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DEC 09 2013

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

RECEIVED

- Mr. Mrs. Ms. Miss

Jeremy Kennedy, #093061 Claimant

State of Arkansas, Respondent Dept. of Correction

Do Not Write in These Spaces Claim No. 14-0455-CC Date Filed December 9, 2013 Amount of Claim \$ 12,500.00 Fund DOC 1&3) Failure to Follow Proceod 2) Personal Injury

COMPLAINT

Jeremy Kennedy, #093061 the above named Claimant, of POB 600, Grady, AR 71644 County of represented by

State agency involved: AR. DEPT. OF CORRECTIONS ; AR. DEPT. OF WORKFORCE EDUCATION Amount sought: \$2500.00 + \$5000.00 + \$5000.00

Month, day, year and place of incident or service: SEPTEMBER 09 - NOVEMBER 09, 2013

Explanation: PLEASE SEE ATTACHED

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? NO; when? ; to whom? ; and that the following action was taken thereon: (Department) and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? NO; if so, state name and address and that the nature thereof is as follows: ; and was acquired on ; in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verify believes that they are true. JEREMY KENNEDY (Print Claimant/Representative Name) Jeremy Kennedy (Signature of Claimant/Representative)

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

on this 30 day of Nov, 2013 (Date) (Month) (Year) Robert M. Smith (Notary Public)

SF1-R7/99

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

CLAIM #1

THIS CLAIM IS FILED BY JEREMY KENNEDY ("KENNEDY"), A STATE PRISON INMATE HOUSED AT THE VARNER UNIT. AT ALL TIMES RELEVANT TO THIS CLAIM, KENNEDY WAS ENROLLED AT THE RIVERSIDE VO-TECH FACILITY AT THE VARNER UNIT. HE WAS ENROLLED IN THE HEAT AND AIR ("H.V.A.C.") COURSE. HIS INSTRUCTOR WAS WILLIAM GREESON ("GREESON"). THE ACTING ASSISTANT DIRECTOR AND HEAD OF THE FACILITY WAS MR. SEGO. THE A.D.C. OFFICER ASSIGNED TO PROVIDE SECURITY WHILE CLASSES WERE IN SESSION WAS OFFICER CLEMENTS ("CLEMENTS")

ON 09-09-13, KENNEDY AND ANOTHER INMATE WERE SITTING IN THE H.V.A.C. CLASS' TOOLROOM STUDYING THEIR TEXTBOOKS. CLEMENTS ENTERED AND SEARCHED THE TOOL ROOM. CLEMENTS FOUND A SET OF HOMEMADE WEIGHTS CREATED BY STROPPING 2 FAN MOTORS TOGETHER. CLEMENTS CALLED GREESON TO THE TOOLROOM AND ASKED IF KENNEDY WAS ASSIGNED TO THE TOOL ROOM. GREESON SAID YES. CLEMENTS SAID THAT WAS ALL HE NEEDED TO HEAR. CLEMENTS TOOK THE WEIGHTS AND LEFT.

THE NEXT DAY KENNEDY WAS TOLD THAT CLEMENTS HAD WRITTEN A DISCIPLINARY AGAINST HIM AND AS A RESULT, HE WAS SUSPENDED FROM VO-TECH FOR 60 DAYS.

INMATE BROCK, ANOTHER VO-TECH INMATE WAS ALSO WRITTEN UP THAT SAME DAY BY CLEMENTS FOR A UNRELATED INCIDENT. BROCK WAS ALSO SUSPENDED

PER ADMINISTRATIVE REGULATION SECTION B31, WHEN A STAFF MEMBER DISCOVERS INMATE MISCONDUCT, HE CAN WRITE A DISCIPLINARY CHARGING THE INMATE WITH A RULE VIOLATION. HE SUBMITS THE DISCIPLINARY REPORT WHICH MUST BE REVIEWED BY THE CHIEF SECURITY OFFICER, WHO

CAN REDUCE IT, FORWARD IT TO THE DISCIPLINARY COURT OR IF HE FEELS NO MISCONDUCT OCCURED, ^{DISMISS} ~~REDUCE~~ IT ALTOGETHER

MAJOR BOLDEN DISMISSED BOTH KENNEDYS AND BROCK'S DISCIPLINARYS ON THE SAME DAY

ON 9-10-13, KENNEDY WROTE A GRIEVANCE AGAINST CLEMENTS AND VO-TECH STAFF. CLEMENTS PROVIDED A RESPONSE TO STEP #1 OF THE GRIEVANCE STATING THAT HE DID NOT SEE KENNEDY USING THE WEIGHTS BUT THAT KENNEDY WAS ASSIGNED TO THE TOOLROOM, THAT GREESON STATED KENNEDY WORKED OUT ALL THE TIME AND THAT HE FOUND THE WEIGHTS RIGHT BEHIND KENNEDY.

KENNEDY WAS ASSIGNED TO THE TOOL ROOM. KENNEDY WAS NOT THE ONLY INMATE WITH ACCESS TO THE TOOL ROOM.. WHEN CLEMENTS CAME IN, KENNEDY WAS NOT THE ONLY INMATE IN THE TOOL ROOM. KENNEDY DOES NOT BELIEVE GREESON SAID THAT HE WORKED OUT ALL THE TIME, EVEN SO, THAT DOES NOT MEAN KENNEDY USED OR CREATED THOSE WEIGHTS. THE WEIGHTS WERE FOUND RIGHT BEHIND ~~THE~~ KENNEDY. THE TOOLROOM IS APPROX 4' X 8'. THE DOOR TO IT IS LOCATED AT ONE END OF THE ROOM THE DESK KENNEDY WAS SITTING AT WAS AT AND FACED THE DOOR. EVERYTHING IN THE TOOL ROOM WAS WITHIN 3' OR 4' BEHIND KENNEDY. THESE STATEMENTS WERE INTENDED TO IMPLY THAT THE WEIGHTS WERE PROBABLY KENNEDY'S

IN HIS RESPONSE TO KENNEDY'S GRIEVANCE, WARREN RANDY WATSON STATED THAT IT IS VO-TECH POLICY THAT IF AN INMATE IS WRITTEN UP, HE IS SUSPENDED FOR ~~#~~ NO LESS THAN 60 DAYS EVEN IF HE IS FOUND NOT GUILTY OF ANY MISCONDUCT

APPROX. 2 WEEKS AFTER THE INCIDENT, BROCK WAS ALLOWED

TO RESUME GOING TO VO-TECH WHILE KENNEDY REMAINED SUSPENDED.

GROUND #1

CLEMENTS DID NOT WITNESS KENNEDY CREATE, USE OR POSSESS THE WEIGHTS. HIS RESPONSE TO THE GRIEVANCE AT MOST MAY HAVE CREATED A SUSPICION THAT THE WEIGHTS COULD HAVE BEEN KENNEDY'S. A.R. B31 STATES THAT SUSPICION ABOUT AN INMATE'S BEHAVIOR SHALL NOT BE TAKEN INTO ACCOUNT. BEFORE CHARGING KENNEDY WITH A RULE VIOLATION, CLEMENTS HAD A RESPONSIBILITY TO INVESTIGATE TO ENSURE KENNEDY VIOLATED A RULE. CLEMENTS RELIED SOLELY ON THE FACT THAT KENNEDY WAS ASSIGNED TO THE TOOLROOM DESPITE THE FACT THAT HE HIMSELF WITNESSED ANOTHER INMATE IN THE TOOLROOM WHEN THE WEIGHTS WERE FOUND. CLEMENTS KNEW THAT EVEN IF THE DISCIPLINARY WAS DISMISSED, KENNEDY WOULD STILL BE PUNISHED WITH A 60 DAY SUSPENSION.

GROUND #2.

VO TECH

RIVERSIDE MAY NOT BE PART OF THE DEPT. OF CORRECTIONS. HOWEVER, ALL OF ITS STUDENT BODY IS MADE UP OF A.D.C. INMATES. ITS FACILITIES ARE LOCATED AT A A.D.C. PRISON, ON A.D.C. PROPERTY. STUDENTS ARE SUBJECT TO A.D.C. REGULATIONS FIRST. RIVERSIDE VO-TECH CANNOT ~~HAVE~~ IMPLEMENT POLICIES THAT VIOLATE A.D.C. REGULATIONS.

IN THE A.D.C., THERE EXISTS ONLY ONE VEHICLE TO DETERMINE IF AN INMATE COMMITTED MISCONDUCT. - A.R. B31 I, E., THE INMATE DISCIPLINE MANUAL. ANY STAFF WITNESSING MISCONDUCT MAY SUBMIT A REPORT. THAT WRITTEN REPORT ALONG WITH ANY EVIDENCE IS FORWARDED TO THE DISCIPLINARY HEARING OFFICER. A.R. B31 SPECIFICALLY STATES THAT THE HEARING OFFICER IS THE ONLY PERSON WHO CAN

DECIDE AN ACCUSED INMATES GUILT OR INNOCENSE. AND IF AN INMATE IS FOUND GUILTY, THE HEARING OFFICER IS THE ONLY PERSON WHO CAN ASSESS PUNISHMENT WHICH MUST BE WITHIN A SPECIFIC RANGE OF SANCTIONS LISTED.

CLEMENTS INITIATED A DISCIPLINARY ACTION AGAINST KENNEDY. AT A PREDETERMINED STEP IN THE PROCESS, A HIGHER AUTHORITY, AUTHORIZED BY POLICY TO DO SO, DISMISSED THE CHARGES. A DISMISSAL OF THE CHARGES MEANS KENNEDY WAS NOT DETERMINED GUILTY OF ANY RULE VIOLATION. HOWEVER, CLEMENTS AND SEGO WENT OUTSIDE POLICY BY SUSPENDING KENNEDY FROM VO-TECH. THE SUSPENSION WAS A PUNISHMENT. KENNEDY WAS PUNISHED DESPITE NOT ^{BEING} FOUND GUILTY OF ANY MISCONDUCT, AND THE PUNISHMENT WAS NOT WITHIN THE RANGE OF ALLOWABLE SANCTIONS ESTABLISHED BY AR 831

WARDEN WATSON BECAME LIABLE WHEN HE RECEIVED KENNEDYS GRIEVANCE. AT THAT POINT, WATSON BECAME AWARE OF THE REGULATORY VIOLATIONS AND NOT ONLY DID HE NOT TAKE STEPS TO CORRECT THEM, HE SUPPORTED THEM IN HIS GRIEVANCE RESPONSE

GROUND CLAIM # 3

AS PREVIOUSLY STATED, SEGO AND THE STAFF OF RIVERSIDE VO-TECH'S VARNER UNIT FACILITY HAVE IMPLEMENTED A POLICY THAT, IF AN INMATE RECEIVES A DISCIPLINARY AT VO-TECH, EVEN IF HE'S DETERMINED TO HAVE COMMITTED NO MISCONDUCT, HE IS STILL PUNISHED WITH A 60 DAY SUSPENSION.

KENNEDY DOES NOT KNOW HOW TO EVEN ARGUE THIS GROUND. IT IS FUNDAMENTALLY WRONG TO PUNISH SOMEONE WHO HAS DONE NO WRONG. FOR SEGO TO IMPLEMENT AND ENFORCE SUCH A POLICY IS RIDICULOUS. KENNEDY DOES NOT BELIEVE THIS IS AN

OFFICIAL POLICY. KENNEDY BELIEVES THIS IS SOMETHING THEY JUST STARTED DOING AND NO ONE HAS CHALLENGED IT. DURING DISCOVERY, KENNEDY WILL CERTAINLY SEEK A WRITTEN COPY OF THIS POLICY.

GROUND # 4.

IN HIS RESPONSE TO KENNEDYS GRIEVANCE, WARDEN WATSON STATED THAT IT IS POLICY WHEN AN INMATE RECEIVES A DISCIPLINARY AT VO-TECH THAT HE BE SUSPENDED FOR NO LESS THAN 60 DAYS. ~~THE~~ KENNEDY AND INMATE BROCK WERE WRITTEN UP AND SUSPENDED FROM VO-TECH ON THE SAME DATE, BOTH DISCIPLINARYS WERE DISMISSED ON THE SAME DAY BY MAJOR BOLDEN, THE ONLY DIFFERENCE BETWEEN THEM WAS THAT KENNEDY WROTE A GRIEVANCE ABOUT THE INCIDENT.

KENNEDY BELIEVES HE WAS NOT ALLOWED TO GO BACK LIKE BROCK WAS ~~THE~~ RETALIATION FROM CLEMENTS AND SEGO FOR WRITING A GRIEVANCE ON THEM

AT THE VERY LEAST, THEY ABUSED THEIR DISCRETION AND ~~THE~~ SHOWED FAVORITISM BY SELECTIVELY APPLYING "POLICY"

DUE TO THE ACTIONS OF RESPONDENTS, KENNEDYS VOCATIONAL EDUCATION WAS DELAYED. TO COMPLETE THE COURSE, KENNEDY MUST ACCRUE 1440 HOURS. STUDENTS GENERALLY ACCRUE 36 HOURS PER WEEK. KENNEDY MISSED 315 HOURS THAT'LL TAKE AN ADDITIONAL 2 MONTHS TO MAKE UP. KENNEDY SUBMITS A WORK RELEASE APPLICATION FORM. THE VARNER UNIT CLASSIFICATION OFFICER SIGNED IT, STATING FOR KENNEDY TO REAPPLY AFTER COMPLETING VO-TECH. THEREFORE BY DELAYING KENNEDYS GRADUATION BY 2 MONTHS, RESPONDENTS WRONGFULLY

DEPRIVED KENNEDY OF 2 MONTHS IN WORK RELEASE WHERE HE BE ABLE TO LEAVE ~~WOR~~ PRISON TO WORK A REAL JOB, EARN AND SAVE WAGES AND BE ELIGIBLE FOR MONTHLY WEEKEND FURLOUGHS TO GO HOME,

UPON ~~WORK~~ COMPLETION OF VO-TECH, KENNEDY WILL RECEIVE A CHUNK OF GOOD TIME, BY DELAYING HIS ACCRUAL OF GOOD TIME, THE RESPONDENTS MOST CERTAINLY EXTENDED THE AMOUNT OF TIME KENNEDY WILL SERUE,

FINALLY THE WRONGFUL ACTIONS OF RESPONDENTS UNFAIRLY SUBJECTED KENNEDY TO THE PUNISHMENT AND STIGMA OF WRONGDOING WHEN HE'D COMMITTED NO MISCONDUCT

FOR THE REASONS CONTAINED HEREIN, KENNEDY ASKS THIS COMMISSION TO GRANT HIM \$2500.⁰⁰ FROM RESPONDENTS IN COMPENSATORY DAMAGES

RESPECTFULLY SUBMITTED,

Jeremy Kennedy
JEREMY KENNEDY #93061

P.O. BOX 600

GRADY AR 71644

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JEREMY KENNEDY (ADC 093061)

CLAIMANT

V.

NO. 14-0455-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
LISA MILLS WILKINS Ark. Bar #87190
Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

Arkansas
State Claims Commission

JAN 02 2014

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 31 day of December, 2013, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Jeremy Kennedy (ADC 093061)
Varner Unit
PO Box 600
Grady, AR 71644-0600

Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190

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State Claims Commission
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IN THE ARKANSAS STATE CLAIMS COMMISSION

JEREMY KENNEDY

CLAIMANT

v.

CLAIM NO 14-0455-CC

STATE OF ARKANSAS

RESPONDENT

MOTION FOR PARTIAL SUMMARY JUDGMENT

PER ARK. RULES OF CIVIL PROCEDURE, SUMMARY JUDGMENT IS APPROPRIATE WHEN NO MATERIAL FACTS ARE IN DISPUTE AND THE MOVING PARTY IS ENTITLED TO JUDGMENT BY LAW.

KENNEDY IS ENTITLED TO SUMMARY JUDGMENT ON CLAIM #2 OFFICER CLEMENTS THOUGHT KENNEDY HAD MADE OR USED HOMEMADE WEIGHTS. OFFICER CLEMENTS WROTE A DISCIPLINARY AGAINST KENNEDY.

STAFF MEMBERS IMMEDIATELY SUSPENDED KENNEDY FROM VO-TECH. IN HIS GRIEVANCE RESPONSE, WARDEN WATSON STATES "WHEN AN INMATE IS DISMISSED FROM VO-TECH FOR DISCIPLINARY REASONS, THAT INMATE IS DISMISSED FOR NO LESS THAN 60 DAYS.... AFTER THE 60 DAY PERIOD, YOU WILL BE ALLOWED TO RETURN TO VO-TECH"

THIS PROO PROVES KENNEDY WAS DISMISSED AND THAT THE DISMISSAL WAS A PUNISHMENT FOR MISCONDUCT.

A.D.C, ADMINISTRATIVE REGULATION A.D. 13-10 I STATES THAT IT IS POLICY " TO ENSURE THAT INSTITUTIONAL RULES AND REGULATIONS ARE ENFORCED THROUGH AN UNBIASED AND PRUDENT FACT FINDER

AND PROVIDE APPROPRIATE DUE PROCESS THROUGHOUT THE DISCIPLINARY PROCESS" (A.D. 13-10(I) PAGE 1)

A.D. 13-10(E)(17) STATES " IN THE EVENT THAT THE INMATE IS FOUND GUILTY, PUNISHMENT MUST BE IMPOSED WITHIN THE GUIDELINES ESTABLISHED BY THIS POLICY" (A.D. 13-10(E)(17) PAGE 17) ANY INMATE MUST BE FOUND GUILTY OF ANY MISCONDUCT BEFORE HE CAN BE PUNISHED AND THEN PUNISHMENT MUST BE WITHIN THE GUIDELINES ESTABLISHED BY THIS POLICY. KENNEDY WAS PUNISHED FOR MISCONDUCT WITHOUT BEING FOUND GUILTY OF ANY MISCONDUCT AND THE PUNISHMENT - A 60 DAY SUSPENSION - IS NOT ONE OF THE ALLOWABLE SANCTIONS (SEE A.D. 13-10(G) P 18-19)

SOMEONE, CLEMENTS OR VO-TECH STAFF, DECIDED KENNEDY WAS GUILTY OF MISCONDUCT AND ASSESSED THE 60-DAY PUNISHMENT. A.D. 13-10 VII.(B)(3) STATES " THE DISCIPLINARY HEARING OFFICER SHALL HEAR ALL OF THE FACTS OF THE CASE **AND SHALL HAVE SINGULAR AUTHORITY** FOR DECIDING GUILT OR THE PUNISHMENT ASSESSED" WHOEVER DECIDED TO SUSPEND KENNEDY STEPPED OUT OF THEIR PLACE AND SUPERSEDED THE FUNCTION OF THE HEARING OFFICER. IN DOING SO, THEY SUBJECTED KENNEDY TO AN ILLEGAL PUNISHMENT THAT, SINCE THE DISCIPLINARY WAS DISMISSED, HE WOULD HAVE NEVER BEEN SUBJECTED TO (SEE A.D. 13-10 VII PAGE 12)

A.D. 13-10 II STATES " WHEN INMATE BEHAVIOR REQUIRES DISCIPLINE, PROCEDURES SHALL BE FOLLOWED TO ENSURE.... THAT... B. THERE IS NO PRESUMPTION OF GUILTY, ". WHEN WHOEVER DECIDED TO SUSPEND KENNEDY, THEY WERE FAILED TO FOLLOW ESTABLISHED PROCEDURE AND WITHOUT DOUBT, PRESUMED KENNEDY TO BE GUILTY. (SEE AD 13-10 II PAGE 1)

SGT. C. JONES SIGNED RECEIPT OF THE 1ST STEP IN KENNEDY'S GRIEVANCE. ~~SHE DID NOTHING~~ SHE BECAME AWARE OF THE SITUATION. AS A DESIGNATED "PROBLEM SOLVER" SHE WAS OBLIGATED TO ATTEMPT

A RESOLUTION. SHE DID NOTHING.

WARDEN WATSON RECEIVED THE GRIEVANCE ON 9-20-13. HE WAITED 25 DAYS TO GIVE AN ANSWER THAT BASICALLY CO-SIGNED THE VIOLATION OF POLICY.

A.D. 13-10 I STATES THAT RULES AND REGULATIONS WILL BE ENFORCED THROUGH AN **UNBIASED**, FACTFINDER. INMATE BROCK RECEIVED A DISCIPLINARY AND VO-TECH SUSPENSION THE SAME DAY KENNEDY DID. MAJ. BOLDEN DISMISSED BOTH KENNEDY AND BROCK'S DISCIPLINARIES THE SAME DAY. BROCK WAS ALLOWED TO RETURN TO VO-TECH AFTER A WEEK OR SO WHILE KENNEDY WAS NOT. THIS DECISION WAS NOT FAIR NOR IMPARTIAL. BROCK WAS ALLOWED TO GO BACK BECAUSE THE WARDEN "PULLED STRINGS" FOR HIM.

MATERIAL FACTS

1. ADC Policy establishes specific procedures must be followed when ADDRESSING ANY INMATE MISCONDUCT
2. A.D.C. AND/OR VO-TECH STAFF IGNORED THIS POLICY AND PUNISHED KENNEDY IN A MANNER THAT WAS NOT ONLY INCONSISTENT WITH POLICY BUT BLATANTLY CONTRADICTED IT.
3. HAD A.D.C. AND/OR VO-TECH STAFF FOLLOWED Policy Kennedy would not have been punished since the disciplinary was dismissed
4. The Varner Unit Warden Watson and Asst. Warden Andrews both personally know of the situation. They interviewed for inmate Brock and did NOT for Kennedy
5. Kennedy was punished in violation of policy and without being found guilty
For these reasons, the Respondents should be found liable

Respectfully Submitted

Jeremy Kennedy #93061

P.O. Box 600

Grady Ar 71644



PO Box 8707
Pine Bluff, AR 71611-8707
Phone: 870-267-6200
Fax: 870-267-6244
www.adc.arkansas.gov

ADMINISTRATIVE DIRECTIVE

SUBJECT: Inmate Disciplinary Manual

NUMBER: 13-10

SUPERSEDES: 12-20

APPLICABILITY: Inmates and Staff

REFERENCE: AR 831 – Disciplinary Rules and Regulations

PAGE 1 of 42

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APPROVED: Original signed by Ray Hobbs

EFFECTIVE DATE: 04/19/2013

I. POLICY:

To ensure that institutional rules and regulations are enforced through an unbiased and prudent fact finder and provide appropriate due process throughout the disciplinary process. The behavior of offenders committed to the custody of the department shall be controlled in an impartial and consistent manner.

II. EXPLANATION:

The Department shall establish and designate Major and Minor Disciplinary Hearing Officers who shall hear and adjudicate all reports of infractions of institutional rules and regulations that are referred to them. These authorities shall be designated as the Major or Minor Disciplinary Hearing Officers, respectively. (When inmate behavior requires discipline, procedures shall be followed to ensure that no unnecessary disciplinaries are written and that:

A. there is no bias in favor of the charging officer;

B. there is no presumption of guilt;

- L. Counsel Substitute – staff appointed to assist the inmate through the disciplinary process including the appeal process if necessary.
- M. Introduction – introduction shall be established through investigation that the charged inmate assisted in the article being brought on ADC property, moved about on ADC property, or stored in any manner on ADC property.
- N. A business day is Monday through Friday, excluding legal holidays.

IV. GENERAL RULES FOR MAJOR DISCIPLINARIES:

- A. To prevent the filing of unnecessary disciplinaries, reasonable effort should be made to first counsel the inmate about his/her behavior.
- B. Each Major Disciplinary Court shall consist of one Hearing Officer, who shall have singular authority for determining guilt or innocence and assessment of appropriate punishment.
- C. When video conferencing is unavailable at units assigned Randall L. Williams Correctional Facility will conduct hearings at those units.
- D. The officer who serves the disciplinary shall have the authority to appoint a staff counsel substitute at the time the disciplinary is served.
- E. Disciplinary action(s) shall be determined by a schedule of punishments that are based on the seriousness of the rule violated.
- F. The appeal process shall be directed to the Warden/Center Supervisor, then to the Disciplinary Hearing Administrator and then to the Director.

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V. TRAINING:

- A. The Disciplinary Hearing Administrator will be responsible for maintaining an instructional folder containing information on the proper procedures for holding major disciplinary hearings, rules and regulations of each unit, plus other pertinent information which could be helpful in implementing these policies and procedures. The folders will be available for review. The Disciplinary Hearing Administrator is responsible for training all Disciplinary Hearing Officers.
- B. The Disciplinary Hearing Officers will be required to review and be knowledgeable of all the policies and procedures including the use of the electronic offender management system for processing disciplinary records. This includes the Inmate Handbook, Employee Handbook, applicable state and federal laws, AR's of the Arkansas Department of Correction, AD's of the Arkansas Department of Correction, and Unit operating procedures.

VII. MAJOR DISCIPLINARY COURT:**A. Establishment of Court**

The Major Disciplinary Court shall be composed of a single Disciplinary Hearing Officer who will be directed in the performance of those duties by the Disciplinary Hearing Administrator.

B. Responsibilities of the Major Disciplinary Hearing Officer

1. The Major Disciplinary Hearing Officer is charged with the responsibility of ensuring that all rules promulgated by the Arkansas Department of Correction regarding major disciplinary hearings are followed.
2. In all major disciplinary proceedings, the Disciplinary Hearing Officer shall fully explain the charges and inform the inmate of the possible consequences if found guilty. The Disciplinary Hearing Officer shall further ensure that there is no undue air of hostility in the proceedings and that the proceedings and deliberations are not conducted in a perfunctory manner. The Disciplinary Hearing Officer will be vigilant in averting any racial, religious or gender discrimination during the proceedings and/or in the assessment of punishment. Any such signs of discrimination will be immediately reported to the Warden/Center Supervisor, Disciplinary Hearing Administrator and the Director.
3. The Disciplinary Hearing Officer shall hear all of the facts of the case and shall have singular authority for deciding guilt or innocence and the punishment assessed, except as outlined in the AD on Evaluations for Disciplinary Court Proceedings for Seriously Mentally Ill and Mentally Deficient Inmates regarding punishment, and AR 834, Procedure for Handling Alleged Disciplinary Infractions of Mentally Disordered Inmates.
4. Regarding guilty pleas, the Disciplinary Hearing Officer must ensure that the inmate understands the charge to which he/she is pleading guilty. Guilty pleas will be monitored to determine whether the inmate offers any supporting evidence indicating innocence of the charge as written.
5. The responsibilities of the Disciplinary Hearing Officer regarding counsel substitutes are enumerated under Section VII (J) (1).

C. Responsibilities of the building or field Chief Security Officer

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15. The Disciplinary Hearing Officer must carefully weigh all evidence with special emphasis upon individual pieces of "primary evidence." Rumor or suspicion about an inmate's behavior shall not be taken into account.
16. After the Disciplinary Hearing Officer has weighed all of the evidence, a decision shall be made regarding guilt/innocence.
17. In the event that the inmate is found guilty, punishment must be imposed within the guidelines established by this policy.
18. The video conferencing system will then be turned on again giving the time of day and the inmate returned to the hearing room. The inmate must then be informed as to the finding of guilt or innocence on each particular rule violation and must be informed of the punishment, if any, imposed.
19. The inmate must be informed of his right to appeal and to obtain staff assistance in the fashioning of an appeal if needed.
20. The inmate will receive an oral statement detailing the reason for the finding of guilt or innocence at the time the hearing officer informs the inmate of the verdict. The hearing officer will reduce these reasons to writing prior to the conclusion of that business day and the unit disciplinary officer will provide a typed copy or ISSR 100 (electronic generated disciplinary hearing results form) generated by electronic Offender Management Information System to the inmate within twenty-four (24) hours. The inmate is not required to sign the typed copy. It is sufficient to indicate that the inmate signed (or refused to sign) the original copy.
21. When the Disciplinary Hearing Officer has completed his/her work for the day, the Disciplinary Hearing Officer shall complete the disciplinary court report.
22. Once the Disciplinary Hearing Officer's report has been completed, the disciplinary action shall not be altered in any way except as provided herein.

F. Disciplinary Actions

1. The Major Disciplinary Hearing Officer, upon determining that an inmate is guilty of violation of institutional rules, may apply any or all of the sanctions from the penalty class of the most serious rule violated. Additional sanctions may be applied from the penalty

- a. Punitive Segregation 1-15 days. Inmates serving a punitive disciplinary sentence shall not earn meritorious good time.
- b. Loss of earned good time 1-150 days.
- c. Loss of designated privileges 1-45 days.
- d. Restitution based on replacement cost or the value of lost, intentionally misplaced or destroyed property.
- e. Extra duty up to two (2) hours per day for up to fifteen (15) days.
- f. Formal reprimand and/or warning.
- g. Recommend to Classification Committee for change of assignment/unit.
- h. Reduce up to two (2) steps in class.

3. Penalty Class "C"

- a. Punitive Segregation 1-10 days. Inmates serving a punitive disciplinary sentence shall not earn meritorious good time.
- b. Loss of earned credits 1-60 days.
- c. Loss of designated privileges 1-30 days.
- d. Restitution based on replacement cost or the value of lost, intentionally misplaced or destroyed property.
- e. Extra duty up to two (2) hours per day for up to ten (10) days.
- f. Formal reprimand/warning.
- g. Recommend to Classification Committee for change of assignment/unit.
- h. Reduce one (1) step in class.

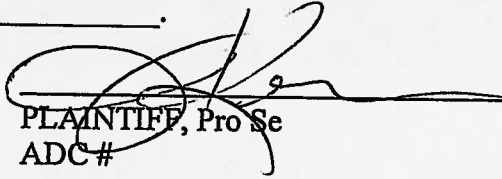
H. Major Disciplinary Appeal Process

1. At the time of notification of the verdict in a disciplinary proceeding, the inmate will be notified that he/she has the right to appeal any decision of, or disciplinary action taken by the

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CERTIFICATE OF SERVICE

This is to certify that on this 16 day of JANUARY, 2014, a copy of the foregoing motion was mailed to LISA MILLS - WILKINS.


PLAINTIFF, Pro Se
ADC #

RECEIVED
CLAIMANT

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JEREMY KENNEDY (ADC # 093061)

V.

NO. 14-0455-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW the Respondent, Arkansas Department of Correction, and for its Response to Motion for Partial Summary Judgment, states and responds as follows:

1. Claimant alleges that he is entitled to summary judgment on Claim #2, but which is listed as the first allegation in his complaint.
2. Claimant is correct that summary judgment is appropriate when no material facts are in dispute and the moving party is entitled to judgment as a matter of law. A summary judgment should only granted when the state of the evidence as portrayed by the pleadings, affidavits, discovery responses and admission on filed is such that the nonmoving party is not entitled to a day in court, i.e., when there is not any genuine remaining issued of material fact and the moving parity is entitled to judgment as a matter of law. *Wallace v. Broyles*, 332 Ark. 189, 961 S. W. 2d 712 (1998).
3. Claimant alleges that staff member suspended him from the program. He does not state who the staff members were. All staff members of Riverside Vo-Tech are employees of the Arkansas Dept. of Career Education, not the Arkansas Dept. of Correction. The first factual dispute is who suspended Claimant from the program.
4. Therefore, any complaint or claim by Claimant regarding his failure to be readmitted into the program upon the disciplinary being dismissed should be made against ACE, not Respondent.
5. The second factual dispute is whether or not the policy quoted by Claimant is a policy of the Respondent or that of Riverside VoTech. Claimant has conducted no discovery and has not produced any of the Riverside Vo-Tech administration participation agreement which he agreed to and signed which evidences his understanding of the program and his responsibilities in support of any of his claims that this policy was a policy of the ADC and not Riverside Vo-Tech.
6. Notwithstanding the above, Claimant was removed from vo-tech because he had an outstanding detainer which is prohibited. He appeared in court and the matter was resolved. He appeared before the Varner classification committee on January 16, 2014, and was reassigned to Riverside Vo-Tech on that date.
7. The third factual dispute is whether or not there were other factors that prevented Claimant from participating in the Riverside Vo-Tech program other than his claim of retaliation.

Respondent submits that his felony detainer action barred him from participation and he was removed until such time as it was resolved. He has since been reinstated in the program.

8. For these and other reasons to be addressed at hearing, there are material issues of fact which preclude granting summary judgment on Claim #2, relating to Claimant's temporary dismissal from the Riverside Vo-Tech program at Varner.
9. Respondent prays that the Motion for Partial Summary Judgment be denied and for all other proper relief to which it is entitled.

WHEREFORE, for the evidence submitted and the reasons stated above, Respondent prays that the Motion for Partial Summary Judgment be denied.

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

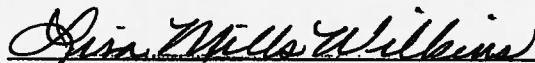
I certify that a copy of the RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT has been served this 23 day of January, 2014, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

JEREMY KENNEDY (ADC # 093061)

VARNER Unit

P. O. BOX 600

GRADY, AR 71644-0600



LISA MILLS WILKINS Ark. Bar #87190

Arkansas
State Claims Comm
JAN 21 2014
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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JEREMY KENNEDY (ADC # 093061)

CLAIMANT

V.

NO. 14-0455-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

MOTON TO DISMISS

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

1. Claimant seeks damages for three claims which will be addressed separately. In all instances Claimant has failed to state a claim under ARCP 12(B)(6) and each claim should be dismissed.

FIRST CAUSE OF ACTION

2. Claimant alleges that on September 9, 2013, that he received a disciplinary which was later dismissed. However, due to the disciplinary, he was removed from the Riverside VoTech program pursuant to their policy and will not be allowed to return for at least six months. He alleges that this is due to retaliation due to the grievance he wrote following the disciplinary.
3. Riverside Vo-Tech is an Arkansas Department of Career Education program operated on the grounds of the Arkansas Dept. of Corrections in Grady, Arkansas. It is not funded by the Respondent or staffed or employed by any of Respondent's employees.
4. Respondent has no control over the policies or program of Riverside Vo-Tech.
5. Therefore, any complaint or claim by Claimant regarding his failure to be readmitted into the program upon the disciplinary being dismissed should be made against ACE, not Respondent.
6. Claimant has failed to state any claim against the Respondent giving rise to any liability and has sued the wrong party for this claim.
7. Notwithstanding the above, Claimant was removed from vo-tech because he had an outstanding detainer which is prohibited. He appeared in court and the matter was resolved. He appeared before the Varner classification committee on January 16, 2014, and was reassigned to Riverside Vo-Tech on that date.
8. The first cause of action should be dismissed *with prejudice* for failure to state a claim upon which relief can be granted and Claimant's failure to sue the proper Respondent.

SECOND CAUSE OF ACTION

9. Claimant alleges that Case No. 12-0702-CC which was dismissed by the Claims Commission on December 13, 2012, should be reinstated and he be allowed to go forward because the case was not dismissed without prejudice.
10. Claimant misstates the law. The ability to refile a case within one year applies only if the Claimant nonsuited his case.
11. Claimant's case was dismissed by the commission on December 13, 2012.
12. The second cause of action should be dismissed *with prejudice* for failure to state a claim upon which relief can be granted.

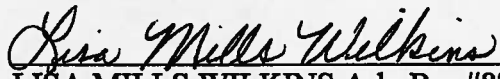
THIRD CAUSE OF ACTION

13. Claimant has failed to state a cause of action under ARCP 12(b)(6) and the claim should be dismissed.
14. Claimant alleges Ms. McConnell violated her duties by declaring him ineligible and denying him to go to work release.
15. Claimant is mistaken. Eligibility is a determination made prior to the application. Claimant knows whether or not he is eligible before submitting an application. Once the application is submitted, the form is reviewed by the Classification officer 'who will consider the application and forward its recommendation to the Warden/Center Supervisor.' See AR1200 V(C)(1) Ms. McConnell considered the application and declined to forward to the center supervisor.
16. Claimant does not have an absolute right to w/study release. It is a privilege.
17. Claimant does have 189 major disciplinaries, 192 total disciplinaries since 1990 with his last on June 18, 2012. He was released on November 16, 2012 and reincarcerated on May 30, 2013. It is a stretch to say he's not had any disciplinary violations in 1.5 years as he has not been incarcerated during that entire time.
18. Claimant has been rejected by three work release centers who did not know of Ms. McConnell's decision. His
19. AR1200 V(C)(3) No application for a work/study program will be favorable recommended by the Classification Committee unless the Committee is satisfied that the inmate meets all requirements of eligibility and that the inmate: (a) does not have an abnormal or uncontrollable propensity for violence; (b) does not constitute a security risk; and (c) is capable of abiding by the terms and conditions of the program.

20. Claimant's last disciplinary violation was for refusal to participate in a treatment program. Work release centers clearly had reason to believe that he would not be a good candidate for work/study release.
21. Furthermore, Claimant's damage's are speculative in that he had no job promised to him, no wage amount upon which to base his damages, and had no expectation of continued employment for the any duration to enable him to earn \$5,000.00
22. The third cause of action should be dismissed *with prejudice* for failure to state a claim upon which relief can be granted.

WHEREFORE, for the evidence submitted and the reasons stated above, Respondent prays that the Claims 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 MOTION TO DISMISS has been served this 17 day of January, 2014, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

JEREMY KENNEDY (ADC # 093061)
VARNER Unit
P. O. BOX 600
GRADY, AR 71644-0600


LISA MILLS WILKINS Ark. Bar #87190

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JEREMY KENNEDY # 092061

CLAIMANT

V.

Arkansas
State Claims Commission

JAN 27 2014

ARKANSAS DEPT. OF CORRECTION

RECEIVED

RESPONDENT

CLAIMANT'S RESPONSE TO MOTION TO DISMISS

COMES NOW, CLAIMANT JEREMY KENNEDY AND FOR HIS RESPONSE TO THE RESPONDENT'S MOTION TO DISMISS STATES:

THE ARKANSAS RULES OF CIVIL PROCEDURE REQUIRES THE COURT TO OPERATE ACCORDING TO A DISMISSAL STANDARD. ON A MOTION TO DISMISS, PURSUANT TO ARK. R. CIV. P. Rule 12(b)(6), THE COURT TREATS THE FACTS ALLEGED IN THE COMPLAINT AS IF THEY WERE TRUE AND VIEW THEM IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFFS DOCKERY V. MORGAN 2011, ARK. 94, 6-7, 380 S.W.3D 377 (CITING MCNEIL V. WEISS 2011 ARK 46, 378 S.W. 3D 133). " ... OUR RULES REQUIRE FACT PLEADING AND A COMPLAINT MUST STATE FACTS... IN ORDER TO ENTITLE A PLEADER TO RELIEF" Id. (CITING ARK. R. CIV. P. Rule 8(a)(1); BORN V. HOSTO AND BUCHAN, PLLC, 210 2010 ARK 292, 372 S.W. 3D 324). THE COURT SHOULD "TREAT ONLY THE FACTS ALLEGED IN THE COMPLAINT AS TRUE..." Id. (CITING

Hodges v. LAMORA 337 ARK. 470, 989 S.W.3d 530 (1999).

In Claim #1, The Respondent Department of Correction ("A.D.C.") Argue they are not liable for acts committed at Riverside Vo-Tech. They claim the blame lies on employees of the Dept. of Career Education and that in fact, No A.D.C. employees work at Riverside Vo-Tech. However, the Complaint alleges facts, which this Commission has to treat as true, that The A.D.C. is liable for any acts committed to PRISON inmates within ADC Custody and occurring on ADC grounds. If the Commission accepts these allegations as truth then it must conclude that claimant has indeed stated grounds on which relief can be granted and must deny the motion to dismiss. Additionally if No ADC employees work at Riverside Vo-tech, how do they Respondents explain Correctional Officer Cpl. Clements presence and participation in the challenged incident? In fact, Cpl. Clements is permanently assigned to provide security while Vo-Tech classes are in session. Cpl. Clements actions initiated and caused the entire incident and Cpl. Clements is an ADC Employee which establishes the ADC liability.

In Claim #2, the Respondents claim that the claimant cannot Refile his prior claim within (1) year unless he "NONSUITED" his case

Plaintiff's previous claim was not dismissed with prejudice. Any case not specifically dismissed with prejudice is considered to have been dismissed without prejudice. Black's Law Dictionary defines without prejudice as "... without loss of any rights; in a way that does not harm or cancel legal rights or privileges of a party. (< dismissed without prejudice >)"

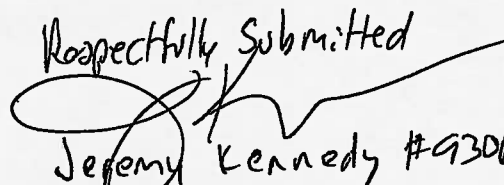
At its very essence, in relation to court cases, ~~the term without pre~~ the act of dismissing a case without prejudice means that it can be refiled whereas a case dismissed with prejudice has been judged on its merits and cannot be refiled. The Respondents have offered no references, statutes or citations to support its claim about how the claimant would have to have "nonsuited" his claim in order to be able to refile. However, this argument is irrelevant. Black's Law Dictionary defines "nonsuit" as a voluntary dismissal. Claimant was released from prison in November 2012. He voluntarily allowed his claim to be dismissed. In support, claimant includes a page from another pleading in another case where he filed a civil rights action against the nurse in this incident. The Asst. Attorney General clearly states claimant wrote the Commission and requested his claim be dismissed. This satisfies any alleged requirement that his prior case be nonsuited.


In Claim #3, claimant alleges that ADC employees failed

to follow proper procedures and violated Administrative Regulations and that said violation denied him entry into the Work Release Program. In Considering the Motion to Dismiss, The Commission must accept these allegations and treat them as if they are true. The only way Claimant did not state a cognizable claim is if the Commission declares that the ABC does not have to follow its Administrative Regulations. If it does, Claimant specifically alleged that it did not and that's all that's necessary to state a claim upon which Relief can be granted. All the statements about how many disciplinarys claimant has had and not completing a program and what Work Release staff concluded are immaterial to a Motion to Dismiss. These are defensive Arguments which must be contained to the hearing on the matter. The Respondents have intentionally and knowingly filed a baseless and Frivolous Motion to Dismiss and improperly attempted to use it to defend itself against the allegations contained in the Complaint.

For the Reasons, the Motion to Dismiss must be denied

I mailed a copy of this document
to the Respondents on Jan 24 2014

Respectfully Submitted

Jeremy Kennedy #93061
P.O. Box 600
Grady Ar 71644



care[.]” (*Complaint, Page 1*). Plaintiff has not offered any sufficient facts to prove, nor is there anything that he can offer that can prove, that either ADC Director Ray Hobbs or Correctional Officer John Doe (a) acted outside the scope of their employment, (b) did anything “with an evil intent to inflict an injury,” or (c) did anything with regard to Plaintiff that “will imply an evil intent.” (emphasis added). Specifically, Plaintiff has named Correctional Officer John Doe and Nurse Barbara Collins in his complaint, and has made conclusory allegations against them, and has not made any allegations against ADC Director Hobbs.³ “[O]ur rules require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief.” *Id.* (Citing Ark. R. Civ. P. 8(a)(1); *Born v. Hosto & Buchan*, PLLC, 2010 Ark 292, 372 S.W.3d 324). Plaintiff has failed to do so with regard to both Hobbs and Doe.

Because Plaintiff has not set forth any allegations that insurance coverage is applicable, or that ADC Director Ray Hobbs or Correctional Officer John Doe acted outside the scope of their employment, they are each entitled to statutory immunity. As a result, Plaintiff’s claim is barred and must be dismissed.

³ To the extent that Plaintiff has stated a claim (and he has not state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure), any jurisdiction to hear Plaintiff’s claim lies in the Arkansas Claims Commission, not an Arkansas State Court, pursuant to Ark. Code Ann. § 19-10-204(a)(2013)(providing that the Arkansas State Claims Commission shall have exclusive jurisdiction over all claims against the State of Arkansas and its several agencies, departments, and institutions, but shall have no jurisdiction of claims against municipalities, counties, school districts, or any other political subdivisions of the state). Plaintiff is well-aware of this mechanism, as indicated in his Complaint that he filed “a small-claims action” in 2012, but such claim “was later dismissed because Plaintiff was released from prison and lost touch with the commission.” (*Complaint, Page 3*). Further, the Claims Commission “shall have jurisdiction only over those claims which are barred by the doctrine of sovereign immunity from being litigated in a court of general jurisdiction.” See Ark. Code Ann. § 19-10-204(b)(2)(A). For all of the reasons explained above, Plaintiff’s claim is barred by sovereign immunity and his claim is subject to dismissal. Undersigned counsel learned that Plaintiff’s claims commission case was actually dismissed because Plaintiff wrote the commission and requested that his six (6) pending claims be dismissed in the event that he were to be paroled. Once Plaintiff’s release was verified by the commission, his request to dismiss his claims was granted on December 13, 2012. Any assertion that he “lost touch with the commission” is simply false.

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 12,500.00

Claim No. 14-0455-CC

Jeremy Kennedy, #093061 Claimant vs. Pro se Claimant
Attorneys

Department of Correction Respondent vs. Lisa Wilkins, Attorney Respondent
State of Arkansas

Date Filed December 9, 2013 Type of Claim Failure to Follow Procedure & Personal Injury

FINDING OF FACTS

The Claims Commission hereby unanimously denies and dismisses the Claimant's "Motion for Partial Summary Judgment." Therefore, the Claimant's "Motion for Partial Summary Judgment" is hereby denied and dismissed. The Commission hereby unanimously grants the Respondent's "Motion to Dismiss" in the First Cause of Action for reasons set forth in paragraphs 2-8, in the Second Cause of Actions for reasons set forth in paragraphs 9-11 and in the Third Cause of Actions for reasons set forth in paragraphs 14-21. Therefore, this claim is hereby unanimously denied and dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denies and dismisses the Claimant's "Motion for Partial Summary Judgment." Therefore, the Claimant's "Motion for Partial Summary Judgment" is hereby denied and dismissed. The Commission hereby unanimously grants the Respondent's "Motion to Dismiss" in the First Cause of Action for reasons set forth in paragraphs 2-8, in the Second Cause of Actions for reasons set forth in paragraphs 9-11 and in the Third Cause of Actions for reasons set forth in paragraphs 14-21. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing February 13, 2014

Date of Disposition February 13, 2014

Pat Moran Chairman
Bill Tamm Commissioner
Ruby May Commissioner

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JEREMY KENNEDY

CLAIMANT

NO. 14-0455-CC

ARKANSAS DEPT OF CORRECTION

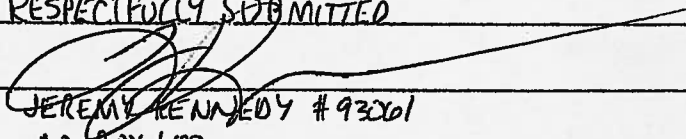
RESPONDENT

MOTION TO RECONSIDER AND/OR VACATE
PREVIOUS ORDER

KENNEDY REQUESTS THE COMMISSION TO VACATE AND
REVERSE ITS DECISION GRANTING THE MOTION TO DISMISS
ATTACHED IS A COPY OF KENNEDYS APPEAL OF THE
DECISION TO THE COMMISSION REVIEW SUB-COMMITTEE. THIS
APPEAL CONTAINS THE REASONS IN SUPPORT OF THIS MOTION

FEB 21, 2014

RESPECTFULLY SUBMITTED


JEREMY KENNEDY # 93261
P.O. BOX 620
GRADY AR 71644

Arkansas
State Claims Commission

FEB 27 2014

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BEFORE THE ARKANSAS GENERAL ASSEMBLY
CLAIMS COMMISSION REVIEW SUB-COMMITTEE

Arkansas
State Claims Commission
FEB 27 2014
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JEREMY KENNEDY

CLAIMANT

CLAIM NO 14-0455-CC

ARKANSAS DEPT. OF CORRECTION

RESPONDENT

CLAIMANTS APPEAL OF NON-VOLUNTARY DISMISSAL

KENNEDY FILED 3 CLAIMS IN 1 ACTION. IN HIS 1ST CLAIM, KENNEDYS COMPLAINT ALLEGED AN A.D.C. OFFICER VIOLATED A.D.C. REGULATIONS RESULTING IN HIS BEING IMPROPERLY PUNISHED. IN HIS 2ND CLAIM, KENNEDY ALLEGED THAT A PRISON GUARD DID NOT PROPERLY PERFORM HIS SUPERVISION DUTIES WHICH RESULTED IN KENNEDY BEING ATTACKED BY OTHER INMATES. THIS CLAIM WAS PREVIOUSLY FILED IN 2012. KENNEDY WAS RELEASED FROM PRISON IN NOVEMBER 2012. PER HIS REQUEST, THE COMMISSION DISMISSED THE CLAIM IN DECEMBER 2012 BECAUSE THE ORIGINAL COMPLAINT WAS DISMISSED WITHOUT PREJUDICE AND THE 3-YEAR STATUTE OF LIMITATIONS HAD NOT EXPIRED, KENNEDY RE-FILED THE 3RD CLAIM CONCERNED A.D.C. OFFICIALS VIOLATING A.D.C. REGULATIONS RESULTING IN KENNEDY BEING DENIED PARTICIPATION IN WORK RELEASE.

IN JANUARY 2014, THE A.D.C. FILED A MOTION TO DISMISS THE 3 CLAIMS. BASICALLY, THE A.D.C. ARGUED THAT ~~BB~~ KENNEDY ALLEGED NO FACTS THAT WOULD ESTABLISH ANY ACTION BY A.D.C. ^{-STAFF} TO MAKE THE A.D.C. LIABLE. IN FACT, THE ALLEGATIONS OF KENNEDYS CLAIM CENTERED AROUND THE ACTS OF B. CLEMENTS - AN A.D.C. CORRECTIONAL OFFICER.

IN THE 2nd CLAIM, THE A.D.C. ARGUED THAT "... THE ABILITY TO RE-FILE A CASE WITHIN 1 YEAR APPLIES ONLY IF THE CLAIMANT NON-SUITED HIS CASE" THE A.D.C. OFFERED NO LAW OR STATUTES TO SUPPORT THIS ARGUMENT, NOTWITHSTANDING, KENNEDY WAS RELEASED ON NOVEMBER 16 2012. HE SUBMITTED WITH HIS RESPONSE TO THE MOTION TO DISMISS, A DOCUMENT FROM AN ARKANSAS DEP. ATTORNEY GENERAL STATING THAT HE WAS TOLD BY THE COMMISSION THAT KENNEDY WROTE A LETTER REQUESTING THE ACTION BE DISMISSED WHEN HE WAS RELEASED. THIS IS PLAUSIBLE SINCE THE COMMISSION DISMISSED HIS CLAIM LESS THAN A MONTH LATER, THIS, BY DEFINITION, IS A NON-SUITED CASE, MAKING THE ADC'S ARGUMENT MIST

IN THE 3rd AND FINAL CLAIM, KENNEDY ALLEGED A CLASSIFICATION OFFICER ("M'CONNELL") FAILED TO FOLLOW PROPER PROCEDURES IN KENNEDY'S WORK RELEASE APPLICATION. IN PARAGRAPH 15, MOTION TO DISMISS, THE ADC STATES THE POLICY "ONCE THE APPLICATION IS SUBMITTED, THE FORM IS REVIEWED BY THE CLASSIFICATION OFFICER WHO WILL CONSIDER THE APPLICATION AND FORWARD ITS RECOMMENDATION TO THE WARDEN / CENTER SUPERVISOR"

IN ITS NEXT STATEMENT, THE ADC SAYS M'CONNELL CONSIDERED THE APPLICATION AND DECLINED TO FORWARD TO THE CENTER SUPERVISOR PER POLICY, M'CONNELL WILL FORWARD ITS RECOMMENDATION. THERE WAS NO DISCRETION FOR HER TO DECLINE PER THE ADC'S OWN ADMISSION, SHE, M'CONNELL, DID NOT FOLLOW POLICY

IN PARAGRAPHS 16-²¹, MOTION TO DISMISS, THE ADC ESSENTIALLY MOUNTS A DEFENSE AGAINST THE ALLEGATIONS OF KENNEDY'S COMPLAINT.

Arkansas
State Claims Commission

FEB 27 2014

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THE CLAIMS COMMISSION ACTED IMPROPERLY IN GRANTING THE RESPONDENTS MOTION TO DISMISS. IN SMITH V. WASHINGTON, 2000, 10 S.W.3d 877, 340 ARK 460 THE COURT HELD THE BASIC PURPOSE BEHIND THE RULES OF CIVIL PROCEDURE IS TO ADMINISTER JUSTICE THROUGH FAIR TRIALS, NOT THROUGH SUMMARY DISMISSALS AS NECESSARY AS THEY MAY BE ON OCCASION.

KENNEDY FILED A COMPLAINT CONTAINING ALLEGATIONS THAT A.D.C. OFFICIALS VIOLATED THEIR ADMINISTRATIVE REGULATIONS RESULTING IN INJURY. IF PROVEN TRUE, THESE ALLEGATIONS CERTAINLY STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED.

IN TESTING THE SUFFICIENCY OF THE COMPLAINT ON A MOTION TO DISMISS, ALL REASONABLE INFERENCES MUST BE RESOLVED IN FAVOR OF THE COMPLAINT, AND THE PLEADINGS ARE TO BE LIBERALLY CONSTRUED. ARKANSAS TECH UNIV. V. LINK, 2000, 17 S.W.3d 809, 341 ARK 495

IN DECIDING ON A MOTION TO DISMISS, THE TRIAL COURT LOOKS ONLY TO THE ALLEGATIONS IN THE COMPLAINT AND ACCEPTS THEM AS TRUE. RULES CIV. P. RULE 12(b)(6) MARTIN V. ARTHUR, 1999, 3 S.W.3d 684, 339 ARK 149; COMMINGS V. BIG MAC MOBILE HOMES INC., 1998, 980 S.W.2d 550, 335 ARK 216; SHEPARD V. WASHINGTON COUNTY, 1998, 962 S.W.2d 779, 331 ARK 480

IN GRANTING THE MOTION TO DISMISS, THE COMMISSION DID NOT LOOK ONLY TO THE ALLEGATIONS IN KENNEDY'S COMPLAINT AND ACCEPT THEM AS TRUE. IN FACT IT DID EXACTLY THE OPPOSITE

Arkansas
State Claims Commission
FEB 27 2014

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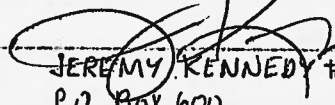
IN ITS MOTION TO DISMISS ~~ADDRESSES~~ ON THE 2ND CAUSE OF ACTION
(WHICH THE COMMISSION ACCEPTED) THE A.D.C. ARGUMENT RESTS SOLELY ON
THE IDEA THAT KENNEDY CANNOT RE-FILE A CASE DISMISSED WITHOUT PREJUDICE
UNLESS HE NON-SUITED HIS CLAIM.

AS PREVIOUSLY MENTIONED, KENNEDY SUBMITTED WITH HIS RESPONSE TO THE
MOTION TO DISMISS A COURT PLEADING FROM A DEP. ATT GENERAL STATING
THAT THE COMMISSION INFORMED HIM THAT KENNEDY REQUESTED HIS CLAIMS
BE DISMISSED UPON HIS RELEASE IN WHICH CASE HIS CASE WAS NON-SUITED,
EVEN SO THE COMMISSION INEXPLICABLY ACCEPTED THE A.D.C.S ARGUMENT

THE LAW ALLOWED THIS CLAIM TO BE REFILED. PLAINTIFF'S FIRST DISMISSAL
IS WITHOUT PREJUDICE. RULES CIV. P., RULE 41(a); LEMON V. LAWS, 1991, 305
ARK 143, 806 S.W.2d 1; CLAIM DISMISSED WITHOUT PREJUDICE IS NOT
BARRED AND MAY BE REFILED A SECOND TIME AS A DISMISSAL WITHOUT
PREJUDICE IS NOT AN ADJUDICATION ON IT'S MERITS LEMONS V. LAWS;
VOLUNTARY NON SUIT STATUTE PERMITS PLAINTIFF TO TAKE VOLUNTARY NONSUIT
AND TO PROCEED WITH CASE BY MEANS OF SECOND COMPLAINT ARK STATS
§ 27-1405; SIMS V. INDIANA LUMBERMENS MUT. INS. CO., 1978, 264 ARK
325, 571 S.W. 2d 435.

FOR THE REASONS CONTAINED HEREIN KENNEDY REQUESTS THE GRANT
OF THE MOTION TO DISMISS BE VACATED AND THIS ACTION BE REINSTATED
Feb 21, 2014

RESPECTFULLY SUBMITTED



JEREMY KENNEDY # 93061
P.O. BOX 600
GRADY AR 71644

I MAILED A COPY OF THIS DOCUMENT
TO THE RESPONDENT ON FEB 22 2014



Arkansas
State Claims Commission

FEB 27 2014

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33

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 12,500.00

Claim No. 14-0455-CC

Jeremy Kennedy, #093061 Claimant
vs.
Department of Correction Respondent
State of Arkansas
Date Filed December 9, 2013

Attorneys
Pro se Claimant
Lisa Wilkins, Attorney Respondent

Type of Claim Failure to Follow Procedure & Personal Injury

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 February 13, 2014, order remains in effect. At the request of the Claimant, this claim will be referred to the Arkansas General Assembly.

IT IS SO ORDERED.

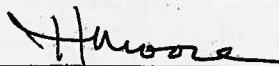
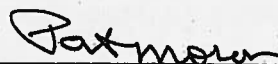

(See Back of Opinion Form)

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 February 13, 2014, order remains in effect. At the request of the Claimant, this claim will be referred to the Arkansas General Assembly.

Date of Hearing April 10, 2014

Date of Disposition April 10, 2014


Chairman

Commissioner

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.