

SEP 13 2012

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Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

Myron Woods, #132694 Claimant

vs.

State of Arkansas, Respondent

Dept. of Correction

Do Not Write in These Spaces Claim No. 13-0236-CC Date Filed September 13, 2012 Amount of Claim \$ 25,000.00 Fund DOC

COMPLAINT Failure to Follow Procedure, Personal Injury, Pain & Suffer Mental Anguish

Myron Woods, #132694, the above named Claimant, of P.O. Box 180, Briceys, AR 72320

AR. 72320 County of Lee represented by NIA

of NIA NIA NIA NIA NIA NIA

State agency involved: Arkansas Department of Correction Amount sought: 25,000 thousand dollars

Month, day, year and place of incident or service: 9-14-10 E.A.R.U. General Population 15-B.K.S. Rack #1

Explanation: I will show you Policy and Procedure was violated and by doing so it cause me bodily harm and substantial risk. Inmate Andrew Beverly #87272 was assign to the Prison E.A.R.U. housing area 15 and on the early morning of 9-14-10 I claimant was assaulted in my sleep by inmate Andrew Beverly #87272 while I was asleep in housing area 15 barracks rack 1. And during the assault by inmate Beverly upon me there was no security personnel assigned or in 15 barracks. Inmate Beverly beat me in the face with a broom while I was asleep until security arrive and intervene and stop the assault. I was taken to E.A.R.U. main infirmary where I received 19 stitches for the injuries and damages. According to Policy and Procedure there is to be a security officers assigned to housing area 15 at all time. According to Policy and Procedure when ever the barracks Porter is using the cleaning tools, the BKS Porter is to be Supervise by Security Personnel. On 9-14-10 officers Futrell was assigned to 13 and 15 control booth and he was responsible for issuing the cleaning tools to the BKS Porter and by not watching the BKS Porter use the cleaning supplies he violated Policy and procedure because inmate A. Beverly #87272 is known for being a violate inmate. The claimant is asking Relief of 25,000 thousand dollar For Failure to protect attack by another inmate, Compensatory damages, Physical Pain and emotional injuries and damages From the assault.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to my state department or officer thereof? yes; when? 9-18-10, 9-22-10, 10-13-10; to whom? M.E. William Problem solver, Mr. Romy Burl unit warden, Mr. Lora May Director; and that the following action was taken thereon: M.E. William Problem solver couldn't resolve it Mr. Warden Burl refer to warden decision Brian # EA-10-01629, Mr. May Director decision Brian # EA-10-166 and that \$ 0 dollar was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address

NIA (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.

Mr. Myron Woods #132694 (Print Claimant/Representative Name) Mr. Myron Woods #132694 (Signature of Claimant/Representative)

WALLACE B. McNARY NOTARY PUBLIC-STATE OF ARKANSAS (SEAL) ST. FRANCIS COUNTY My Commission Expires 01-10-2015

SWORN TO and subscribed before me at Briceys AR on this 06 day of Feb 2012 My Commission Expires 01-10-2015

SF1- R7/99

My Commission Expires: 01-10-2015 (Month) (Day) (Year)

UNIT LEVEL GRIEVANCE F M (Attachment D)

Unit/Center EARV

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FOR OFFICE USE ONLY  
GRV. # EA-10-D1629  
Date Received: 9-23-10  
GRV. Code #: 900

Name MR. MYRON WOODS

ADC# 132694 Brks # 15-1 Job Assignment Subordinate

9-18-10 (Date) STEP ONE: Informal Resolution

9-22-10 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why: This issue cannot be resolved at step one, this is a complete denial of Brz Amend.

(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? No If yes, circle one: medical or mental BRIEFLY state your one complaint/concern and be specific as to the complaint, date, place, name of personnel involved and how you were affected. (Please Print):

I was assaulted while I was sleeping in 15-1 on 9-14-10. At no time are officers assigned within each 50 bed unit, with appropriate personal alarm equipment. Due to this current past arrangement are dangerously inadequate and more direct supervision is required. In either past assignment concept a raised platform should be installed to provide a distinct officer station and a better viewing of the entire barracks area. (see emphasis in Original) not providing fundamental security and safety practices, resulted in my injuries and type of inappropriate actions and the almost total lack of direct monitoring could be resulting in criminal activities currently, while state is not required to ensure that its inmates face absolutely no danger from assaults by other inmates, it must take a reasonable measures to guarantee the safety of its inmates. U.S. Const. Amend. 8th. Smith v. Norris 877 F. Supp 1296 (1995), failure to protect.

Mr. Myron Woods  
Inmate Signature

9-18-10  
Date

If you are harmed/threatened because of your use of the grievance process, report it immediately to the Warden or design

**THIS SECTION TO BE FILLED OUT BY STAFF ONLY**

This form was received on \_\_\_\_\_ (date), and determined to be Step One and/or an Emergency Grievance \_\_\_\_\_ (Yes or No). This form was forwarded to medical or mental health? \_\_\_\_\_ (Yes or No). If yes, name of the person in that department receiving this form: \_\_\_\_\_ Date \_\_\_\_\_

M.E. Williams 7220 M. E. Williams 9-18-10  
PRINT STAFF NAME (PROBLEM SOLVER) ID Number Staff Signature Date Received

Describe action taken to resolve complaint, including dates: You complaint cannot be resolved at this level, proceed to step two

Staff Signature & Date Returned M. E. Williams 9/22/10 Inmate Signature & Date Received Mr. Myron Woods 9-22-10

This form was received on \_\_\_\_\_ (date), pursuant to Step Two. Is it an Emergency? Yes (Yes or No).

Staff Who Received Step Two Grievance: \_\_\_\_\_ Date: 9/22/10

Action Taken: \_\_\_\_\_ (Forwarded to Grievance Officer/Warden/Other) Date: 9/22/2010

If forwarded, provide name of person receiving this form: \_\_\_\_\_ Date: \_\_\_\_\_

DISTRIBUTION: YELLOW & PINK - Inmate Receipts; BLUE-Grievance Officer; ORIGINAL TO BUILDING ADMINISTRATION  
INMATE GRIEVANCE SUPERVISOR

INMATE NAME: Woods, Myron      ADC #: 132694A      GRIEVANCE #: EA-10-01629

WARDEN/CENTER SUPERVISOR'S DECISION

Inmate woods, you are grieving policy and procedural practices. It is up to the administration to determine if the layout of this unit is inadequate. In the meanwhile security staff will continue to monitor the barracks as present policy dictates. With the close living arrangement within the facility, it is impossible to prevent all forms of altercations. However, staff does monitor, and all measures are take to ensure that your safety is of the highest priority.

<u><i>JUBur</i></u>	<u><i>Warden</i></u>	<u><i>10/12/10</i></u>
Signature of Warden/Supervisor or Designee	Title	Date

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OCT 22 2010

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.

WHY DO YOU DISAGREE WITH THE ABOVE RESPONSE? *I disagree because I was assaulted within this close living arrangement on (9-14-10). At no time are officers assigned within each 50 cell with personal alarm equipment. Due to this current past arrangement are dangerously inadequate and more direct supervision is required. In either past assignment concept, a raised platform should be added to provide a distinct officer station and allow better viewing of the entire barracks area. Emphasis in Original) not providing fundamental security and safety practices, resulted in multiple injuries and type of inappropriate action and the almost total lack of direct monitoring could be resulting in criminal activities currently. While State is not required to ensure that its inmates face absolutely no danger from assaults by other inmates, it must take a reasonable measure to guarantee the safety of its inmates. U.S.C.A. Const. Amend 8th. Smith V. Norris 877 F. Supp. 1296 (1995) Failure to protect.*

<u><i>Mr. Myron Woods</i></u>	<u><i>132694</i></u>	<u><i>10-13-10</i></u>
Inmate Signature	ADC#	Date

IGTT430  
3GD

Attachment VI

INMATE NAME: Woods, Myron      ADC#: 132694      GRIEVANCE#: EA-10-01629

**CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION**

In your complaint you allege that you were assaulted while being asleep on 9/14/10. You claim that at no time are officers assigned within each 50 bed Unit. You also claim this current post arrangement is dangerous and more direct supervision is required. You state that the lack of direct monitoring is resulting in criminal activities currently. You state that the state must take reasonable measures to guarantee the safety of its inmates.

Inmate Woods after reviewing this grievance, I concur with the Wardens response in which he states in part, "Inmate woods, you are grieving policy and procedural practices. It is up to the administration to determine if the layout of this unit is inadequate. In the meanwhile security staff will continue to monitor the barracks as present policy dictates. With the close living arrangement within the facility, it is impossible to prevent all forms of altercations. However, staff does monitor, and all measures are taken to ensure that your safety is of the highest priority."

Appeal denied

17m7

Signature

1.18.11

Date

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MYRON WOODS (ADC 132694)

CLAIMANT

V.

NO. 13-0236-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: HCA0100
  - 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.

ARKANSAS STATE  
CLAIMS COMMISSION

SEP 26 2012

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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

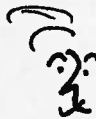
CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 24 day of Sept, 2012, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Myron Woods (ADC 132694)  
East Arkansas Regional Unit  
PO Box 180  
Brickeys, AR 72320-0180

*Lisa Mills Wilkins*  
LISA MILLS WILKINS Ark. Bar #87190

JAN 03 2013

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CLAIMANT

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MYRON WOODS (ADC #132694)

V.

NO. 13-0236-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

**MOTION TO DISMISS**

COMES NOW the Respondent, Arkansas Department of Correction, and for its Motion to Dismiss states as follows:

1. Claimant alleges that Respondent failed to follow policy and he was attacked by the barracks porter and suffered personal injury, pain and suffering and mental anguish. He is seeking \$25,000.00 in damages.
2. Claimant states, conclusively, that Respondent failed to protect him. Claimant does not state any facts to support this allegation. Inmate Beverly and Claimant were not known enemies at the time of the incident. Inmate Beverly had been assigned as a barracks porter since August 19, 2010 without any incident.
3. Claimant alleges that 'there was no security personnel assigned or in 15 barracks at the time of the assault, about 7:20 a.m. on September 14, 2010. Officer K. Futrell was assigned to 13 and 15 Control booth which supervises 15 barracks. Officer K. Futrell was on his post and observed Inmate Beverly with a cane in his hand waving it and yelling at the other inmates. He then saw Claimant who had blood on his face. Officer K. Futrell immediately used his handheld radio and called for all available rovers (officers). Inmate Beverly admitted to striking claimant with a broom and Claimant's cane.
4. The post orders which are attached hereto *in camera* and not to be released to the inmate do not require the officer to be located inside the barracks nor do the orders require the officer to 'remain with' the barracks porter who is performing his duties. Only The officer is responsible "for the security and operation of these barracks, the hallway...and adjacent area..." The offer is also "responsible for maintaining security within these barracks by promptly reporting incidents or any unusual activities..." Officer Futrell was located at his post and observed the porter waving the cane and then saw inmate Woods. Officer Futrell has just allowed the outside maintenance crew had exited the barracks for work and Officer Futrell had completed a count just minutes before the altercation; therefore, he was fully alert and on post with his job duties. The post orders for a barracks officer states at PO.07(L), that the officer shall "maintain a constant visual observation of inmate in the area of supervision to

detect any unusual activity.” The barracks were properly supervised in accordance with the ADC policy and the correctional standards. There was no policy violation.

5. No disciplinary action was taken against any officer involved in this incident as there was found to be no violation of policy or breach of security by the officer.
6. Arkansas law requires fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief. According to Ark. R. Civ. P. 8(a)(1), a pleading that sets forth a claim for relief shall contain a statement in ordinary and concise language of facts showing that the pleader is entitled to relief. Rules 12(b)(6) and 8(a)(1) must be read together in testing the sufficiency of a complaint. *Smith v. Eisen*, 97 Ark. App. 130, 139, 245 S.W.3d 160 (Ark. App. 2006). Claimant has merely stated conclusions and no facts to support his allegations.
7. To survive a motion to dismiss, a complaint must contain sufficient factual matter, when accepted as true, to ‘state a claim to relief that is plausible on its face.’ *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (U.S. 2009) citing *Twombly* at 550 U. S. 544 (2007). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.*, *Twombly*. Threadbare recitals of the elements of a cause of action, supported by merely conclusory statements, also do not suffice. *Id.*
9. Claimant has failed to state a cause of action for any of the above cause of action which and this matter should be dismissed under ARCP 12(b)(6).

WHEREFORE, for the reasons submitted above, Respondent requests that the matter be dismissed.

Respectfully submitted,  
Department of Correction  
Office of Counsel

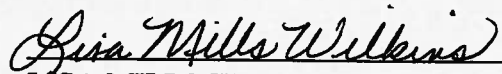


LISA MILLS WILKINS Ark. Bar #87190  
Attorney Supervisor  
Post Office Box 8707  
Pine Bluff, AR 71611  
(870)267-6844 Office  
(870)267-6373 Facsimile


**CERTIFICATE OF SERVICE**

I certify that a copy of the above pleading has been served this 31 day of December, 2012, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

MYRON WOODS (ADC #132694)  
EAMU  
P. O. Box 180  
Brickeys, AR 72032-0180

  
LISA MILLS WILKINS Ark. Bar #87190



 <p>ARKANSAS DEPARTMENT OF CORRECTION East Arkansas Regional Unit</p> <p><b>POLICY AND PROCEDURE</b></p>	NUMBER: PO. 07	PAGE NUMBER: 1 OF 5			
	SUPERCEDES:	ISSUING EMPLOYEE:			
	DATE: 10-11-11				
CHAPTER: <b>POST ORDERS</b>	SUBJECT: <b>DO NOT RELEASE TO INMATE BARRACKS OFFICER</b>				
Revised on These Dates	11-08-10	02-03-11	12/12/11		
Reviewed on These Dates	11-08-10	11-15-11	12/12/11		

**LOCATION:** Barracks one (1) through twenty (20)

**PERSONNEL:** **Correctional Officer:** Unless otherwise directed by the Duty Warden, priority one (P1) must be staffed in accordance with unit policy/post order. Any deviation in the staffing procedure will require written authorization from the Duty Warden.

**OPERATING HOURS:** Twenty-Four (24) Hours Per Day  
Seven (7) Days Per Week

**DUTY HOURS:** A & C Shift 5:45 AM to 6:00 PM  
B & D Shift 5:45 PM to 6:00 AM

**DAYS OFF:** As assigned by the Chief Security Officer and determined by the Shift Assignment.

**SUPERVISION:** This post is under the direct supervision of the Area Sergeant and Shift Supervisor.

**EQUIPMENT:** One Hand Held Radio  
One Key Ring  
One Medal Detector

**Submitted  
in camera  
DO NOT RELEASE TO INMATE**

**UTILIZATION OF POST ORDERS:**

These orders will cite specific and general instructions for the operation of this post. They cannot cover every incident or event that may occur. The officer assigned to this post must use good judgment and pay careful attention to detail in the performance of their duties. Officers assigned to this post will utilize these orders to familiarize themselves with the duties and responsibilities of this area. If the officer does not understand any part of these orders, they should contact their supervisor for clarification. Once the orders are understood, the post officer will make an entry on the security log indicating that they have read and understand the post orders.

**I. RESPONSIBILITIES:**

The primary areas of responsibility are as follows:

- A. Responsible for the security and operation of these barracks, the hallway located in front of these barracks, and any adjacent areas requiring supervision of inmate traffic.

**Submitted  
in camera  
DO NOT RELEASE TO INMATE**

<b>POST ORDERS</b>	POST ORDER NO. PO .07	PAGE NUMBER: 2 OF 5
SUBJECT: BARRACKS OFFICER	SUPERCEDES:	EFFECTIVE DATE: 10-1-95

B. Responsible for enforcing all institutional rules and regulations to include but not limited to; barracks rules, hallway rules, and AR 831.

C. Responsible for the accountability of all security equipment issued to them (radio, keys, etc.). Equipment must be in the officers' possession at all times.

D. The officer assigned to this post will be thoroughly familiar with the Emergency Evacuation Plan.

E. Responsible for conducting the inmate count during "Count Time".

1. The officer will announce "Count Time" and instruct inmates to go to their assigned beds and remain there until count has cleared and the count light is off.
2. The officer will conduct a physical count of each inmate, ensuring that all inmates are visually observed when counted.
3. The officer will then note a total "Out Count" of inmates outside the barracks during count time due to work call, etc.
4. A count slip must then be filled out that properly and accurately reflects the count, and turned in to the count room supervisor.
5. The officer conducting the barracks count will be responsible for the accurate count of these barracks.

G. Responsible for controlling inmate movement within the area of supervision to ensure that:

1. Inmates do not exit their assigned barracks unless they are called for or an announced call has been made by the Control Center.
  - a. Inmates exiting the barracks will be checked out on the barracks assignment roster and checked in upon return to the barracks.
2. Inmates exiting the barracks are fully clothed and have proper ID:
  - a. Shirts are to be buttoned and pants are to be pulled up.
  - b. Shoes must be worn, shower shoes require a valid infirmary script.
  - c. Tennis shoes may be worn in all areas except during inmate visitation.
  - d. All inmates exiting the barracks are to be in compliance with the inmate grooming policy.
3. Inmates do not congregate in the hallway. All inmate traffic will stay behind the yellow lines proceeding down the hallway in an orderly manner.

**Submitted  
in camera  
DO NOT RELEASE TO INMATE**

<b>POST ORDERS</b>	POST ORDER NO. PO .07	PAGE NUMBER: 3 OF 5
SUBJECT: BARRACKS OFFICER	SUPERCEDES:	EFFECTIVE DATE: 10-1-95

4. During activity calls/mass movement, officers will position themselves in the middle of the hallway and direct traffic in such a manner as to allow the officer to maintain security inside the barracks.

**Submitted  
in camera**

H. Responsible for maintaining security within these barracks by:

1. Remaining vigilant and alert at all times while on duty. **DO NOT RELEASE TO INMATE**
2. Promptly reporting incidents or any unusual activities within the area of supervision.
3. Ensuring that no articles are placed in any area of the barracks that may obstruct the officer's view or otherwise jeopardize security. The officer will not allow inmates to congregate or obstruct the view in any way that would prevent the officer from properly supervising the area of responsibility.
4. Conduct random shakedowns on inmates entering and exiting the barracks. All laundry carts, bags, boxes, and packages that pass through the area of supervision will be searched. At least five inmate living areas, to include locker boxes, will be searched per shift.

I. Responsible for immediately reporting all breaches of security and discrepancies to the Shift Supervisor.

J. Responsible for the cleanliness and sanitation of all areas of supervision to include ensuring that inmate porters/sanitation workers are working during their assigned work hours.

K. Responsible for ensuring that all cleaning supplies are secured when not in use.

A. All chemicals will be closely monitored while in use by inmates.

L. Responsible for maintaining a constant visual observation of inmates in the area of supervision to detect any unusual activity. Immediate corrective measures must be taken if any such activity is observed.

M. Responsible for ensuring that the noise level is kept at a minimum within the area of supervision.

1. Leisure tables are available for letter writing and game playing.
2. Game will only be played during the hours of TV viewing and will end when the TV's are turned off for the evening. A blanket will be placed over the game table to minimize noise level during games. Domino "Slamming" will not be permitted.

N. Responsible for making security checks within these barracks at least once every half-hour. During each security check the officer assigned to this post will:

1. Enter the barracks and make a visual inspection of the restrooms, utility closets, windows, emergency exits, and living area.

**Submitted  
in camera**

**DO NOT RELEASE TO INMATE**

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CLAIMS COMMISSION  
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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MYRON WOODS (ADC #132694)

CLAIMANT

V.

NO. 13-0236-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

REPLY TO REPOSE TO MOTION TO DISMISS

COMES NOW the Respondent, Arkansas Department of Correction, and for its Reply to Response to the Motion to Dismiss states as follows:

1. Claimant erroneously states that there was no security assigned to or in 15 barracks at the time of the assault. Officer Futrell was assigned to 13 and 15 barracks and his position is seated in the control booth where he can observe through the glass the activities of 13 and 15 barracks. This barracks was properly staffed in accordance with post orders, policy and American Correctional Association standards.
2. Claimant alludes to the fact that the named cases he refers to in paragraph 5 of his 'unnamed pleading dated January 13, 2013' supports a finding of liability in all of those cases based upon these facts. None of the cases stands for the proposition for which he has proposed and none are findings on the merits. *Goka v. Bobbitt*, 862 F. 2d 646 (7<sup>th</sup> Cir. 1988) reversed summary judgment and remanded the case for trial finding a genuine issue of material fact as to whether or not guards knew or should have known that tools *which were not in use at the time* and were stored in the barracks could pose a risk of harm to inmates. *Lawrence v. Norris* 307 F. 3d 745 (8<sup>th</sup> Cir. 2002) involved a ruling on an interlocutory appeal dismissal for lack of jurisdiction without addressing any factual allegations. *Smith v. Arkansas Dept. of Correction*, 103 F. 3d 637 (8<sup>th</sup> Cir. 1996) reversed district court grant of summary judgment on liability and remanded for trial on the merits finding that standing should have been granted.
3. The post orders which are attached hereto *in camera* and not to be released to the inmate do not require the officer to be located inside the barracks nor do the orders require the officer to 'remain with' the barracks porter who is performing his duties. Only The officer is responsible "for the security and operation of these barracks, the hallway...and adjacent area...." The offer is also "responsible for maintaining security within these barracks by promptly reporting incidents or any unusual activities...." Officer Futrell was located at his post and observed the porter waving the cane and then saw inmate Woods. Officer Futrell has just allowed the outside maintenance crew had exited the barracks for work and Officer Futrell had completed a count just minutes before the altercation; therefore, he was fully alert and on post with his job duties. The post orders for a barracks officer states at PO.07(L), that

the officer shall "maintain a constant visual observation of inmate in the area of supervision to detect any unusual activity." The barracks were properly supervised in accordance with the ADC policy and the correctional standards. There was no policy violation.

4. Claimant has failed to show how Respondent breached any policy, violated any law, or otherwise failed to take any action to prevent any known or reasonable risk of harm to him.
5. Claimant was struck by Inmate Beverly who was previously assigned as Barracks Porter in May of 2010, he was removed from the position a month later and charge with non violent disciplinary. After serving his punitive time, he was returned to Barracks Porter on August 19, 2010. This incident occurred on September 14, 2010. There was nothing in his work history to indicate this assignment might cause a risk of harm to other inmates.
6. Claimant has failed to state a cause of action for any of the above cause of action which and this matter should be dismissed under ARCP 12(b)(6).

WHEREFORE, for the reasons submitted above, Respondent requests that the matter 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 pleading has been served this 22 day of January, 2013, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to

MYRON WOODS (ADC #132694)

EAMU

P. O. Box 180

Brickeys, AR 72032-0180

*Lisa Mills Wilkins*

LISA MILLS WILKINS Ark. Bar #87190

MYRON WOODS (ADC # 132691)

CLAIMANT

✓

NO. 13-0236-CC

ARKANSAS STATE  
CLAIMS COMMISSION  
JAN 16 2013

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ARKANSAS DEPARTMENT OF COLLECTION

RESPONDENT

Comes now CLAIMANT MYRON WOODS (ADC # 132691) NO. 13-0236-CC and for  
its RESPONSE to Motion as follow:

1. Claimant alleges Respondent did fail to follow Policy and Procedure as Claimant was attacked and beaten by the barracks Porter as tools were issued unsupervised and Claimant suffered personal injury, Pain and suffering and mental anguish. Claimant received 19 stitches due to the beatings he received while asleep in 15 barracks Rack (1).
2. Respondent did fail to protect Claimant. By not having security or a supervisor inside the barracks while the cleaning tools were been in use by barracks Porter. Claimant do show and state facts to this matter that Respondent did fail to protect him, cause all tools ect are supposed to be supervised while in use or in the hands of inmates and Respondent violated this Protocol and Policy when issuing these tools / cleaning supplies unsupervised.
3. THERE WAS "no" security personnel assigned to or in 15 barracks at the time Claimant was assaulted 7:20 A.M. on September 14, 2010. Officer K. Futrell was assigned to 13 and 15 control booth, which is not assigned to 15 barracks and the cleaning tools were issued while no security personnel was niether in or assigned to 15 barracks. Officer K. Futrell was on the post assigned to as 13 and 15 control booth operator and not the post of 15 barracks security personnel and issued the cleaning tools unsupervised without security personnel which show Respondet failed to protect and follow Policy.

4. Officer K. Futrell violated Tools Control Policy D by issuing the tools to the Barrack Porter unsupervised, which resulted in Claimant being assaulted in his sleep by another inmate and if Officer K. Futrell was assigned to 15 barracks and not 13 and 15 control booths, then security personnel would have been inside the barracks while the unsupervised tools ect. were in use. Therefore Respondent has failed to protect by not have the adequate security personnel inside 15 barracks while tools ect. were in use.

5. Violations of Policy and breach of security by Respondent and officers are clearly shown and stated in facts: Failure to control tools or other items that can be used as weapons, *Goka v. Bobbitt*, 862 F.2d 646 652 (7th Cir 1988) failure to enforce a tool control policy. Respondent violated not only tool control policy but a breach of security as well by not having a adequate security personnel, *Lawrence v. Norris* 307 F.3d 745, 74. 8th Cir 2002) Prisoner was attacked at a time when the only guard on duty was controlling traffic in the hallway stated an Eighth Amendment Claim. *Smith v. Arkansas Dep't of Correction* 103 F.3d 637 645 (8th Cir 1996) failure to provide supervision in open barracks.

6. Claimant has clearly shown and stated facts of Respondent failure to protect and the violation of the Claimant's Eighth Amendment right, As law and Claimant's Constitutional rights have been clearly violated by Respondent and as it state: THE Constitution requires Prison and jail officials to provide "reasonable safety" for prisoners. They must protect them from assault by other inmates and from unreasonably hazardous living and working conditions and must refrain from subjecting them to the unnecessary and excessive use of force.

Prison officials must take reasonable measure to protect prisoner from assault by other inmates, including sexual assault. If they fail to do so as the Respondent clearly has failed, courts may award damages to injured prisoners or injunctions to prisoners who are in danger.

Claimant's case should not be dismissed and ask courts to accept Claimant's Responses.

STATE OF ARKANSAS )  
 ) §  
COUNTY OF LEE )

ARKANSAS STATE  
CLAIMS COMMISSION  
JAN 16 2013  
RECEIVED

AFFIDAVIT

I, Myron Woods #132694, after first being duly sworn, do hereby swear, depose and state that: on this day I sent Norman Hodges Jr of the Small Claims Commission and Lisa Wilkins of AOC Attorney a copy of my Responses to the Respondents Motion to Dismiss And I ask that you file the Original and return a file-stamped/mark copy to me Mr. Hodges. I do ask that the courts please accept my Responses and do not dismiss the case.

I further swear that the statements, matters and things contained herein are true and accurate to the best of my knowledge, information and belief.

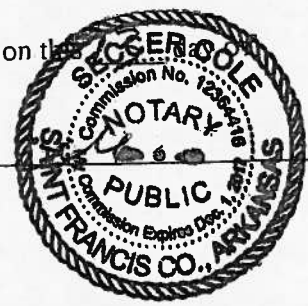
1-13-13  
DATE

Myron Woods #132694  
AFFIANT

\_\_\_\_\_  
SOCIAL SECURITY #

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this Jan, 2013.

Secser  
NOTARY PUBLIC



My Commission Expires: Dec. 06 2017



STATE OF ARKANSAS )  
 ) §  
COUNTY OF LEE )

JAN 16 2013

RECEIVED

AFFIDAVIT

I, Myron Woods #132694, after first being duly sworn, do hereby swear, depose and state that: This response to Respondent Motion to Dismiss is to be read with the other Response Documentation that I sent 1-13-13 to the Claim Commission, Mr. Norman Hodges Jr. Please send me a file mark/stamp copy back and note I sent Lisa Mills Wilkins the exact same Documentation I pray the courts object to the Motion to Dismiss and let my case be heard in court.

I further swear that the statements, matters and things contained herein are true and accurate to the best of my knowledge, information and belief.

1-13-13  
DATE

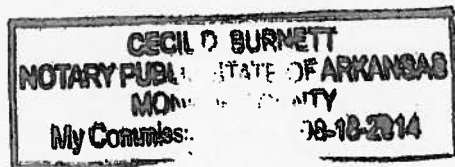
Myron Woods #132694  
AFFIANT

SOCIAL SECURITY #

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this 14 day of January, 2013.

C. Burnett  
NOTARY PUBLIC

My Commission Expires: 8-18-14



MYRON WOODS AOC# 132694

Claimant

✓

NO. 13-0236-CC

ARKANSAS STATE CLAIMS COMMISSION

JAN 16 2013

Arkansas Department of Correction

RECEIVED

Respondent

Response/Objection

Comes Now Claimant Myron Woods AOC# 132694 Response/Objection to Respondent Arkansas Department of Correction "Motion to Dismiss"

1) Respondent came under the "Twombly" at 550 U.S. 544 (2007) which is under the Rules 12(b)(6) Fed. R. Civ. P. and Respondent ask for a Motion to Dismiss Claimant Case.

2) Now Claimant ask that the courts object to the motion to Dismiss cause Claimant do show a cause of actions along with Physical eye witness Medical Reports and Documented evidence of Facts and actions of Claimant claim. Claimant refer to Fed. R. Civ. P. 8 "requires only a short and plain Statement of the claim showing that the Pleader is entitled to relief"

NOTE: A Rule 12(b)(6) motion is not "an appropriate device for testing the truth of what is asserted or for determining whether a Plaintiff has any evidence to back up what is in the complaint."

Rule 8: a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt the Plaintiff can prove no set of facts in support of his claim which would entitled him relief.

Once a claim has been stated adequately, it may be supported by "showing" any set of facts consistent with the allegation in the complaint. Fed. Rules Civ. Proc. Rules 8, 12(b)(6) 28 U.S.C.A.

On motion to Dismiss for failure to state a claim, courts accept all factual allegations as true, construe the complaint in the light most favorable to the Plaintiff and determine whether under any reasonable reading of the complaint the Plaintiff may be entitled to relief. Fed. Rules C.V. Proc. Rule 12(b)(6) 28 U.S.C.A.

At this stage claimant has required enough factual matters to be taken as true, to suggest the required element. Claimant has shown enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element. Fed. Rules C.V. Proc. Rules 8 12(b)(6) 28 U.S.C.A.

Turnbly, 127 S.Ct at 1964 (quoting Conley 355 U.S. at 47, 78 S.Ct 99). The Supreme Court also reaffirmed that on a Rule 12(b)(6) motion, the facts alleged must be taken as true and a complaint may not be dismissed merely because it appears unlikely that the Plaintiff can prove those facts or will ultimately prevail on the merits.

Turnbly Rule 8(A)(2) 12(b)(6) requires a "showings" rather than a blanket assertion and after Turnbly Rule 8 12(b)(6) it is no longer sufficient to allege mere elements of a cause of action. But [The Proscribed] Conduct.

STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 25,000.00

Claim No. 13-0236-CC

Attorneys

Myron Woods #132694 Claimant  
vs.

Pro se Claimant

AR Department of Correction Respondent  
State of Arkansas

Lisa Wilkins, Attorney Respondent

Date Filed September 13, 2012

Type of Claim Personal injury

FINDING OF FACTS

This claim was filed for failure to follow procedure in the amount of \$25,000.00 against Arkansas Department of Corrections.

Present at a hearing March 8, 2013 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 negligence on the part of the Respondent.

Therefore, this claim is hereby unanimously dismissed.

IT IS SO ORDERED.

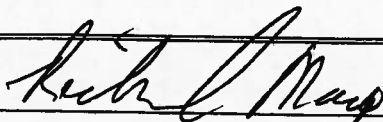
(See Back of Opinion Form)

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 negligence on the part of the Respondent.

Date of Hearing March 8, 2013

Date of Disposition March 8, 2013

  
Chairman

  
Commissioner

  
Commissioner

BEFORE THE STATE CLAIMS COMMISSION

✓ Myron Woods #132694

CLAIMS No. #13-0236cc

CLAIMANT

AR. DEPARTMENT OF CORRECTION

Respondent

NOTICE OF APPEAL

Comes now Claimant Myron Woods #132694. And with his NOTICE OF APPEAL STATES.

1). THE ABOVE CLAIM WAS HEARD BEFORE THIS COMMISSION MARCH 8, 2013. AND WAS UNANIMOUSLY DISMISSED.

2). CLAIMANT WISHES TO APPEAL THIS COMMISSION RULING TO THE ARKANSAS GENERAL ASSEMBLY. LET THE RECORDS REFLECT NOTICE HAS BEEN GIVEN.

Respectfully Submitted  
Myron Woods #132694  
East ARK. Reg. Unit  
P.O. Box 180  
Brickeys, AR. 72320

ARKANSAS STATE  
CLAIMS COMMISSION  
APR 03 2013  
RECEIVED