSEMBLY

Pursuant to Ark. Code Ann § 19-10-211, Claimant seeks to appeal the
abovementioned claim to the General Assembly.



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