

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

December 2, 2014
Room 218-N—Statehouse

Committee Members Present

Senator Dan Kerschen, Chairperson
Representative James Todd, Vice-chairperson
Senator Terry Bruce
Senator David Haley
Representative Sydney Carlin
Representative Mike Houser
Representative Craig McPherson

Staff Present

Cindy Lash, Kansas Legislative Research Department
Eddie Penner, Kansas Legislative Research Department
Justin Carroll, Kansas Legislative Research Department
Daniel Yoza, Office of Revisor of Statutes
Deb Burns, Committee Assistant

Conferees

Libby Snider, Kansas Department of Corrections
Jeff Chanay, Office of Attorney General
Steve Phillips, Office of Attorney General
John Wesley Smith, Office of Attorney General
Edie Martin, Kansas Department of Revenue
Teri Agnew, Kansas Department of Revenue
Antwan Girgis, Claimant
Sally Kelsey, Attorney
Mike Leitch, University of Kansas

Morning Session

Chairperson Kerschen called the meeting to order at 10:00 a.m. He welcomed the Committee members, staff, and conferees to the meeting, and he thanked Representative Todd for presiding over the October 22 meeting in his absence.

Representative Houser moved to approve the October 22, 2014, minutes; Representative Todd seconded the motion; the motion carried.

Motor Fuel Tax Refunds for 2014 were submitted by Teri Agnew, Kansas Department of Revenue ([Attachment 1](#)). *Representative Todd moved to approve; Representative Carlin seconded the motion; the motion carried.* The Committee encouraged a review and listing of businesses that repeatedly file claims beyond the deadline.

HEARING ON THE RECORD

Claim No. 6659, Claimant, David O'Rear #98292
v. Respondent, KDOC
due to property loss in the amount of \$65.00

Claimant stated when he was moved to Segregation due to intoxication, he was told to sign some papers. When he was released from Segregation, he discovered some of his property was missing. He filed a Property Claim form that was denied. He feels it was irresponsible for officers to have him sign anything when they knew he was intoxicated and did not realize what he was signing.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the claim investigator determined none of the claimed items were listed on the property inventory sheets, and the Claimant signed the inventory sheets, certifying they were correct. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6659 be denied.
(See section captioned "Committee Action and Recommendation.")

HEARING FROM EL DORADO CORRECTIONAL FACILITY

Claim No. 6624, Claimant, Adrian M. Requena #48877
v. Respondent, KDOC
due to property loss in the amount of \$39.64

Claimant stated an officer went through his property and mixed it up with another inmate's property. His property was never returned to him even though he provided proof of purchase and was in possession of the claimed property when it was lost.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the Claimant's items may have been mixed up with that of another inmate. However, it appears from documentation, none of the property included in his claim was in his possession at the time of the mix-up, so his claimed loss cannot be substantiated. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6624 be dismissed without prejudice. (See section captioned "Committee Action and Recommendation.")

HEARING ON THE RECORD

Claim No. 6674, Claimant, David Valencia #88258
v. Respondent, KDOC
due to theft of Inmate Account in the amount of \$43.36

Claimant stated money was taken from his inmate bank account on three different occasions for commissary items he ordered but never received.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated Claimant's canteen transaction history shows the amounts claimed were charged to his account on the dates indicated, but months passed before the Claimant complained he never received the purchased items. The claim is not supported by any evidence and Claimant has failed to exhaust administrative and judicial remedies. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6674 be dismissed without prejudice. (See section captioned "Committee Action and Recommendation.")

HEARINGS FROM LANSING CORRECTIONAL FACILITY

Claim No. 6667, Claimant, Edward Lasley #64783
v. Respondent, KDOC
due to refund of overpayments in the amount of \$2,112.84

Claimant stated he has been paying off court-ordered restitution and costs, paycheck by paycheck, and has discovered accounting discrepancies in amounts taken from his paycheck and what was actually owed. He claims he was charged with overpayment of collection fees and court costs.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated Claimant's argument that the collection fees should be deducted from the restitution amount ordered by the court is contrary to statute, which provides that the cost of collection is the offender's responsibility and shall not be deducted from the debts owed to courts or restitution. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6667 be carried over. (See section captioned "Committee Action and Recommendation.") The Committee encouraged KDOC to audit the Claimant's payments for restitution and court costs.

Claim No. 6666, Claimant, Guillermo Ruiz #106654
v. Respondent, KDOC
due to personal injury in the amount of \$4,000,000.00

Claimant stated he was placed in protective custody for four weeks after being threatened by other inmates. He claims he was later threatened with disciplinary action if he did not agree to leave protective custody, and was lied to by an officer who told him he would be safe because the threatening inmate had been moved to another unit. After leaving protective custody, he was attacked by two inmates and suffered fractures, bruises, pain, and permanent damage to his left eye.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated all injuries described by the Claimant are supported by his medical record, and there is no indication any of said injuries were the direct result of staff conduct. The Claimant was involved in an altercation with other inmates, and while he alleges this was the result of his reliance on a lie by a corrections officer, the allegation is unsupported. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6666 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6665, Claimant, Ronald Hailes #39699
v. Respondent, KDOC
due to loss of wages in the amount of \$200.00

Claimant stated he was written up on a disciplinary infraction for having the makings of alcohol in his locker. He alleged facility staff did not test him for alcohol consumption or the alleged products for alcohol content. Due to the disciplinary charge against him, he lost his state pay and his medium custody status. He alleged that because the charge against him was amended to non-disciplinary, any charge relating to this incident should be dismissed.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated that, as a result of evidence presented at the Claimant's disciplinary hearing, the charge of dangerous contraband was amended to a lesser charge of contraband, and the conviction was confirmed by the Secretary. Any loss sustained by the Claimant resulted from his conduct, not from staff negligence, and there is no indication he is entitled to compensation on this claim. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6665 be denied.
(See section captioned "Committee Action and Recommendation.")

HEARING FROM LARNED CORRECTIONAL MENTAL HEALTH FACILITY

Claim No. 6646, Claimant, Christopher Pierce #58077
v. Respondent, KDOC
due to insufficient medical care and property damage in the amount of \$500.00

Concerning the alleged property damage, the Claimant stated that during a search of his cell by officers, his personal eyeglasses were broken and he was provided a replacement pair of eyeglasses through the facility health authority; he filed a property claim in the amount of \$119.00 for the disproportional replacement cost of his personal eyeglasses; his claim was denied.

Concerning the alleged insufficient medical care, the Claimant stated as a result of contact with someone else's bodily fluids during forced oral sex with a facility staff member, he may have been exposed to a contagious disease and needs to be seen by a nose, throat, and ear specialist due to deterioration of his health and eyesight.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the alleged abuse by staff was investigated and not substantiated, and nothing was provided by the Claimant that established examination by a specialist was medically indicated or that it was ever requested and denied. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6646 be denied.
(See section captioned "Committee Action and Recommendation.")

HEARINGS

Claim No. 6663, Claimant, Antwan Girgis
represented by Sally Kelsey, Attorney
v. Respondent, University of Kansas (KU)
due to personal injury in the amount of \$50,000.00

Claimant's attorney stated the Claimant suffered a compound fracture to his arm while slipping on ice in the parking lot of the University of Kansas School of Pharmacy. As a result of his injuries, the Claimant suffered out-of-pocket medical expenses and lost wages. The Claimant alleges that if KU maintenance crews had not removed the cushion of snow from the parking lot, the Claimant would not have fallen on ice and suffered the alleged injury.

Respondent, KU
represented by Michael Leitch, Associate General Counsel, KU

Respondent stated the liability of state agencies, including KU, is determined by reference to the Kansas Tort Claims Act that expresses the clear and sound policy that the State cannot be held responsible for damages resulting from "snow or ice conditions or other temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the governmental entity." KU respectfully asked the Committee deny the claim.

Following discussion, the Joint Committee recommended Claim No. 6663 be dismissed without prejudice under Rule 2. (See section captioned "Committee Action and Recommendation.")

Claim No. 6668, Claimant, Debra Skalinder
v. Respondent, Office of the Attorney General (OAG)
due to property damage in the amount of \$1,829.77

Claimant stated the front bumper of her car was damaged when it hit metal stakes sticking up two inches above the cement parking bumper of the parking stall she was pulling into at the Hutchinson Correctional Facility (HCF).

Respondent, OAG
represented by Stephen Phillips, Assistant Attorney General

Respondent stated, because the Claimant's car appears to have been damaged by an unusual condition through no apparent fault of her own, the OAG does not oppose the Hutchinson Correctional Facility warden's recommendation this claim be paid.

Following discussion, the Joint Committee recommended Claim No. 6668 be allowed in the amount of \$1,489.61. (See section captioned "Committee Action and Recommendation.")

HEARINGS FROM HUTCHINSON CORRECTIONAL FACILITY

Claim No. 6643, Claimant, Steven Gilkey #35717

v. Respondent, OAG

**due to violation of 14th and 15th Amendment Rights and Americans with Disabilities Act
in the amount of \$49,999.00**

Claimant stated his constitutional rights were violated and he suffers emotional distress and pain due to incorrect sentencing in light of the recent decision by Kansas Supreme Court in *State v. Murdock*. He claims his 27-month sentence should be reduced to 19 months.

Respondent, OAG

represented by John Wesley Smith, Assistant Attorney General, OAG

Respondent stated the claim should be denied for multiple reasons: Claimant has not served any part of the sentence he alleges to be excessive, the opinion in *State v. Murdock* has not been finalized, and Claimant is already pursuing the appropriate alternative remedy to determine the legality of his sentence. The OAG recommended the claim be denied based upon a wholly speculative and non-demonstrated claim of damages.

Following discussion, the Joint Committee recommended Claim No. 6643 be dismissed without prejudice under Rule 2. (See section captioned "Committee Action and Recommendation.")

Claim No. 6608, Claimant, Nicomedes Barahona #60599

v. Respondent, KDOC

due to property loss in the amount of \$199.95

Claimant stated his property was to be inventoried, packed, and transported to another unit by facility staff. Due to being placed in Segregation, he was not present at any stage of staff members' handling of his property for two days. His property sat unattended in the cell house lobby. When he was given his property he found 57 items were missing; 24 of those were eventually found; the rest are still unaccounted for.

Respondent, KDOC

represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the facility investigation concluded the Claimant provided no documentation showing staff had taken control of the claimed property, or that the Claimant was in possession of the claimed property prior to the move. Absent proof of a loss attributable to staff negligence, KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6608 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6658, Claimant, Jason Peterson #75665
v. Respondent, KDOC
due to property loss in the amount of \$9.72

Claimant stated he was transferred to the Hutchinson Correctional Facility's Segregation unit directly from a disciplinary hearing, and when he later received his property, he was given state-issued hygiene items, not the items he had purchased, which included a new bar of soap, toothpaste, and hair oil.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated Claimant did not note any discrepancies when he signed the Property Inventory sheet upon arrival at the Hutchinson Correctional Facility. Documentation does not establish that the Claimant suffered any loss as a direct result of staff conduct.

Following discussion, the Joint Committee recommended Claim No. 6658 be denied.
(See section captioned "Committee Action and Recommendation.")

Claim No. 6655, Claimant, Thomas Everson #35685
v. Respondent, KDOC
due to property loss in the amount of \$210.00

Claimant stated he was forced to throw away food items and cassette tapes after he was told to bring his property into compliance due to excess. He claims he should have been allowed to maintain all of his food items as none of it was given to him for free, and some of it was recently purchased at a facility fundraiser for which no purchase limit was mentioned. He also stated he should have been allowed to keep all of his cassette tapes since he arrived with them upon transfer from another facility and would have been considered to be "grandfathered-in."

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated policy states an inmate may possess property up to a total volume of one storage box, and an inmate may "at any point in time" be required to demonstrate his property is within the established limits. Policy also contains a quantity limit of 15 cassette tapes. The Claimant had six boxes of property and 42 cassette tapes, exceeding both quantity limits. He was given the option to mail out, donate, or destroy the excess property, and he chose to destroy it. KDOC recommended the claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6655 be denied.
(See section captioned "Committee Action and Recommendation.")

Claim No. 6654, Claimant, Thomas Everson #35685
v. Respondent, KDOC
due to property loss in the amount of \$210.00

Claimant stated his Georgia Giant boots were taken from him by officers when he was placed in Segregation, and the boots never made it to Central Property to be properly secured and were never returned to him. He stated the boots were purchased by him from a source outside the facility and he provided a Banking Transaction History showing payment for the boots to the Brown's Shoe Fit Company on August 30, 2010.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated claims investigator located an Inmate Property Receipt indicating the Claimant had received a pair of Georgia Giant boots as "replacement from company" on November 15, 2010. After June 22, 2011, there are no boots listed on any property inventories for this Claimant, nor any discrepancies noted. The Claimant's claim that staff lost his boots on or after April 24, 2014, could not be substantiated. KDOC recommended the claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6654 be denied.
(See section captioned "Committee Action and Recommendation.")

Claim No. 6653, Claimant, Thomas Everson #35685
v. Respondent, KDOC
due to property loss in the amount of \$15.00

Claimant stated a corrections officer confiscated a pair of his shorts claiming they had been altered by adding pockets. Claimant had purchased the item through a facility fundraiser with the pockets already attached. He was not given the option to mail them out prior to being destroyed by the officer.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the Claimant did not provide documentation to show he had purchased the shorts through a fundraiser with the pockets already present. Regulation provides that altered property is contraband, it is to be confiscated, and the inmate forfeits all rights to it. This would include the right to determine its disposition. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6653 be denied.
(See section captioned "Committee Action and Recommendation.")

HEARINGS ON THE RECORD

Claim No. 6679, Claimant, Ryan Heim #102710

v. Respondent, KDOC

due to property loss in the amount of \$79.95

Claimant stated he was told to remove certain items of his property, given a deadline, advised to prepare a property removal form and S.P.O. for postage payment, and sent the property to A&D Property. He followed up with his unit team asking to be sure all listed items on the removal form made shipment. A list of his personal items was shipped *via* USPS to a family member; however, his MP3 player and batteries did not make the shipment.

Respondent, KDOC

represented by Libby Snider, Legal Counsel, KDOC

Respondent stated all available documentation indicated the MP3 player was shipped with the other items; there is nothing to indicate it remains at the facility. There is no indication the Claimant suffered a loss as the direct result of staff negligence. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6679 be denied.
(See section captioned "Committee Action and Recommendation.")

Claim No. 6671, Claimant, Ryan Heim #102710

v. Respondent, KDOC

due to property loss in the amount of \$113.97

Claimant stated his property was packed by officers, without his presence, for cell house transfer. After review of his property inventory sheets, he found many items were missing.

Respondent, KDOC

represented by Libby Snider, Legal Counsel, KDOC

Respondent stated investigation determined the Administrative Segregation Report showed the Claimant was present for the packing of his segregation allowable property. The security camera recording was reviewed, and the Claimant was seen leaving his five-person cell at 18:37. At 19:04 an officer entered the cell empty-handed and emerged approximately one minute later carrying a large box of property, indicating the property was already gathered and packed before the officer entered. In addition, the Claimant had signed the property inventories without noting any discrepancies. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6671 be denied.
(See section captioned "Committee Action and Recommendation.")

HEARINGS

Claim No. 6611, Claimant, Michael Moody
v. Respondent, KDOC
due to property loss in the amount of \$262.97

Claimant stated during his move to central max, some of his property was stolen from an unsecured storage room by inmate porters. Later, his television and other items were offered back to him by inmates for purchase.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated documentation does not support a finding the Claimant suffered a loss as a direct result of staff negligence or misconduct. All of the items claimed have been accounted for; he signed a receipt for most of them without noting any discrepancies and many appear on later inventories of his property. Some items appear to have been removed from the facility according to Claimant's instructions; the remaining items were contraband due to their misuse or excessive accumulation and, therefore, disposed of. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6611 be denied. (See section captioned "Committee Action and Recommendation.") Committee members discussed whether there exists a legislative committee that could hear discussion on how inmate property pack-out could be better documented.

Claim No. 6634, Claimant, Michael Moody
v. Respondent, KDOC
due to excessive force in the amount of \$200,000.00

Claimant stated he was asleep in his cell and missed his shower. He asked if he could take one anyway. An officer accused him of being drunk. He went to the clinic and was questioned. He asked for an alcohol test strip to be done but was told he was "going to the hole and to cuff up." While he was being held in a wheelchair he was tazed in the cheek, which pierced the skin, then tazed 2 or 3 times in jaw, ear, and head, and he still has scars. He claims through all of this he was not resisting. He was put in a room and was bleeding. He was later stitched up and put in "the hole." He could not see out of his left eye and was later taken to the Wichita clinic where it was determined he suffered severe stress, which caused his eyesight to go temporarily. He was never charged with anything. He never got the chance to prove he was not drinking with a test strip and now has severe headaches.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated Claimant was taken to the clinic and was determined to be under the influence of alcohol. He refused orders to cuff-up while demanding a breathalyzer test. When

officers attempted to subdue him, he became combative and hand-held electronic devices were applied. Officers attempted to move him to Segregation, but he was still combative so officers applied a one-second burst of chemical agent. Claimant did suffer apparently minor injuries during the altercation with staff, but it appears it was his own actions that necessitated the use of force. There is no showing he suffered any loss as a direct result of staff negligence or misconduct. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6634 be dismissed without prejudice under Rule 2. (See section captioned "Committee Action and Recommendation.")

Claim No. 6603, Claimant, Darryl Carter
v. Respondent, KDOC
due to property loss in the amount of \$504.85

Claimant stated, while in a Work Release program, he had a medical emergency that staff mistook as being under the influence. He was sent to Segregation instead of to the clinic for observation and his property was packed out by officers without his presence. When he was finally given his property, he discovered items were missing. The missing property are all items deemed non-allowable in Segregation. Some of the missing property has been returned to him.

Respondent, KDOC
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the claim is confusing as to exactly what items are claimed and the exact value of each. The Claimant can establish he purchased most of the items claimed, but there is no showing the claimed items were in his possession when his property was packed, or that the items were ever in the possession of KDOC staff. KDOC recommended this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6603 be denied. (See section captioned "Committee Action and Recommendation.")

WITHDRAWAL

Claim No. 6661, Claimant, Susan McCullers
v. Respondent, Adjutant General's Department
due to property damage in the amount of \$1,270.89

Claimant withdrew the claim.

Following discussion, the Joint Committee recommended Claim No. 6661 be dismissed without prejudice due to withdrawal. (See section captioned "Committee Action and Recommendation.")

The meeting adjourned at 4:50 p.m.

Prepared by Deb Burns
Edited by Cindy Lash

Approved by the Committee on:

January 7, 2015
(Date)