

Please Read Instructions on Reverse Side of Yellow copy

ARKANSAS STATE CLAIMS COMMISSION

F17

Please print in ink or type

JAN 11 2013

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

RECEIVED

- Mr. Mrs. Ms. Miss

James Fudge, #078875, Claimant

vs.

State of Arkansas, Respondent Dept. of Correction

Do Not Write in These Spaces Claim No. 13-0518-CC Date Filed January 11, 2013 Amount of Claim \$ 125,000.00 Fund DOC

COMPLAINT Pain & Suffering, Personal Injury, Negligence, Failure to Follow Procedure

James Fudge, #078875, the above named Claimant, of POB 400, Grady, AR 71644

ARKANSAS 71644 County of LINCOLN represented by PRO SE

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

State agency involved: ARKANSAS DEPARTMENT OF CORRECTIONS Amount sought: \$ 125,000.00

Month, day, year and place of incident or service: July 27th, 2012, FRIDAY YARNER SUPER MAX UNIT/086 of ARK. Dept of Correcst

Explanation: Having Placed several Arkansas Department of Corrections (ADC here after) security staff on Notice By verbal and Orally complaints of pain and Over growth Toe Nails causing other Injuries As well written, with Medical History Prior Recommended Authorization "script" of Treatment fell Upon dereliction of security Officials whom KNEW AS WELL Obtained Avenues towards should have KNOWN their Abandonment and negligence posed high risk of Harm to me physically and Emotion- ally, as well as psychologically stress disorders / Functions :

- 1) ON OR ABOUT SEPTEMBER 8th 2011 CLAIMANT FUDGE, MADE A ORAL AND VERBAL PLEA TO SECURITY CO2, WATTS AND NURSE NEWTON TO ASSIST HIM IN HAVING HIS TOE NAILS CLIPPED/ TRIMMED AND CUT AFTER SOAKING TO NO AVAIL. 2) ON OR ABOUT OCTOBER 4th 2011 CLAIMANT FUDGE, WRITTEN SICK CALL REQUESTING TO HAVE HIS TOE NAILS CUT, TRIMMED AND SOAKED BY SECURITY STAFF AND MEDICAL STAFF ONLY RENDERED CLAIMANT FUDGE'S NAME BEING PLACED ON THE DOCTOR'S LIST AFTER SECURITY AND MEDICAL STAFF "SEEN" MY OVER GROWTH NAILS ON MY TOES. 3) ON NOVEMBER 17th 2011 CLAIMANT FUDGE, WAS SEEN BY DOCTOR AFTER BOTH SECURITY AS WELL MEDICAL STAFF CONTINUED TO DISREGARD AND IGNORE HIS PLEA FOR TOE NAIL CLIPPERS CAUSING CLAIMANT TO WALK ON HIS OWN TOE NAILS AS THEY GREW UNDER THE TOE, AND CUT INTO OTHER TOES ON HIS FOOT THIS DOCTOR RECOMMEND A TOE NAIL SOAK AND CLIPPING TREATMENT EVERY THREE (3) MONTHS. BY MEDICAL STAFF HEALTH CARE PROVIDERS 4) ON SEVERAL (VSMD) CLASSIFICATION REVIEW MEETINGS CLAIMANT FUDGE, INFORMED BOTH CURTIS MEINZER DEPUTY WARDEN, AS WELL MENTAL HEALTH MR GREEN WADE OF HIS INTENSE PAINFUL OVER GROWN TOE NAILS AND BOTTOM TIER HOUSING / CELL MEDICAL RECOMMENDATION "SCRIPT" TO NO-AVAIL "SEE CLAIMANT'S BWH

(5) 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? N/A ; to whom? N/A (Yes or No) (Month) (Day) (Year) (Department)

and that \$ N/A was paid thereon: (2) Has any third person or corporation an interest in this claim? NO ; if so, state name and address (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: N/A ; and was acquired on N/A, 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.

JAMES CHARLES FUDGE # 78875 (Print Claimant/Representative Name)

James Charles Fudge # 78875 (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Grady AR (City) (State)

(SEAL) on this 13 day of December 2012 (Date) (Month) (Year)

Alvina Piggie (Notary Public)

SF1- R7/99

My Commission Expires: 01 31 2021 (Month) (Day) (Year)

COMPLAINT

JAMES FUDGE, 70875

CLAIMANT

Vs.

CLAIM NO.

STATE OF ARKANSAS

RESPONDENT

- 12) CO2. ANDREWS SHOVE CAUSED CLAIMANT FUDGE TO FALL ON A STEEL FLIGHT OF FOURTEEN STAIRS TO THE CONCRETE FLOOR WHILE BOTH CO2. SINGLETON AND CO2 ANDREWS WATCHED FROM THE 2nd TIER PLAT FORM UNTIL CLAIMANT FUDGE'S YELLING CRY OF INTENSIFIED PAIN, DID THIS SET TEAM DESCEND THE SECOND TIER SOUTH STAIR CASE AND INFORM OTHER SET-TEAM YARD OFFICIALS THAT CLAIMANT FUDGE FELL FROM THE TOP OF THE SECOND TIER TO THE CONCRETE CELLBLOCK FLOOR IN BODY RESTRAINTS. SEE (EXHAUSTED GRIEV. VSM 12- 2940 ALSO CLNT'S EXHS F1, F-2, F-3, AND F-4).
- 13) A CALL FOR SECURITY ZONE SUPERVISORS WAS INITIALLY MADE, ZONE SUPERVISORS ADVISED SET-TEAM TO NOT MOVE CLAIMANT FUDGE AND TO SUMMON MEDICAL HEALTH CARE PROVIDERS, MORE THAN (30) THIRTY MINUTES ELAPSED AS CLAIMANT LIE AT THE BASE OF THE STEEL SOAIR CASE ON THE CELL-BLOCK FLOOR, SHIPT CHANGED AND MINUTES AFTER ONE NURSE PUSHING A UNIVERSAL STRETCHER ARRIVED WHERE, SECURITY INFORMED NURSE CHITRELL THAT INMATE FUDGE FELL DOWN THE STAIRS."
- 14) CLAIMANT FUDGE HAVING PLACED MR. CURTIS MEINZER, MR. GREEN WADE, MRS MCBRIDE, CO2 WATTS CO2. R. WILLIAMS, SGT. T. SPENCER, CO2. ANDREWS. CO2, SINGLETON OF HIS UNTREATED TOR. NAILS WITH A VALID AUTHORIZED MEDICAL "SCRIPT" TO SOAK AND CLIPP OR CUT AND TRIMM EVERY (3) MONTHS CONTRIBUTED TO HIS INJURIES AND MENTAL PHOBIA AND EMOTIONAL DURESS ANGUISH OF THE STAIRS, DEMONSTRATE DERELICTION OF DUTY TO ENDANGER CLAIMANTS WELLBEINGS AND SAFETY SEE (CLNTS EXH. F-9)
- 15) CLAIMANT FUDGE HAVING PLACED THE NAMED RESPONDENTS ON NOTICE OF HIS BOTTOM TIER/CELL VALID AUTHORIZED MEDICAL "SCRIPT," DEMONSTRATES DERELICTION OF DUTY THAT CLAIMANT IS SO HOUSED UPON STAIRS WITH VALID KNEE BRACE MEDICAL "SCRIPT" THAT ALSO WAS NOT EXPIRED ON JULY 25th 2012 NOR THE DATE CO2. ANDREWS SHOVED CLAIMANT JULY 27th, 2012 Deliberately;
- 16) CLAIMANT FUDGE, sustained multiple contusions and Injured to his Head, Neck and Back, As well his Toes for these reasons he is currently being medicated, and within his rights To seek Relief and compensation in the sum of \$ 125,000.00 for My Injuries, Pain and Sufferings, post traumatic stress disorder, Phobia, anxiety and mental Anguish at the Fault of ADC's Herein Above named officials; NOTE SUPPORTIVE CLAIMANT'S EXHIBITS.
- 17) RESPONDENT PRACTICE AND PROCEDURAL POLICIES IN VSMU VM MOVEMENT IS TO HAVE HOLD ONTO THE ESCORTED I/M AT ALL TIMES DURING THE ESCORT/ INMATE MOVEMENT OR TRANSPORTS.

SUBSCRIBED AND SWORN TO BEFORE ME this 13 day of

December 20 12

My COMMISSION EXPIRES 01 31 2012

Felicia Piggree

NOTARY PUBLIC FELICIA PIGGEE
NOTARY PUBLIC STATE OF ARKANSAS
DESHA COUNTY
My Commission Expires 01-31-2012
Commission # 12882202

ATTACHMENT

JAMES FUDGE, 78875

COMPLAINT

Vs.

CLAIM NO.

CLAIMANT

STATE OF ARKANSAS

RESPONDENT

12). CO2. ANDREWS SHOVE CAUSED CLAIMANT FUDGE TO FALL ON A STEEL FLIGHT OF FOURTEEN STAIRS TO THE CONCRETE FLOOR WHILE BOTH CO2. SINGLETON AND CO2 ANDREWS WATCHED FROM THE 2nd TIER PLATT FORM UNTIL CLAIMANT FUDGE'S YELLING CRY OF INTENSIFIED PAIN, DID THIS SET TEAM DESCEND THE SECOND TIER SOUTH STAIR CASE AND INFORM OTHER SET-TEAM YARD OFFICIALS THAT CLAIMANT FUDGE FELL FROM THE TOP OF THE SECOND TIER TO THE CONCRETE CELLBLOCK FLOOR IN BODY RESTRAINTS. SEE (EXHAUSTED GRIEV. VSM12-2940 ALSO CLINTS EXHS F-1, F-2, F-3, AND F-4).

13) A CALL FOR SECURITY ZONE SUPERVISORS WAS INITIALLY MADE, ZONE SUPERVISORS ADVISED SET-TEAM TO NOT MOVE CLAIMANT FUDGE AND TO SUMMON MEDICAL HEALTH CARE PROVIDERS, MORE THAN (30) THIRTY MINUTES ELAPSED AS CLAIMANT LIE AT THE BASE OF THE STEEL STAIR CASE ON THE CELLBLOCK FLOOR, SHIPT CHANGED AND MINUTES AFTER ONE NURSE PUSHING A UNIVERSAL STRETCHER ARRIVED WHERE, SECURITY INFORMED NURSE CANTRELL THAT INMATE FUDGE FELL DOWN THE STAIRS."

14). CLAIMANT FUDGE HAVING PLACED MR. CURTIS MEINZER, MR. GREEN WADE, MRS MCBRIDE, CO2 WATTS CO2. R. WILLIAMS, SGT. T. SPENCER, CO2. ANDREWS. CO2, SINGLETON OF HIS UNTREATED TOE NAILS WITH A VALID AUTHORIZED MEDICAL "SCRIPT" TO SOAK AND CLIPP OR CUT AND TRIMM EVERY (3) MONTHS CONTRIBUTED TO HIS INJURIES AND MENTAL PHOBIA AND EMOTIONAL DURESS ANGUISH OF THE STAIRS. DEMONSTRATE DERELICTION OF DUTY TO ENDANGER CLAIMANTS WELLBEINGS AND SAFETY SEE (CLINTS EXH. F-9)

15) CLAIMANT FUDGE HAVING PLACED THE NAMED RESPONDENTS ON NOTICE OF HIS BOTTOM TIER/CELL VALID AUTHORIZED MEDICAL "SCRIPT" DEMONSTRATES DERELICTION OF DUTY THAT CLAIMANT IS SO HOUSED UPON STAIRS WITH VALID KNEE BRACE MEDICAL "SCRIPT" THAT ALSO WAS NOT EXPIRED ON JULY 25th 2012 NOR THE DATE CO2 ANDREWS SHOVED CLAIMANT JULY 27th, 2012 Deliberately:

16) CLAIMANT FUDGE, SUSTAINED MULTIPLE CONFUSSIONS AND INJURED TO HIS HEAD, NECK AND BACK, AS WELL HIS TOES FOR THESE REASONS HE IS CURRENTLY BEING MEDICATED, AND WITHIN HIS RIGHTS TO SEEK RELIEF AND COMPENSATION IN THE SUM OF \$125,000.00 FOR MY INJURIES, PAIN AND SUFFERINGS, POST TRAUMATIC STRESS DISORDER, PHOBIA, ANXIETY AND MENTAL ANGUISH AT THE FAULT OF ADC'S HEREIN ABOVE NAMED OFFICIALS. NOTE SUPPORTIVE CLAIMANTS EXHIBITS.

17) RESPONDENT PRACTICE AND PROCEDURAL POLICIES IN VSMU VM MOVEMENT IS TO HAVE HOLD ON TO THE ESCORTED I/M AT ALL TIMES DURING THE ESCORT/ INMATE MOVEMENT OR TRANSPORTS.

SUBSCRIBED AND SWORN TO BEFORE ME this 13 day of December 20 12

MY COMMISSION EXPIRES 01 31 2021

Felicia Piggee
NOTARY PUBLIC
3

COMPLAINT

JAMES FUDGE, # 78875

CLAIMANT

Vs.

CLAIM NO.

STATE OF ARKANSAS,

RESPONDENT(S)

- 18). THAT CLAIMANT'S REALISTIC NIGHT MARES OF FALLING AGAIN OFF UPPER STAIR FLIGHTS HAS CAUSED ADDITIONAL INJURIES AND PAIN THAT DUE TO REFLEX OF KICKING- FEET-OUT, TO NONE EXISTING BASE FOR PREVENTIVE MEASURE ONLY RESULT IN CLAIMANT ACTUALLY KICKING HIS CELL WALL ATTACHED TO BUNK WHILE ASLEEP, AWAKING PROMPTLY TO NEW INJURED TOES AND PAIN AT NIGHT.
- 19). THAT THE RESPONDENTS MENTIONED HEREIN KNEW PRIOR TOO COZ. ANDREWS SHOVE / PUSH OF CLAIMANT FUDGE ON JULY 29th, 2012 AS FAR BACK AS OCTOBER 5, 2011 THAT CLAIMANTS TOE NAILS WAS CAUSING HIM PAIN AND NEEDED CLIPPING, AS WELL OF CLAIMANTS "BOTTOM TIER CELL HOUSING SCRIPT" AND HISTORY OF SUCH SEE (CLMNT'S EXHIBITS F-14, F-15, F-16 ALSO F-8, F-9 F-10, F-11). WITH ORAL VERBAL REQUEST FOR CELL RELOCATION TO FLOOR TIER.
- 20). TO ATTEMPT TO RESOLVE CLAIMANT'S COMPLAINT OF SECURITY FAILURES TO ENFORCE CLAIMANTS MEDICAL SOAK AND TOE- NAIL TRIM "EVERY THREE MONTHS"; SECURITY ESCORTED CLAIMANT TO THE INFIRMARY FOR TREATMENT CALL OF SOAK AND TRIMM THREE TIME(S) DURING ONE (1) WEEKEND STARTING FRIDAY AUGUST 24th, 2012 ENDING SUNDAY AUGUST 26th 2012 NOT EVERY THREE MONTHS, NO FEET SOAK AND TOE NAIL TRIMMING TREATMENT WAS AFFORDED IN NOVEMBER.
- 21). BECAUSE CLAIMANT FUDGE MEDICAL HISTORY ALSO SUPPORTS HIS OBESITY COMBINED WITH AN COLLAPS- ING KNEE CAPP INJURY, UPPER TIER CELL HOUSING POSES IMMINENT DANGERS AS WELL RISK OF IRREPARABLE AND SERIOUS PHYSICAL INJURIES OR DEATH UPON FLIGHTS OF STAIR CASES. SEE (CLAIMANTS EXHIBIT F-12, F-13 AND F-17) AS LONG AS CLAIMANT REMAINS LOCATED AND SO HOUSED ON THE UPPER CELLBLOCK TIERS HIS LIFE IS AT GRAVE RISK OF INJURIES AND HARM.
- 22). THAT CLAIMANT IS CURRENTLY UNDER PAIN AND INJURY MEDICATIONS RESULTING FROM THE ABOVE NAMED RESPONDENTS DELIBERANT DERELECTION OF DUTY, TO CONTINUE UNTIL MARCH 01, 2013 NAMELY NAPROXEN 500 MG TABLETS SEE (CLAIMANTS EXHIBITS "F-5, F-6, F-7") THAT CLAIMANT REQUESTED CELL RELOCATION TO COMMANDER OF SECURITY THIS PAST WEEK OF DECEMBER 26th, 2012 FROM HIS SECOND TIER STEEL STAIR CASE FLIGHT CELL LOCATION TO NO AVAIL.
- 23). CLAIMANT STATES THAT HE HAS SUBMITTED SICK CALL REQUEST IN HIS PEN MENSHP TO HAVE HIS MEDICAL RESTRICTIONS/ LIMITATION /SPECIAL AUTHORIZATION (MSF-207) FORMS RENEWED AS LATE AS 12-11-2012 WHERE FORE HEALTH CARE PROVIDERS HAVE PLACED CLAIMANT ON THE DOCTOR'S LIST FOR RENEWAL APPROVAL PENDING.

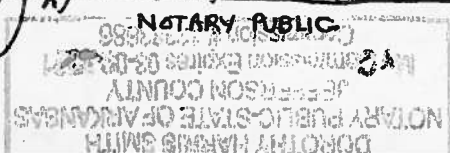
SUBSCRIBED AND SWORN TO BEFORE ME THIS 31 Day of

December 20 12.

Dorothy H. Smith

MY COMMISSION EXPIRES: 09, 12

ATTACHMENT



JAN 18 2013

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

RECEIVED

JAMES FUDGE (ADC 078875)

CLAIMANT

V.

NO. 13-0518-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.

Respectfully submitted,
Department of Correction Office of Counsel


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

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 15 day of January, 2012, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

James Fudge (ADC 078875)
Varner Supermax Unit
PO Box 400
Grady, AR 71644-0400


LISA MILLS WILKINS Ark. Bar #87190

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

FEB 13 2013

JAMES FUDGE (ADC#078875)

CLAIMANT RECEIVED

V.

NO. 13-0518-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

RESPONDENT'S MOTION TO DISMISS

COMES NOW the Respondent, Arkansas Department of Correction, and for its MOTION TO DISMISS, states and responds as follows:

1. Claimant seeks \$125,000.00 for personal injury pain and suffering, negligence, and failure to follow procedure as a result of multiple allegations.
2. Claimant has failed to state a cause of action for this claim under ARCP Rule 12(b)(6) on each of the allegations which will be addressed individually.

CLAIM #1 STRIP SEARCH WITHOUT GLOVES

3. Claimant alleges that on July 24, 2012, Officers Andrews and Singleton failed to wear gloves in a strip search while handling his clothes.
4. Officers were not touching or conducting a physical search of the Claimant. AD 11-24 "searches of Inmates, Unite Searches and control of Contraband", part (b) Inmate Searches does not require that gloves be worn while inspecting the inmates clothing during a strip search.
5. Claimant has made no factual allegation that he suffered any injury or physical harm or condition as a result of gloves not being worn during the search of his clothing.
6. Based on the foregoing statements, Claimant has failed to state a claim upon which relief can be granted herein under ARCP Rule 12(b)(6).

CLAIM #2: JULY 25, 2012


7. Claimant alleges he was walking on his sore toe nails which was ignored in classification and was advised that big set restraints were assigned to other officers.
8. Actually, classification was held on this date, Claimant stated, "I'm good. I need to get my toe nails cut." Mrs. McBride, infirmary staff who was present advised him to put in a sick call. See Exhibit "A". Claimant did not put in a sick call for this matter. The next sick call by Claimant after this date was on August 1, 2012 was related to his fall. No mention was made of his toe nails.
9. With respect to the restraints, Respondent fails to see any basis for a complaint in this statement.
10. Based on the foregoing statements, Claimant has failed to state a claim upon which relief can be granted herein under ARCP Rule 12(b)(6).

CLAIM #3: BATTERY BY OFFICERS

11. Claimant states that on July 27, 2012, Officer Andrews and Officer Singleton were escorting him and shoved him onto his toe nails wrong and caused him to fall down the stairs injuring himself. Thereafter, they made him lay there for 30 minutes before receiving help.
12. Officer Andrews and Singleton were escorting Claimant in restraints when Claimant jerked away from the officers and proceeded to fall head first down the stairs. This intentional action was witnessed also by Corporal Davenport who was nearby.
13. Claimant alleges that the officers 'left him there crying for help.' The rotating camera shows that he fell at 6:34:28 a.m. Officers Andrews and Singleton were standing beside him at 6:34:47 a.m. eighteen seconds later!
14. Claimant alleges that officers refused to help him and medical staff pushing a stretcher arrived. Claimant is correct, officers were told not to touch or move Claimant because officers are not medically trained and the risk of aggravating any serious injury is too great. Medical staff was immediately notified and arrived nineteen minutes later with a stretcher due to the nature of the injuries.
15. When treated in the infirmary, Claimant stated, "I fell down the stairs." Claimant had no bleeding or broken bones. After being seen in the infirmary, Claimant returned to his cell under his own power.
15. Claimant is currently being medicated, but was on medication prior to this fall for pain associated with various back and knee pain. He takes over the counter medication which he was taking prior to the fall for other complaints. Medical staff will testify that there is no continued medical diagnosis of any lingering injury or damage from the fall.
16. Respondent's policy does state that escorting inmates are to be held and also states that inmates are to obey lawful commands of the officers and submit to the restraints, but Claimant made an intentional effort to disobey those commands and break from the officers which was witnessed by a third officer with whom this Claimant had never had a previous involvement or confrontation.
17. It is interesting to note that Claimant had a script to have his toenails soaked and clipped every three (3) months from November 4, 2011 through November 4, 2012. During this time, if Claimant missed any appointment, he never put in a sick call and never made a complaint until July 25, 2012, at the classification meeting when he was told to put in a sick call request. Had he put in a request, which he did not, he would not have been charged for the visit.
18. Claimant now alleges that he suffers from post traumatic stress disorder, phobia, anxiety, mental anguish and nightmares. No observations have been made which reflect any of these conditions by any mental health staff or correctional staff. Claimant has made no self-report of any of his listed conditions to mental health staff during rounds, ad seg reviews or at any other time.
12. Based on the foregoing statements, Claimant has failed to state a claim upon which relief can be granted herein under ARCP Rule 12(b)(6).

WHEREFORE, for the reasons stated above, Respondent requests that the claim 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 12 day of February, 2013, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

JAMES FUDGE (ADC#078875)
Varner Supermax Unit
P. O. Box 400
Grady, AR 71644-0400


LISA MILLS WILKINS Ark. Bar #87190

UPERMAX PLACEMENT REVIEW

NAME FUDGE, JAMES

ADC NUMBER 078875

INCENTATIVE LEVEL VSM Level 2

REVIEW DATE

T.E. / P.E. DATE

HOUSING AREA:

CB8-638

INITIAL REASON(S) FOR SUPERMAX PLACEMENT

PLACEMENT DATE 7/28/2010

ES

- X Seriousness of offense resulting in placement on Maximum Security status.
- X Threat to the security and good order of the institution.
- Requires maximum protection from themselves or others require maximum protection from them.
- Chronic inability to comply with agency rules and regulations and is a threat to the agency mission.
- Chronic inability to adjust in the general population.
- Inmates pending transfer or holdover status awaiting permanent housing assignment as determined by the Classification Committee.
- Any inmates having been found guilty of taking over a part of the physical plant, battery, aggravated battery, rape, or forced sexual assault, taking of a hostage, or any act or acts defined as felonies or misdemeanors by the State of Arkansas.
- Any behavior or circumstances, which poses a serious threat to the security, good order, or quality of life for staff or inmate of the institution, will warrant consideration for assignment to Administrative Segregation.
- The inmate is likely to be exploited or victimized by others, sexual predators, and others who have needs for single housing.
- The inmate is potentially dangerous to himself or others.
- The inmate poses a serious escape risk.
- The inmate requests protection or is deemed by staff to require protection.
- The inmate requires immediate mental health evaluation and cannot be in contact with general population inmate.
- The inmate requires medical isolation and medical housing that is not otherwise available.
- Other, Specify

DECISION OF COMMITTEE

RETAIN IN SUPERMAX

No

Yes

PROGRESS TO NEXT LEVEL:

No

Yes

RETAIN AT CURRENT LEVEL

No

Yes

REDUCE TO LEVEL:

REASON FOR REVIEW COMMENT VSM 90 Day Review / Class Promotion

all good, need to get my needs met. Mr. McBride, infirmary

COMMITTEE MEMBERS SIGNATURES

C. Melzer

M. McConnell

Ms. Martin

A. Gray

Cudjager/Stephens

DATE OF REVIEW:

7/25/2012

DATE OF NEXT REVIEW:

Deputy Warden

Classification

Mental Health

Infirmary

Security

RECEIVED

REVIEW BY WARDEN:

COMMENTS:

APPROVE

DENY

How are you Judge.

Class II

JUL 27 2012

VARNER UNIT RECORDS

WARDEN'S SIGNATURE

DATE

TO BE USED FOR ANNUAL REVIEW AND REINTEGRATION RECOMMENDATION ONLY

CHIEF DEPUTY DIRECTOR OR DESIGNEE REVIEW:

APPROVE

DENY

COMMENTS:

Signature / Chief Deputy Director, or Designee

Date

Distribution - Institutional File

Classification

Inmate



Exhibit

A

FEB 22 2013

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

RECEIVED

JAMES FUDGE, ADC # 78875

CLAIMANT

Vs.

CLAIM No. 13-0518-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

PRO SE CLAIMANT'S REPLY TO RESPONDENT'S MOTION TO DISMISS

NOW COMES CLAIMANT JAMES FUDGE, #78875 PRO SE IN THE ABOVE STYLED CLAIM ON BEHALF OF HIS REPLY TO RESPONDENT'S MOTION TO DISMISS SERVED UPON HIM THURSDAY FEBRUARY 14th, 2013 BY U.S. MAIL WITH INSTITUTIONAL STAFF ISSUANCE, FOR DERELICTION OF DUTY, PERSONAL INJURIES PAIN AND SUFFERING, NEGLIGENCE AS RESULT OF FAILURE TO FOLLOW PROCEDURE STATES AS FOLLOWS:

CLAIM (a). STRIP SEARCH W/O GLOVES / CONFISCATION - HARASSMENT

2-1. RESPONDENTS ADMIT TOUCHING OF UNDER GARMENTS OF MANY INMATES MOST EXTREME SENSITIVE AREA COVERINGS CLOTHES IN DIRECT CONNECTIONS TO ANAL, WITH GLUTEAL CREVICE, GENITAL-GENITALIA, AND TESTICLES BARE HANDEDLY AS WELL SOCKS AND SHOES DURING UNGLOVED STRIP SEARCH (SIC) PASSING, FUNGAL, BACTERIA, VIRUS, RING WORM, BOILS AND OTHER CONTAGIOUS GERMS FROM INMATE TO INMATE KNOWINGLY CLAIMANT REPLY ADC ADMIN-DIRECTIVE (AD 11-24 PROVISION IV. PROCEDURE: SECTION (B)(4)(b). STRIP SEARCH OF INMATES (UNCLOTHED BODY SEARCH) CLEARLY PROVIDES "STRIP SEARCHES SHALL BE CONDUCTED IN A PROFESSIONAL MANNER BY STAFF." HERE RESPONDENTS ADMIT TO UNSANITARY TRANSFERR AND PASSING OF KNOWN CONTAGIOUS FUNGAL BACTERIAL VIRUS, GERMS ETC.

2-2. RESPONDENTS CONTEND THAT CLAIMANT HAS MADE NO FACTUAL ALLEGATIONS THAT HE SUFFERED ANY INJURY OR PHYSICAL HARM OR CONDITION AS A RESULT OF GLOVES NOT BEING WORN WHILE AND DURING UNGLOVED INSPECTION OF INMATES UNDERCLOTHES, CLAIMANT REPLY ADC ADMIN-DIRECTIVE (AD 11-24 PROVISION IV. PROCEDURE: SECTION (B.) "SEARCHES OF INMATES ARE NEVER CONDUCTED FOR PURPOSES OF PUNISHMENT OR HARASSMENT." CLAIMANT FACTUAL ALLEGATION IN HIS COMPLAINT THAT IN COZ. ANDREW'S OBSERVATION OF CLAIMANT WITH UNIT LEVEL GRIEVANCE FORM AND FLEX INK PEN, COZ. ANDREWS REPRISAL WAS TO START BACK STRIP-SEARCHING AND TAKING YARD, IN HIS COMPLAINT AT PARAGRAPH 6), SIX THERE IS FACTUAL ALLEGATIONS OF RETALIATIVE PUNISHMENT OF CONFISCATED YARD CALL AS RESULT OF GLOVES NOT WORN AT PARAGRAPH 7), SEVEN AND 10), TEN.

2-3. RESPONDENTS ASSERTS THAT CLAIMANT HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, HOWEVER CLAIMANT REPLY THAT HE HAS SET FORTH STATED FACTS ALLEGING CO2 ANDREWS THREATENED HARASSMENT STRIP-SEARCHES, CARRIED OUT UNPROFESSIONAL UNSANITARY STRIP-SEARCHES AS WELL PUNISHED CLAIMANT BY CONFISCATIONS OF HOUR YARD BREAK AS RESULT OF HARASSING UNGLOVED HAND STRIP-SEARCHES IN RETALIATION FOR USE OF UNIT LEVEL GRIEVANCE - INFORMAL RESOLUTION FORMS.

CLAIM (B). JULY 25, 2012 / ORAL - VERBAL NOTICE GIVEN

b-1. RESPONDENTS ALLEGES CLAIMANT'S JULY 25, 2012 ORAL AND VERBAL NOTIFICATION TO RESPONDENTS IN CLASSIFICATION OF HIS SORE TOE NAILS WHICH WAS IGNORED AND DISREGARDED IN RESTRAINTS PRIMARY ORAL AND VERBAL NOTICE GIVEN UPON RESPONDENT, CLAIMANT REPLY THAT OCTOBER 5, 2011 CLASSIFICATION NOTIFICATION OF HIS UNCLIPPED TOE NAIL WAS ORALLY AND VERBALL NOTIFIED UPON RESPONDENT LONG BEFORE JULY 25, 2012 SEE CLAIMANT'S EXHIBIT "F-14" CLAIMANT CONTENDS THAT HE SHOULD NOT HAVE TO BADGER RESPONDENT TO COMPLY TO AND WITH MEDICAL SICK CALL REQUESTED NEEDS AS RESPONDENT IMPLY IN RE-SUBMISSIONS - VEXATION OF SAME SICK CALL REQUEST FOR MAYBE SERVICE RENDERED OR IN THIS INSTANTS NEGLECT OR ABANDONEMENT.

b-2. RESPONDENTS POINTS TO AUGUST 1, 2012 SICK CALL REQUEST FOR TOE NAIL-CLIPPINGS THAT IS HIND SIGHT OF JULY 27, 2012 TOE-NAIL-CLIPPING AFTER SHOVED FALL DOWN STEEL STAIRS INJURY ENSUED AFTER THE FACT. CLAIMANT'S REPLY TO PAIN AND INJURY AS WELL SUFFERING ENTAILED AUGUST 1, 2012 WITH CLIPPED TOE NAILS AS OF JULY 27, 2012, RESULT OF DERELICTION OF DUTY / NEGLIGENCE.

CLAIM (C), BATTERY BY OFFICERS / ASSAULT

c-1. RESPONDENT ASSERTS WHILE ESCORTING CLAIMANT IN RESTRAINTS CLAIMANT JERKED AWAY FROM OFFICERS AND PROCEEDED TO FALL HEAD FIRST DOWN STAIRS, A WELL ESTABLISHED VIOLATION OF SEVERAL MAJOR MISCONDUCT RULE VIOLATION IN FRACTIONS SUCH AS POTENTIALLY 02-8 RUNNING FROM OR OTHERWISE RESISTING APPREHENSION. 11-1 Insolence To a staff member and 12-1 FAILURE TO OBEY VERBAL AND /OR WRITTEN ORDERS OF STAFF CLAIMANT'S REPLY THAT RESPONDENT VAGUE ALLEGATION OF INTENTIONAL ACTIONS OF KNOWN WELL ESTABLISHED RULE VIOLATIONS OF INFRACTION BE ENTIRELY FABRICATED AS WELL MENDACIOUS WHERE ANY OFFICER WITH DIRECT KNOWLEDGE WOULD HAVE CHARGED CLAIMANT MAJOR MISCONDUCT RULE INFRACTION VIOLATION IF ANY PART OF RESPONDENT ALLEGED ASSERTIONS WERE IN FACT TRUE AND CORRECT.

c-2. RESPONDENT ADMIT ON JULY 27, 2012 THAT CLAIMANT WAS HOUSED AND SO LOCATED UPON STAIRS WITH VALID EFFECTIVE BOTTOM TIER HOUSING MEDICAL SCRIPT WITH KNEE FAILURE SCRIPT, TOE NAIL SOAK AND CLIPP SCRIPT UNDER ADDED RESTRAINT.

CLAIMANT'S REPLY, HAD RESPONDENT HONORED CLAIMANT'S SOAK AND TOE NAIL CLIPPING SICK CALL IN YEAR 2011 TIL JULY 2012 CLAIMANT MAY NOT HAVE BEEN INJURED BY RESPONDENT'S SHOVE / PUSH UPON HIM. CERTAINLY NOT ONTO STEEL STAIRS HAD RESPONDENT HONORED CLAIMANT'S BOTTOM TIER CELL HOUSING MEDICAL SCRIPT VALID AND EFFECTIVE. SEE CLAIMANT'S EXHIBITS "F-1, F-2, F-3"

C-3. RESPONDENT'S ADMIT THAT MEDICAL STAFF WAS IMMEDIATELY NOTIFIED AND ARRIVED NINETEEN MINUTES LATER, WHILE FAILING TO INDICATE HOW MANY MINUTES ELAPSED FOR SECURITY ZONE SUPERVISORS TO ARRIVE INSTRUCTING OFFICERS NOT TO TOUCH OR MOVE CLAIMANT. CLAIMANT'S REPLY AT #14 ZONE SUPERVISOR TELLING OFFICER WHAT NOT OR WHAT TO DO HADD AN ENROUTE AND ARRIVAL TIME THE WOULD GO BEFORE THE ADMITTED NINETEEN MINUTES.

C-4. RESPONDENT'S ADMIT ADC POLICY DOES STATE THAT ESCORTING INMATES ARE TO BE HELD RELIANCE UPON RESPONDENT MOTION TO DISMISS AT #16, CLAIMANT'S REPLY AT NO PART DOES RESPONDENT'S MOTION TO DISMISS STATE OFFICER ANDREWS AND SINGLETON HELD CLAIMANT, NOR DISOBEY LAWFUL ORDERS AND COMMANDS OF THE OFFICERS FURTHER THE RESPONDENT LACK INDICATION THE OFFICERS GAVE AN ORDER OR ANY COMMANDS WHILE RESTRAINTS WERE SECURED UPON CLAIMANT.

C-5. RESPONDENT ALLEGES A THIRD OFFICER OBSERVED AND WITNESSED CLAIMANT INTENTIONAL VIOLATION OF DEPARTMENTAL RULES AND REGULATIONS WELL ESTABLISHED MISCONDUCT INFRACTIONS LISTED IN C-1 YET THE THIRD OFFICER HAVING DIRECT KNOWLEDGE FAILED TO CITE AND CHARGE CLAIMANT. CLAIMANT'S REPLY AT NO PART HAS RESPONDENT PROVIDED THIS ARKANSAS STATE CLAIMS COMMISSION WITH MAJOR DISCIPLINARY MEASURES ENTAILING DISOBEYED LAWFUL COMMAND, BREAK FROM, FLEEING, ELUDING APPREHENSION NOT RECOGNIZED AS ESTABLISHED PROSCRIBED RULES AND REGULATIONS OF VSMU NOR ADC.

C-6. RESPONDENT CONTEND THAT MULTIPLE SICK CALL REQUEST SUBMISSIONS CLAIMANT WOULD NOT BE CHARGED FOR TOWARDS BADGERING HEALTH CARE PROVIDERS WHOM MAY NOT BE SUED BY THIS ARKANSAS STATE CLAIMS COMMISSION CLAIMANT'S REPLY RESPONDENT'S DONT CARE IF CMS OVER CHARGE HIM CO-PAY SICK CALL COMPILED MEDICAL FEES FOR REPETITIVE SICK CALL REQUEST SUBMISSIONS. CLAIMANT HAS NEVER RECIEVED A REFUND IN FOURTEEN YEARS OF INCARCERATION WITHIN ADC.

C-7 RESPONDENT POINTS TOO NO OBSERVATIONS, ANALYSIS OF ANY MENTAL HEALTH STAFF FOR HIS POST TRAUMATIC STRESS DISORDER, PHOBIAS, ANXIETY, MENTAL ANGUISH AND NIGHT MARES, SOLEY BECAUSE CLAIMANT HAS NOT OPEN THE DOOR FOR MENTAL HEALTH STAFF TO LIE TO HIM AND ADVISE HIM THAT WHAT CLAIMANT IS EXPERIENCING IS NOT A MENTAL HEALTH ISSUE, CLAIMANT'S REPLY RATHER THAN WASTE TIME WITH MENTAL HEALTH STAFF CLAIMANT CORRESPOND WITH SECURITY FOR CELL RELOCATION TO BE MOVED FOR MONTHS SEE CLAIMANT'S

EXHIBIT "F-18", VSM UNIT CLASSIFICATION OFFICER Ms. F. WASHINGTON DENIES CLAIMANT'S WRITTEN REQUEST TO BE MOVED OFF STAIR CASE CELL HOUSING LOCATION AND TIERS CITING INSTITUTIONAL NEEDS ONLY NOT HEALTH CARE CONCERNS. CLAIMANT HAS BEEN LIED TO FOR MONTHS SINCE OCTOBER 3rd 2012 BY MAJOR M. CULCLAGER ORALLY AND VERBALLY CONCERNING CELL LOCATIONS MOVING OFF STAIR CASE CELL HOUSING TO NO AVAIL AS CLAIMANT CONTINUED PHOBIAS, AND MENTAL ANGUISH DYSFUNCTIONAD ARISE TO ANXIETY OF FALLING AGAIN ON STAIR CASE WHILE AWAITING RENEWAL OF MEDICAL SCRIPT SEE CLAIMANT'S EXHIBIT "F-20", ATTACHED "F-21",

C-8 ON OCCASIONS HEALTH CARE PROVIDERS HAVE CONFISCATED CLAIMANT'S SICK-CALL UNLESS HE AGREED TO WAIVE OTHER RIGHTS DUE HIM IN MALNIPULATIVE ABUSE OF AUTHORITY SEE CLAIMANTS EXHIBIT "F-19", ATTACHED AS PROOF OF MENDACIOUS FABRICATION TO DEPRIVE CLAIMANT OF TIMELY HEALTH CARE.

WHERE FORE, CLAIMANT PRAYS THIS ARKANSAS STATE CLAIMS COMMISSION DENY RESPONDENT'S MOTION TO DISMISS AS VAGUE ALLEGATIONS UNSUPPORTED MAJOR ALLEGED MISCONDUCT REPORTS "DISCIPLINARY MEASURES" IF ANY OF THE SERIOUS WELL ESTABLISHED RULES AND REGULATIONS OF ADC WAS ACTUALLY WITNESSED AND OBSERVED BY RESPONDENT AND VIOLATED BY CLAIMANT SUCH PROOFS WOULD BE ATTACHED TO THEIR MOTION TO DISMISS AS OPPOSED TO CLAIMANT'S SECOND ORAL VERBAL NOTIFICATION FOR HIS TOE NAILS GROWTH TO BE SOAKED AND CLIPPED.

RESPECTFULLY SUBMITTED

PRO SE
James Charles Fudge 78875
JAMES CHARLES FUDGE 78875
VARNER SUPER MAX UNIT/CB6-637
POST-OFFICE BOX 400 ADC
GRADY, ARK 71644

CERTIFICATE OF SERVICE

I, JAMES FUDGE DO HEREBY CERTIFY THAT THREE (3) COPIES OF THE ABOVE HEREIN AND FOREGOING PROSE CLAIMANT'S REPLY TO RESPONDENT'S MOTION TO DISMISS WAS PLACED IN U.S. MAIL BY INSTITUTIONAL SECURITY THIS 20th OF FEBRUARY 2013 ADDRESS TO ARKANSAS STATE CLAIMS COMMISSION AT 101 E CAPITOL AVENUE STE #410 L.R. ARK 72201-3823

James Charles Fudge 78875
02/20/2013

13

Patient's Name: _____ ADC#: _____

RELEASE FROM RESPONSIBILITY FOR NON-TREATMENT

This is to certify that on the _____ day of _____, in the year _____, at _____ o'clock a.m./p.m., I have refused the medical/surgical examination and/or treatment described below. The same having been explained to me and recommended by the medical staff. I understand that this is against the professional advice of medical staff and standard treatment practices. I acknowledge that I have been informed of the type and nature of medical examination and/or treatment which is being recommended. That the medical examination and/or treatment has been explained to me, and I have been explained the risk and consequences involved for refusing the same. With complete knowledge of the above information I do hereby release the medical care provider and its medical staff, as well as the Arkansas Department of Correction and its staff from all responsibility for any ill effects of any nature which may result from my decision. I further state that I have arrived at this decision on my own, without coercion from anyone, medical staff, Department of Correction staff, or otherwise.

Type of Treatment/Medical Care refused: _____

Arkansas Claims Commission

Reason for refusal: _____

FEB 22 2013

RECEIVED

I have read the language of this document (or I have had the document read to me) and discussed the content and effect of my decision with the medical staff, and I understand the risks presented.

Inmate Signature: _____ Date: _____

Witness: _____ Witness: _____

IF INMATE REFUSES TO SIGN THE FORM

I was present when this document, the examination/treatment recommended therein, and the consequences of refusal of the same were explained to the inmate. I am personally aware that the inmate refused the explained examination/treatment, and there after refused to sign the refusal of treatment form.

Witness: _____ Witness: _____

Administrative Remarks: _____

PETITIONER'S
EXHIBIT F-19
"F-19"
FUDGE, J # 78875

Name: _____

DOB: _____

ADC#: _____

ARKANSAS DEPARTMENT OF CORRECTION

MSF-202C

Health Service Request Form

Name (Last-First-MI): Fudge, JAMES C AOC#: 78875 Date of Birth: 07-16-1964 Service: CB6/637 Date of Request: 01-07-2013

Job Assignment: VSMU / B-MIL PUNISHMENT PROGRAMM

Description of the problem: I AM REQUESTING RENEWAL OF ALL OF MY EXPIRED MEDICAL SCRIPTS AS SOON AS POSSIBLE PLEASE.

I consent to be treated by the Health Services Staff for the condition described: James C. Fudge 78875

- 1) _____
- 2) _____
- 3) _____

Subjective Data: 1/9/13 All meds have been reordered Dpk PRS Date/Time Rec'd in Medical: 1-9-13 0946
 Date/Time Triaged: _____
 Triaged by: _____ Date: _____

Objective Data: BP: _____ Pulse: _____ Respiration: _____ Temperature: _____ Weight: _____
 Priority Level: 24hrs 48hrs 72hrs
 Arkansas Claims Commission

FEB 22 2013 RECEIVED

PETITIONER'S EXHIBIT F-20
 "F-20"
 FUDGE, J #78875

Assessment:

Plan by Nursing Care:

Body System Code: (from problem list) _____ Patient Education: Handout Verbal Instruction Topic: _____
 Refer to: Physician Mid-level Mental Health Dental Other (List): _____
 Title: _____ Unit: _____ Date: _____ Time: _____
 Name: _____

ARKANSAS DEPARTMENT OF CORRECTION

Medical Restrictions/Limitations/Special Authorization(s)

MSF-207

PART 1 - RESTRICTIONS:

RESTRICT INMATE FROM:

- Restrict assignment requiring strenuous physical activity for periods in excess of hours.
- Restrict assignment requiring prolonged crawling, stooping, running, jumping, walking or standing.
- Restrict assignment requiring handling, lifting of heavy materials in excess of pounds or requiring overhead work for a period in excess of hours.

PART 2 - LIMITATIONS:

INMATE REQUIRES:

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

PART 3 -

SPECIAL AUTHORIZATIONS:

INMATE IS AUTHORIZED TO:

- Report to the Infirmary for Special Treatments()
- Soak:
- Exercise:
- Other:
- Bathe in the Infirmary
- Sitz Bath
- Cast
- Other:
- Have in Possession:
 - Cane
 - Crutches
 - Brace: (describe briefly) knee brace
 - Prescribed Footwear:
 - Orthopedic Appliance: (describe briefly)
 - Other: double cuff front/bottom tier
- * Go to Dining/Pill Window/Shower Only

Arkansas Claims Commission

FEB 22 2013

RECEIVED

This Medical Restriction(s)/Limitation(s)/Special Authorization(s) Starts: 02/14/2013 20:16:00

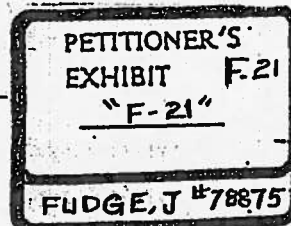
This Medical Restriction(s)/Limitation(s)/Special Authorization(s) Ends: 02/13/2014 20:16:00

Handwritten signature and date: 2/14/13

Name: Fudge, James
DOB: 07/16/1964
ADC#: 078875

Connie Hubbard

Distribution: Original - Medical Jacket



17

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 125,000.00

Claim No. 13-0518-C

James Fudge, #078875 Claimant
vs.

Attorneys
Pro se Claimant

Department of Correction Respondent
State of Arkansas

Lisa Wilkins, Attorney Responder

January 11, 2013

Date Filed

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

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1, 3-5, 7-9 & 11-18 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1, 3-5, 7-9 & 11-18 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing March 7, 2013

Date of Disposition March 7, 2013

[Signature] Chairman
[Signature] Commissioner
[Signature] Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

MAR 26 2013

RECEIVED

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JAMES FUDGE, ADC# 78875

CLAIMANT

Vs.

CLAIM No. 13-0518-CC

ARKANSAS DEPARTMENT OF CORRECTIONS

RESPONDENT

CLAIMANT'S MOTION FOR RECONSIDERATION / RE-HEARING
PURSUANT TO GENERAL RULES OF PRACTICE & PROCEDURE
RULE 7.1 ACCORDANCE WITH ACT 462 OF 1949 § 19-10-201.

COMES NOW PRO SE CLAIMANT, IN THE ABOVE STYLED CLAIM FOR HIS MOTION FOR RE-HEARING / RECONSIDERATION FROM THIS STATE CLAIMS COMMISSION OPINIONED FINDING OF FACTS HEARING ON MARCH 7, 2013 THAT GRANTED RESPONDENT'S MOTION TO DISMISS HIS CLAIM FOR FAILURE TO STATE A CAUSE OF ACTION UPON WHICH RELIEF CAN BE GRANTED UNDER ARK. RULES CIVIL PROCEDURE RULE 12 (b)(6), IMPROPERLY ON DATE OF DISPOSITION MARCH 7, 2013 MOVES THIS STATE CLAIMS COMMISSION TO RE-HEAR / RECONSIDER FOR THE FOLLOWING STATED GROUNDS

- 1.) CLAIMANT POINTS TO ARKANSAS CIVIL RULES PROCEDURE RULE 12 (b)(6) (ALSO) "ARCP RULE, § (b)(1) HERE AFTER" PROVIDES IN DETERMINING WHETHER TO DISMISS A COMPLAINT FOR ARCP. RULE 12 (b)(6) FAILURE TO STATE A CAUSE UPON WHICH RELIEF CAN BE GRANT. IT IS IMPROPER FOR THE COMMISSION / COURT TO LOOK BEYOND THE "COMPLAINT." HERE THE STATE COMMISSION HAS IMPARTIALLY RELIED SOLELY UPON REASONS SET FORTH IN RESPONDENT'S MOTION TO DISMISS WHILE INFRINGING UPON GENERAL RULES. RULE 1.2 LIBERAL CONSTRUCTION INHERENTED IN AR.C.P. RULE 12 (b)(6) STANDARDS AND TEST TO LIBERALLY CONSTRUE / ACCEPT ALL FACTS CONTAINED IN THE "COMPLAINT" AS TRUE IN THE LIGHT MOST FAVORABLE TO THE NON MOVING PARTY, AS WELL AR.C.P.R. 8(1)
- 2.) CLAIMANT POINTS TO THE ARKANSAS STATE CLAIMS COMMISSION'S RECIEPT OF THE RESPONDENT'S JANUARY 15, 2013 ANSWER DENYING LIABILITY, DISPUTING AND CONTESTED STATED FACTS SUPPORTING CAUSE OF ACTION, IN HIS ASSERTED CLAIM.

- 3). CLAIMANT CONTENDS THE ARKANSAS STATE CLAIMS COMMISSION HAS MIS INFORMED HIM WHOLLY, INFRINGING ON GENERAL RULES OF PRACTICE AND PROCEDURE 1.5 (c), 1.9 (b) ADVISING THAT THE DIRECTOR OF THE COMMISSION "SHALL" OR "WILL" SPECIFY A HEARING IN WRITTING UNLESS THERE IS A SPECIFIC WRITTEN REQUEST FOR ALL FIVE (5) COMMISSIONERS HEAR ANY GIVEN CLAIM: HERE ON FEBRUARY 11, 2013 THE COMMISSION DIRECTOR MR. NORMAN L. HODGES, JR ADVISED CLAIMANT OF SET SCHEDULED HEARING FOR MARCH 8, 2013 BEGINING AT 9:00 AM BEFORE THE STATE CLAIMS COMMISSION BY (V-C) VIDEO - CONFERENCE, PURSUANT GENERAL RULES 1.6 MEETING OF THE COMMISSION.
- 4). CLAIMANT CONTENDS THE ARKANSAS STATE CLAIMS COMMISSION DIRECTOR MR. NORMAN L. HODGES ADVISED CLAIMANT ON FEBRUARY 23rd. 2013 REGRETFULLY, THE HEARING SCHEDULED FOR FRIDAY, MARCH 8, 2013 AT 9:00 AM IS HEREBY CANCELLED, THAT RE-SCHEDULE OF HIS CLAIM "WILL" TAKE PLACE UPON A LATER DATE AS WELL NOTIFY CLAIMANT ACCORDINGLY. HERE THE ARKANSAS STATE CLAIMS COMMISSION CONDUCTED AN UN-NOTIFIED HEARING WITHOUT CLAIMANT'S APPEARANCE OR ATTENDANCE ON THURSDAY MARCH 7,th 2013 A DATE PRIOR TOO THE INITIAL SCHEDULED HEARING DATE 03/08/2013.
- 5). CLAIMANT AGAIN POINTS TO THE ARKANSAS STATE CLAIMS COMMISSION IMPROPER NOTIFICATION OR LACK THERE OF ON THURSDAY MARCH 7, 2013 HEARING IN CLEAR DISREGARD FOR GENERAL RULE OF PRACTICE AND PROCEDURE RULE 3.1 NOTICE OF HEARING WHICH PROVIDE IN PERTINENT PART, "THE DIRECTOR "SHALL" ISSUE ALL NOTICES OF HEARINGS," WITH AT LEAST TWO (2) MONTHS ADVANCE NOTICE. HERE CLAIMANT ONLY RECIEVED HIND-SIGHT OPINION AND FINDING OF FACTS AS RESULT OF HIS UNNOTIFIED, UNATTENDED HEARING, BASED UPON INAPPLICABLE CIV. R. P. RULE. 8 (2)(1) ALSO RULE 12 (b) (6). ADOPTION.
- 6). CLAIMANT STATES THAT HIS PRO SE MOTION FOR PRODUCTION OF DOCUMENTS MAILED TO THE ARKANSAS STATE CLAIMS COMMISSION ON OR ABOUT FEBRUARY 12th, 2013 BEFORE FEBRUARY 22nd, 2013 HAS COMPELLED NONE OF RESPONDENT'S INCIDENT REPORTS #005 REQUESTED BE PRODUCED AT NUMBERS #6, 8, 9, 10, 11, 13 OF HIS TIMELY MOTION NOR INDICATIONS OF SUCH BEING RECIEVED BY THE ARKANSAS STATE CLAIMS COMMISSION.
- 7). BECAUSE CLAIMANT SUBMITTED HIS TIMELY WRITTEN NOTICE TO ATTEND THE HEARING ON HIS CLAIM WITHIN FIFTEEN (15) CALENDAR DAYS FROM THE DATE OF JANUARY 18, 2013 THE CLAIMS COMMISSION POSITION TO DISMISS REST ON FAILURE TO PROSECUTE HIS CLAIM IT HAD SCREENED, TITLED AS WELL IDENTIFIED AS FACTS STATED FOR CAUSE OF ACTION PURSUANT TO GENERAL RULES OF PRACTICE AND PROCEDURE RULE 1.5 (d) CAUSE OF ACTION STATED.

- 8). CLAIMANT POINTS TO ARKANSAS STATUTES ANNOTATED § 19-10-201 et seq. ALSO GENERAL RULES OF PRACTICE AND PROCEDURE ADOPTING THE APPLICABLE PROCEDURE USED BY ARKANSAS STATE COURT AS A FACT-FINDING BODY. IT IS WELL SETTLED ARKANSAS STATE CIVIL PROCEDURE THAT TO PROPERLY DISMISS A COMPLAINT FOR FAILURE TO STATE A CAUSE / CLAIM PURSUANT TO ARK. CIV. R. PROC 12(b)(6) THE CLAIMS COMMISSION "MUST" FIND THAT (1) THE CLAIMANT FAILED TO STATE GENERAL FACTS UPON WHICH RELIEF COULD BE GRANTED (2) FAILED TO INCLUDE SPECIFIC FACTS PERTAINING TO THE ELEMENTS OF HIS CLAIMS AFTER ACCEPTING ALL FACTS CONTAINED IN THE COMPLAINT AS TRUE THOMAS V. PIERCE, 87 ARK. APP. 26, 184 SW3d 489 (2004) ARKANSAS STATE COURTS HOLD THE MOVING PARTIES COMPLAINT SET FORTH FACT TO CONSTRUE LIBERALLY AS TRUE IN LIGHT MOST FAVORABLE TO THE NONE MOVING PARTY OR RESPONDENTS IN THIS INSTANCE,
- 9). CLAIMANT POINTS OUT THAT AT NO TIME HAS THIS ARKANSAS STATE CLAIMS COMMISSION ADVISED NOTICE OF FILING ANY MOTIONS, BRIEFS ECT, ECT, ECT INTERROGATORIES NOR RENDERED ANY DEPOSITIONAL TRANSCRIPT OF NAMED WITNESSES OFFICER SINGLETON AND CORPORAL DAVENPORT AS OF THE UNATTENDED UNNOTIFIED THURSDAY MARCH 7, 2013 HEARING.
- 10) CLAIMANT POINTS TO THE ARK. CIV. PROC. RULE 12 (b) (6) FAILURE TO STATE A CLAIM / CAUSE OF ACTION PROVIDES IN PART "IN VIEWING THE FACTS LIBERALLY CONSTRUED AS TRUE ON APPELLATE REVIEW SHOULD BE IN THE CLAIMANT'S FAVOR CLOWERS V. LASSITER, 363 ARK. 241, (2005)
- 11), CLAIMANT CONTENDS RE-HEARING / RECONSIDERATION IS PROPER FOR THE ABOVE POINTED TO GROUNDS INCLUDING BUT NOT LIMITED TO RESPONDENT'S FAILURE TO PRODUCE HIS TIMELY REQUESTED PRODUCTION OF DOCUMENTS, STATEMENT, INCIDENT REPORTS, MISCONDUCT REPORTS, ECT, ECT, PURSUANT TO RULE 7.1; AS WHICH WAS NOT AVAILABLE TO CLAIMANT AT THE UNATTENDED - UNNOTIFIED THURSDAY MARCH 7, 2013 HEARING
- 12), CLAIMANT ASSERTS THAT THERE WAS NOTHING - - ABSOLUTELY NONE LIBERAL FINDINGS OF FACT AT THE UNNOTIFIED, UNATTENDED, IMPARTIAL, AND BIASED THURSDAY MARCH 7, 2013 HEARING THAT REST SOLELY UPON RESPONDENT'S MATERIAL DISPUTED REBUTTAL'S DENYING LIABILITY OF HIS CONCISE STATED CAUSE OF ACTION

WHEREFORE CLAIMANT PRAYS THIS ARKANSAS STATE CLAIMS COMMISSION RE-HEARD / RECONSIDER THE THURSDAY MARCH 7, 2013 OPINION, FINDING OF FACTS TO GRANT RESPONDENT'S MOTION TO DISMISS FOR REASONS SET OUT BY RESPONDENTS AS IMPROPER UNDER ARK. CIV. R. PROC 12(b)(6) UNNOTIFIED AS WELL UNATTENDED UNANIMOUSLY DENIED AND DISMISSED

James Charles Judge 78875
RESPECTFULLY SUBMITTED *21*

James Charles Fudge #78875

JAMES CHARLES FUDGE #78875

VARNER SUPER MAX UNIT

P.O. BOX 400 ADC

GRADY, ARKANSAS 71644

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT FOUR (4) COPIES OF THE ABOVE MOTION FOR RE-HEARING/
RECONSIDERATION PURSUANT TO RULE 7.1, ACT 462 OF 1949 ARK. STAT. ANN § 19-10-201
WAS MAILED BY U.S. POSTAGE ADDRESSED TO ARK. STATE. CLAIMS. COMMISSION AT 101
EAST CAPITOL AVENUE SUITE 410 LITTLE ROCK, ARK 72201-3823 THIS 22nd DAY OF
MARCH 2013 WITH REQUEST FOR RETURN RECEIVED FILED-MARK COPY THANK
YOU IN ADVANCE

SINCERELY

James Charles Fudge 78875
JAMES FUDGE 78875

03 / 22 / 2013

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 125,000.00

13-0518-CC
Claim No. _____

James Fudge, #078875 Claimant
vs.

Attorneys
Pro se Claimant

Department of Correction Respondent
State of Arkansas

Lisa Wilkins, Attorney Respondent

Date Filed January 11, 2013

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

FINDING OF FACTS

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's March 7, 2013, order remains in effect.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's March 7, 2013, order remains in effect.

Date of Hearing April 11, 2013

Date of Disposition April 11, 2013

Richard C. May Chairman
Thomas Commissioner
Bill Farnsworth Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

BEFORE STATE CLAIMS COMMISSION

JAMES FUDGE, 78875

CLAIMANT

Vs.

CLAIM No. 13-0518-CC

ARK. DEPARTMENT OF CORR.

RESPONDENT

PRO SE NOTICE OF APPEALS

COMES NOW CLAIMANT IN THE ABOVE STYLED CLAIM/CAUSE ON BEHALF OF THE UNNOTIFIED HEARING MARCH 07, 2013 THAT RESULTED IN DISMISSAL OF HIS CLAIM BASED ON RESPONDENT'S MOTION TO DISMISS PURSUANT TO ADOPTED CIVIL RULES OF PROCEDURE RULE 12(b)(6) FAILURE TO STATE A CAUSE FOR ACTION, GIVES TIMELY NOTICE OF APPEALS,

RESPECTFULLY SUBMITTED

PRO SE

James Charles Fudge 78875
JAMES CHARLES FUDGE 78875

04 / 15 / 2013

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT THREE (3) HAND WRITTEN COPIES WAS PLACED IN USMU SECURITY POSSESSION FOR POSTAGE IN THE U.S. MAIL ADDRESSED TO THE ARKANSAS STATE CLAIMS COMMISSION ON 04-15-2013 WITH REQUEST FOR RETURN RECEIVED MARKED COPY THANK YOU

James Charles Fudge 78875
JAMES C FUDGE 78875

VARNER SUPER MAX UNIT

P.O. BOX 400 ADG

GRADY, ARK 71644

ARKANSAS STATE
CLAIMS COMMISSION

APR 17 2013

RECEIVED

24