



STATE OF ARKANSAS BUREAU OF LEGISLATIVE RESEARCH

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Matthew Miller, Assistant Director
for Legal Services
Richard Wilson, Assistant Director
for Research Services

TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Alfredo Munoz v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: May 2, 2016

Date of Claim Filed: September 12, 2016

Amount Claimed: \$250.00

Amount Awarded: N/A

Claimant's Representative: N/A

Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The Claimant alleged that he allowed another inmate to use his electronic game, as long as the inmate agreed to use the "AAA" batteries required. The inmate was found to have the game on his possession being powered by a "battery pack" consisting of "AA" batteries wired together. The game was confiscated as contraband and not returned to Claimant. Claimant alleges that when his game was confiscated, the staff did not fill out the proper documentation, and therefore did not follow proper procedure. Claimant seeks damages for the loss of his game.

Agency Response: The agency stated in its Motion to Dismiss that Claimant's game was confiscated as contraband. The agency asserted that Claimant can show no facts upon which he is entitled to relief under ARCP 12(B)(6). The game was powered by a "battery pack" and a "battery pack" is contraband, in addition, the agency asserted that Claimant violated the policy against trafficking and trading by giving his game to another inmate. The game was confiscated as contraband.

Opinion of the Claims Commission: The Commission granted the agency's Motion to Dismiss due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Barry Turner v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: April 30, 2016
Date of Claim Filed: September 6, 2016
Amount Claimed: \$6,200.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The Claimant alleged that he was sentenced to seventy-five (75) days of punitive isolation by a disciplinary hearing officer and was scheduled for release from isolation on April 30, 2016. However, Claimant was held in punitive isolation until June 16, 2016. Claimant alleged he was held for remaining days of punitive restriction, rather than punitive isolation, from 2015. Claimant alleged he was wrongfully held in punitive isolation for an additional thirty-one (31) days, and filed a claim for failure to follow procedure and mental anguish.

Agency Response: The agency stated in its Motion to Dismiss that Claimant's claim should be dismissed as he failed to exhaust all administrative remedies. A grievance must alert prison officials to a problem and give them an opportunity to address it. *Johnson v. Johnson*, 385 F. 3d 503, 522 (C.A.5 2004). The agency asserted that Claimant failed to include all documents in his appeal, thereby failing to properly exhaust his administrative remedies.

Opinion of the Claims Commission: The Commission granted the agency's Motion to Dismiss due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Chris Ward v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: November 14, 2015

Date of Claim Filed: July 18, 2016

Amount Claimed: \$1,000.00

Amount Awarded: N/A

Claimant's Representative: N/A

Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The Claimant alleged that while he was sleeping, another inmate entered his cell and opened his personal box and began emptying the contents into a common area. Claimant stated the agency was liable due to the "deliberate indifference" they showed by issuing him a defective box that was unable to lock and therefore allowed another inmate to easily access and take his personal property. Claimant filed a claim for the value of the items taken.

Agency Response: The agency stated in its Motion to Dismiss that Claimant's claim should be dismissed as he failed to exhaust all administrative remedies because Claimant made no allegation at any time in his grievance that his locker box was broken or defective. A grievance must alert prison officials to a problem and give them an opportunity to address it. *Johnson v. Johnson*, 385 F. 3d 503, 522 (C.A.5 2004). The agency stated there was no notice to the agency of any issue with the locker box being defective in the prior to the incident.

Opinion of the Claims Commission: The Commission granted the agency's Motion to Dismiss due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Danny Ray Woods v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: August 10, 2015

Date of Claim Filed: July 25, 2016

Amount Claimed: \$12,000.00

Amount Awarded: N/A

Claimant's Representative: N/A

Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The Claimant alleged that upon his transfer from the Cummins unit to the Varner unit, his personal property and hobby craft tools were not transferred to his new unit as required by procedure. Claimant claimed the unit staff failed to properly inventory and transfer his property which resulted in the loss of his hobby craft property, and rather the staff erroneously packaged tools and supplies from the wrong locker. Claimant sought damages for the items he claims he never received.

Agency Response: The agency stated in its Motion to Dismiss that Claimant's claim should be dismissed as he failed to exhaust all administrative remedies, because although Claimant filed a grievance, he did not file a timely appeal of the denial of this grievance to the next level. A prisoner is required to exhaust administrative remedies. *Booth v. Churner*, 532 U.S. 731 (2001). The agency stated that the Claimant filed a first step grievance but did not further his efforts to exhaust the grievance process.

Opinion of the Claims Commission: The Commission granted the agency's Motion to Dismiss due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Every Richardson v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: August 10, 2015

Date of Claim Filed: July 11, 2016

Amount Claimed: \$1,000.00

Amount Awarded: N/A

Claimant's Representative: N/A

Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The Claimant alleged that his clothes, which he purchased from the commissary, were removed from his person upon being taken to the infirmary. Claimant filed his claim when his clothes were not returned to him.

Agency Response: The agency stated in its Motion for Summary Judgment that Claimant's property was confiscated as contraband after an altercation with a fellow inmate. The agency asserted that Claimant's bloodstained clothing cannot be returned to him because they are evidence in a pending criminal case related to the altercation.

Opinion of the Claims Commission: The Commission granted the agency's Motion for Summary Judgment due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Jarrius Williams v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: November 3, 2015

Date of Claim Filed: July 6, 2016

Amount Claimed: \$2,500.00

Amount Awarded: N/A

Claimant's Representative: N/A

Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The Claimant alleged the agency failed to follow procedures when it failed to properly investigate the origin of several items of contraband that were discovered in a search of the library and not directly on the Claimant's person. Further, the Claimant argued that had the Agency followed the proper procedures that he would have been exonerated and never transferred to a different facility. Claimant claimed the transfer caused him to lose visitation with family and friends.

Agency Response: The Agency stated in its Motion to Dismiss that Claimant failed to state a claim for which relief can be granted. Specifically, the Agency stated that a disciplinary hearing was held on November 28, 2015 and the Director reversed the decision and cleared the Claimant of any violations. Further, the Agency asserted Claimant is subject to being transferred to any institution necessary at any time to meet institutional needs.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Jeremy Kennedy v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: January 27, 2016
Date of Claim Filed: September 26, 2016
Amount Claimed: \$36,500.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The Claimant alleged that he was sentenced to 170 days after receiving a major disciplinary violation for violating several rules. Claimant appealed that sentence, alleging that it exceeded the maximum of 150 day sentence. Claimant's appeal was granted and the sentenced reduced to 150 days. Claimant filed this claim for fees he claims he incurred in his defense.

Agency Response: The agency asserted that Claimant failed to state a claim upon which relief can be granted because he received the relief which he sought and provided no legal basis supporting his claim for payment for his own services. Further, the agency stated in its Motion to Dismiss that Claimant's claim should be dismissed as he failed to exhaust all administrative remedies. A grievance must alert prison officials to a problem and give them an opportunity to address it. *Johnson v. Johnson*, 385 F. 3d 503, 522 (C.A.5 2004). The agency asserted that Claimant failed to exhaust his remedies within the time period allotted.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Jerry Ellis v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: April 7, 2016
Date of Claim Filed: September 29, 2016
Amount Claimed: \$10,000.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The Claimant alleged that his clear tunes radio was damaged while in the custody of corrections staff after he was placed on behavioral control. The Claimant also alleged that he received "bogus infractions" or major disciplinary violations. Finally, the Claimant alleged he was not issued a pillow or mattress upon his return from behavioral control. The Claimant sought damages based on these claims.

Agency Response: The agency moved to dismiss arguing the Claimant failed to state a claim upon which relief can be granted. Specifically, officers stated Claimant never advised that the radio was broken when it was returned and any damage done was done so after it was returned to Claimant. Further, the agency asserted that Claimant failed provide any facts to support his claim of "bogus infractions." Finally, the agency asserted that Claimant admitted he received his pillow and mattress upon his release from behavioral control on April 7th, 2016.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to Claimant's failure to respond.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Joe Perkins v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: May 14, 2016
Date of Claim Filed: August 31, 2016
Amount Claimed: \$15,000.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The Claimant alleged that he was injured when he fell through his bed and that the bunk was damaged and therefore unsafe. The Claimant further alleged the medical treatment he received was inadequate. Because of this, the Claimant sought damages for personal injury and pain and suffering.

Agency Response: The agency moved to dismiss arguing that the Claimant failed to state facts upon which relief may be granted. Specifically, the agency asserted that Claimant has alleged that his bunk was damaged prior to his being assigned the bunk in question and that he notified corrections personnel. However, corrections personnel stated that they were not notified at any time prior to the alleged injury and the Claimant previously assigned the bunk filed no grievances or maintenance requests about the condition of the bunk. The agency stated that only one maintenance request was made, after the incident in question. Further, the agency argued the bunk was noted to be 14.5 inches off the ground, and that a fall from this distance is not consistent with the Claimant's alleged injuries.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons given in the motion.



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Memorandum

TO: Claims Review Subcommittee

FROM: BLR Legal Services Division Staff

SUBJECT: Summary of Legal Issues
Juan Carlos Rodriguez v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: October 28, 2015

Date of Claim Filed: September 12, 2016

Amount Claimed: \$2,500.00

Amount Awarded: N/A

Claimant's Representative: N/A

Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The inmate alleges that his personal wheelchair was in need of repair and was to be sent off for repair by the Grimes Unit infirmary. The inmate acknowledges that he was provided a temporary wheelchair, but states that, on October 28, 2015, his wheelchair was turned over to the ADC property room for disposal. The inmate claims that he was told he would have thirty (30) days in which to decide what was to be done with the wheelchair, but he was not offered the necessary disposition form, and the wheelchair was destroyed. He now seeks damages for loss of property and failure to follow procedure.

Agency Response: The agency moved to dismiss, asserting that the inmate failed to exhaust his remedies and lack of jurisdiction, specifically, that the inmate failed to exhaust his remedies when he did not timely pursue his grievance. The agency notes that the inmate's grievance was even rejected as untimely; therefore, the agency states, the inmate's complaint should be dismissed.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss for the reasons contained in the motion.



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Memorandum

TO: Claims Review Subcommittee

FROM: BLR Legal Services Division Staff

SUBJECT: Summary of Legal Issues
Kenneth Davis v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: May 9, 2016

Date of Claim Filed: August 11, 2016

Amount Claimed: \$10,000.00

Amount Awarded: N/A

Claimant's Representative: N/A

Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The inmate states that on May 9, 2016, he was the subject of a cell extraction in order to be placed on behavior-control status for seventy-two (72) hours due to his disruptive behavior. The inmate claims that, while dressed in only boxer shorts and socks, he was provided neither a blanket nor toilet paper and was forced to sleep on a concrete floor, which he alleges is against behavior-control policy. He now seeks damages.

Agency Response: The agency moved to dismiss, asserting that the inmate has failed to state a claim upon which relief can be granted and lack of jurisdiction. Specifically, the agency states, the inmate has alleged a violation of the Eighth Amendment, if the denial of a blanket and toilet paper to him is found to be punishment. The agency states that the Claims Commission does not have jurisdiction over federal causes of action and, therefore, the inmate's complaint should be dismissed for lack of jurisdiction. The agency further asserts that there is no prohibition against placing the inmate on behavior control in his boxer shorts and socks. The agency points out that the inmate had dashed an officer and threatened to dash a sergeant. While he is entitled to a paper gown unless it is determined that he could harm himself or use it for destruction, the agency claims that it was not unreasonable to withhold a paper gown, if that did occur, in light of the inmate's destructive behavior. The agency additionally states that no mattresses are provided to inmates on behavior control pursuant to agency policy. For these reasons, the agency asserts, the inmate's claim should be dismissed for failure to state a claim upon which relief can be granted.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss for the reasons contained in the motion. The Commission later denied the inmate's motion for

reconsideration due to the inmate's failure to offer evidence that would change the Commission's prior decision.



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Memorandum

TO: Claims Review Subcommittee

FROM: BLR Legal Services Division Staff

SUBJECT: Summary of Legal Issues
Marcus Fields v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: March 10, 2016
Date of Claim Filed: August 18, 2016
Amount Claimed: \$6,000.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The inmate claims that he was housed in administrative segregation after the Varner Unit's mailroom received contraband addressed to him. The inmate contends that he was assigned to administrative segregation without justification because the contraband was never in his possession and he had no involvement in its arrival. He further asserts that, despite having been subsequently exonerated on April 4, 2016, he was not released back into general population. He contends that the Department intentionally violated and ignored administrative-segregation policies, and he now seeks damages.

Agency Response: The agency moved to dismiss, asserting that the inmate has failed to state a claim upon which relief can be granted. Specifically, the agency asserts, the inmate is incorrect in stating that he was exonerated, as his disciplinary was actually dismissed due to an invalid extension form. The agency states that the inmate was seen by Classification and that it was determined that he would remain in administrative segregation due to his behavior. Additionally, the agency avers, the inmate's remaining allegations were not timely exhausted, thereby precluding the pursuit of his claims before the Claims Commission, and the claim should be dismissed.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss for the reasons set forth in the motion. The Commission also denied the inmate's motion for reconsideration due to the inmate's failure to offer evidence that would change the Commission's prior decision.



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Memorandum

TO: Claims Review Subcommittee

FROM: BLR Legal Services Division Staff

SUBJECT: Summary of Legal Issues
Russell Berger v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: March 31, 2016

Date of Claim Filed: August 8, 2016

Amount Claimed: \$538.18

Amount Awarded: N/A

Claimant's Representative: N/A

Respondent's Representative: Lisa Wilkins

Allegations of Claimant: The inmate claims that on March 31, 2016, his cell was searched and several of his personal items were confiscated and turned over to Internal Affairs. He maintains that the items were not contraband; thus, there was no need to seize the items other than to serve as punishment. The items seized included one (1) rollup keyboard, two (2) handheld video games, six (6) JVC Xtreme Bass earbuds, and five (5) books. The inmate now seeks damages for the loss of his property.

Agency Response: The agency moved to dismiss, asserting that the inmate has failed to state a claim upon which relief can be granted. The agency states that the inmate's property was confiscated as contraband after a search of the inmate's cell during an investigation into his involvement in downloading pornographic material from the internet. The agency claims that because the matter remains under investigation by the Arkansas State Police for potential criminal charges against the inmate, there is nothing to return to him.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss for the reasons set forth in the motion. The Commission further denied the inmate's motion for reconsideration due to the inmate's failure to offer evidence that would change the Commission's prior decision.



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Memorandum

TO: Claims Review Subcommittee

FROM: BLR Legal Services Division Staff

SUBJECT: Summary of Legal Issues
Steven Turner v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: April 25, 2016

Date of Claim Filed: October 13, 2016

Amount Claimed: \$10,000.00

Amount Awarded: N/A

Claimant's Representative: N/A

Respondent's Representative: Lisa Wilkins and Lauren Elizabeth Heil

Allegations of Claimant: The inmate claims that on April 25, 2016, he was awakened in the early morning by another individual striking him with a sock containing an unknown object. The inmate states that he was struck several times on his arms and about his chest area. The inmate contends that the individual responsible for his attack was another inmate not assigned to the same barracks that was let in "unassigned." The inmate further states that upon his release from the infirmary, the sole remedial action taken by the Department was to reassign him to another barracks. The inmate now seeks damages for his injuries and the Department's failure to follow procedure.

Agency Response: The agency moved to dismiss, asserting that the inmate has failed to state facts upon which relief can be granted. The agency acknowledges that the inmate was attacked, in fact by two other inmates, and that he thereafter received medical treatment at the infirmary. The agency states that a subsequent investigation revealed that a corrections officer had failed to follow ADC policy that required him to log all inmates as they move in and out of barracks. The agency further states that this officer was disciplined with a written warning and was placed on six months' probation. The agency notes that the inmates responsible for the attack were punished for disciplinary code violations in relation to the incident, and all three inmates involved were placed on each other's enemy watch lists. The agency, while regretful of the incident, avers that it has fully investigated the incident and taken the appropriate remedial measures. Moreover, the agency contends, the inmate has not identified any further damages that warrant the compensation he seeks.

Opinion of the Claims Commission: The Commission granted the agency's motion for the reasons set forth in the motion.