

Please Read Instructions on Reverse Side of Yellow copy Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

RECEIVED

- Mr. Mrs. Ms. Miss

Daniel Hurlbut, #658898 Claimant

vs.

State of Arkansas, Respondent Dept. of Correction

Do Not Write in These Spaces Claim No. 14-0397-CC Date Filed November 12, 2013 Amount of Claim \$ 12,000.00 Fund DOC

COMPLAINT Failure to Follow Procedure, Personal Injury, Mental Anguish, Negligence

Daniel Hurlbut, #658898, the above named Claimant, of POB 1058, Newport, AR 72112

County of represented by (Legal Counsel, if any, for Claim)

(State) (Zip Code) (Daytime Phone No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Department of Correction / A.D.C. Amount sought: \$12,000

Month, day, year and place of incident or service: 5/16/2013 7:30 pm EARU-ADC "south hall"

Explanation: This is a claim of 1. Excess force/assault & battery 2. Negligence 3. Personal Injury... I became sick and tried to get medical attention. I had difficulty speaking, but I tried to explain to Lt. Michael E. Williams and he became visibly agitated and told me to leave. I told him I was too sick to stand anymore and requested a wheelchair. At which time Lt. Williams punched me in the stomach. Then he and Cpl. Lucas picked me up and slammed my face to the ground and cuffed me. Lt. Williams then grabbed the back of my shirt collar and picked me up allowing the front of my shirt to wrap around my throat, choking me, and dragged me over 100 yards down South Hall in this manner. Several times, Cpl. Lucas suspended me off the ground, my entire body weight, by holding only the handcuffs and dislocated my shoulders and hyper-extended my elbows. All of this was done in full view of surveillance cameras, and the men can be seen laughing. Cameras also show that at no time was I combative or resistant. Photos of fresh bruises were taken that night, and a few days later blackened bruise on my stomach was photographed by Lieutenant Heath. I submitted sick calls about my stomach, throat, shoulders and elbows but I was delayed evaluation (and treatment) for several weeks, enough time for my injuries to mostly heal. My mental health requests of nightmares, high anxiety and panic attacks were also ignored but I was ultimately prescribed mental-health meds and they were increased. On the grievance I filed, I got multiple Grievance Extensions that were very vague. Over 5 months later, on 10/15/2013 I got shipped to Crimes Unit without any explanation. Just one short week later Director Larry May finally responds in an extremely vague answer to my appeal denying it as being unfounded without disclosing what the video shows exactly, why, exactly it was denied, what was in the report or anything.

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? when? to whom? (Department)

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

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.

Daniel Hurlbut, #658898 (Print Claimant/Representative Name)

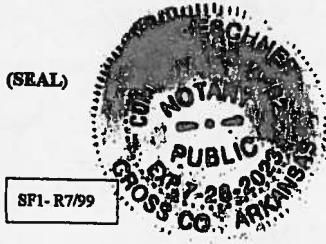
(Signature of Claimant/Representative)

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

on this 25 day of November 2013 (Date) (Month) (Year)

(Notary Public)

My Commission Expires: 7/26/2013 (Month) (Day) (Year)



SF1-R799

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DANIEL HURLBUT (ADC 568898)

CLAIMANT

V.

NO. 14-0397-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

Arkansas  
State Claims Commission

NOV 20 2013

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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 19 day of November, 2013, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Daniel Hurlbut (ADC 658898)  
Grimes Unit  
300 Corrections Drive  
New Port, AR 72112

  
LISA MILLS WILKINS Ark. Bar #87190

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DANIEL HURLBUT (ADC #658898)

CLAIMANT

V.

NO. 14-0397-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:

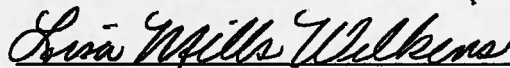
1. Claimant alleges that on May 16, 2013, he suffered personal injury and mental anguish as a result of a failure to follow policy and negligence when excessive force was used on him by officers. He seeks \$12,000.00 in damages. Claimant has failed to state a cause of action under ARCP 12(b)(6) and the claim should be dismissed.
2. Claimant states that he sought medical help from Lt. Williams who refused to give it to him, then punched him in the stomach, threw him on the floor with another officer and drug him down the hallway over 100 yards by his shirt choking him. They suspended him several times off the floor being held up only by handcuffs, dislocated his shoulders and hyper-extended his elbows. He states photos were taken that night of his fresh bruises and he submitted several sick calls but was delayed treatment. He has nightmares as a result of this incident, panic attacks, and high anxiety.
3. In his grievance, Claimant admits that he had been doing push ups and went to the nurse for a Cortisone shot. She informed him that he did not have a script for one and to put in a sick call if he thought he should be having one. That was at 7:15 p.m. Claimant had walked from his barracks to the infirmary on his own. He then walked on his own to the Captain's office in Zone 2, where he asked Lt. Williams to get him his shot. Lt. Williams called Nurse Becker who informed him she had just told the inmate to put in a sick call. Lt. Williams relayed this message to the Claimant and instructed him to return to his barracks 1 in Zone 1. Claimant refused. Lt. Williams gave him several more direct orders to return to the barracks.
4. In the video, the noise in the office must be apparent, as faces of inmates passing are visually drawn to looking in the office. Cpl. Lucas who is passing by, stops at the door of the office to assist. Claimant demanded to be taken to the infirmary. The officers pick him up when he refuses to leave and shove him out into the hallway on his stomach to handcuff him in the back which is consistent with policy. See Exhibit "A". Claimant refused to stand up as the photos show. See Exhibit "A". Claimant refused to walk to pre-lock up although moments earlier he had no difficulty walking, and had to be carried under his arms. See Exhibit "A".
5. Claimant was seen by medical that evening for pre-lock up at 9:50 p.m. He never mentioned any bruising. The nurse noted red marks to his neck and left and right side area. No other injuries noted and able to move extremities as asked without noted difficulty. No physical distress noted.
6. Photos were taken of the Claimant and he was not wearing a shirt in the photos and not bruising was visible or any other injuries. Medical personnel had ample opportunity to see any injuries.

Arkansas  
Claims Co.  
DEC 04 2013  
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7. Cpl. Ivory, infirmary security, observed Claimant being carried into the infirmary by the officers who were holding him up under each of his arms.
8. The officers indicated and will testify that Claimant was restrained using the least amount of force necessary to remove Claimant from the Captain's office and place him in isolation. Claimant refused to walk on his own to pre-lock up and, therefore, was carried down the hall by them. He was photographed without his shirt and no bruising was noted.
9. Interestingly, later that night, just 1.5 hours later, Claimant complained of chest pains and alerted security who alerted Nurse Henderson who came to the holding cell to see Claimant. However, Claimant refused to let her check him out and still made no mention of having any bruising or inability to stand at that time.
10. Also, the very next day, Claimant refused orders to be placed in restraints to be moved. Once outside his holding cell, Claimant again refused to walk and tried to sit on the floor and had to be lifted to his feet to get to his assigned cell. Claimant continues a pattern of uncooperative behavior and then claims negligence and personal injury as a result.
11. Based on the foregoing statements, 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 and the evidence submitted, the Claim must 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

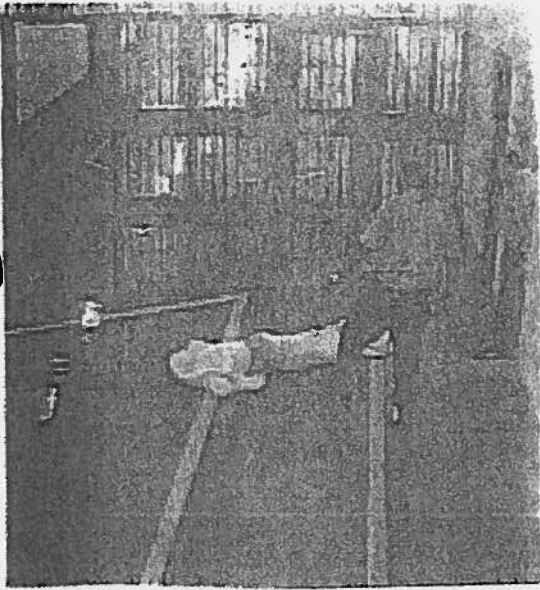
#### CERTIFICATE OF SERVICE

I certify that a copy of the MOTION TO DISMISS has been served this 3 day of December, 2013, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

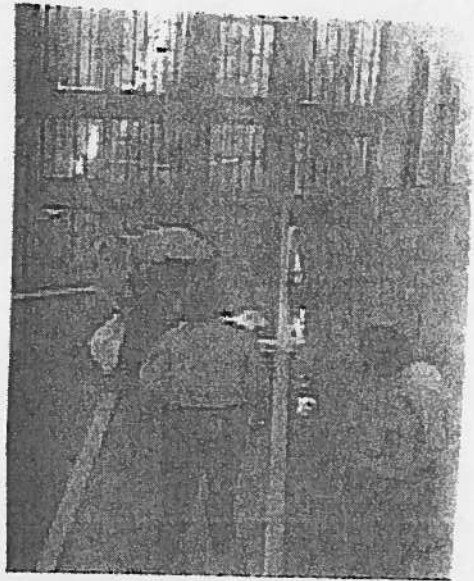
DANIEL HURLBUT (ADC #658898)  
EARU  
P. O. Box 180  
Brickeys, AR 72320-0180

  
LISA MILLS WILKINS Ark. Bar #87190

①



②



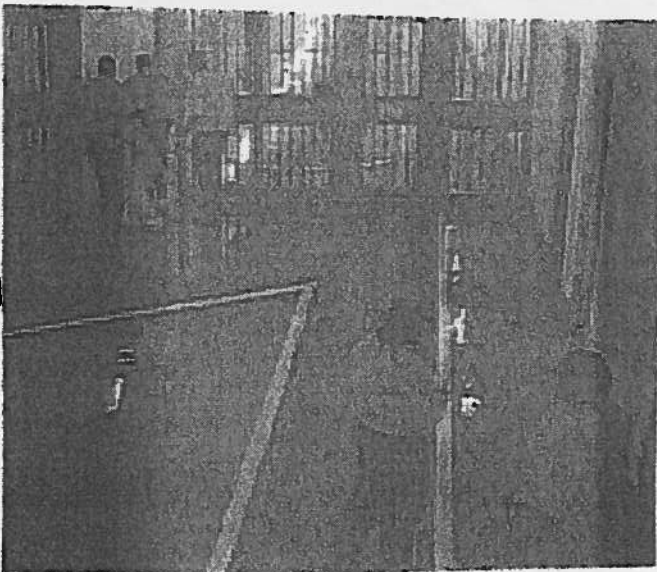
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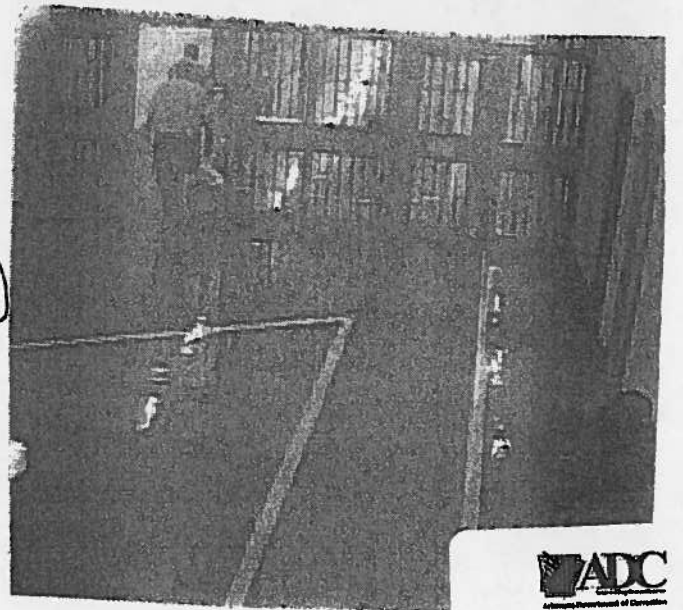
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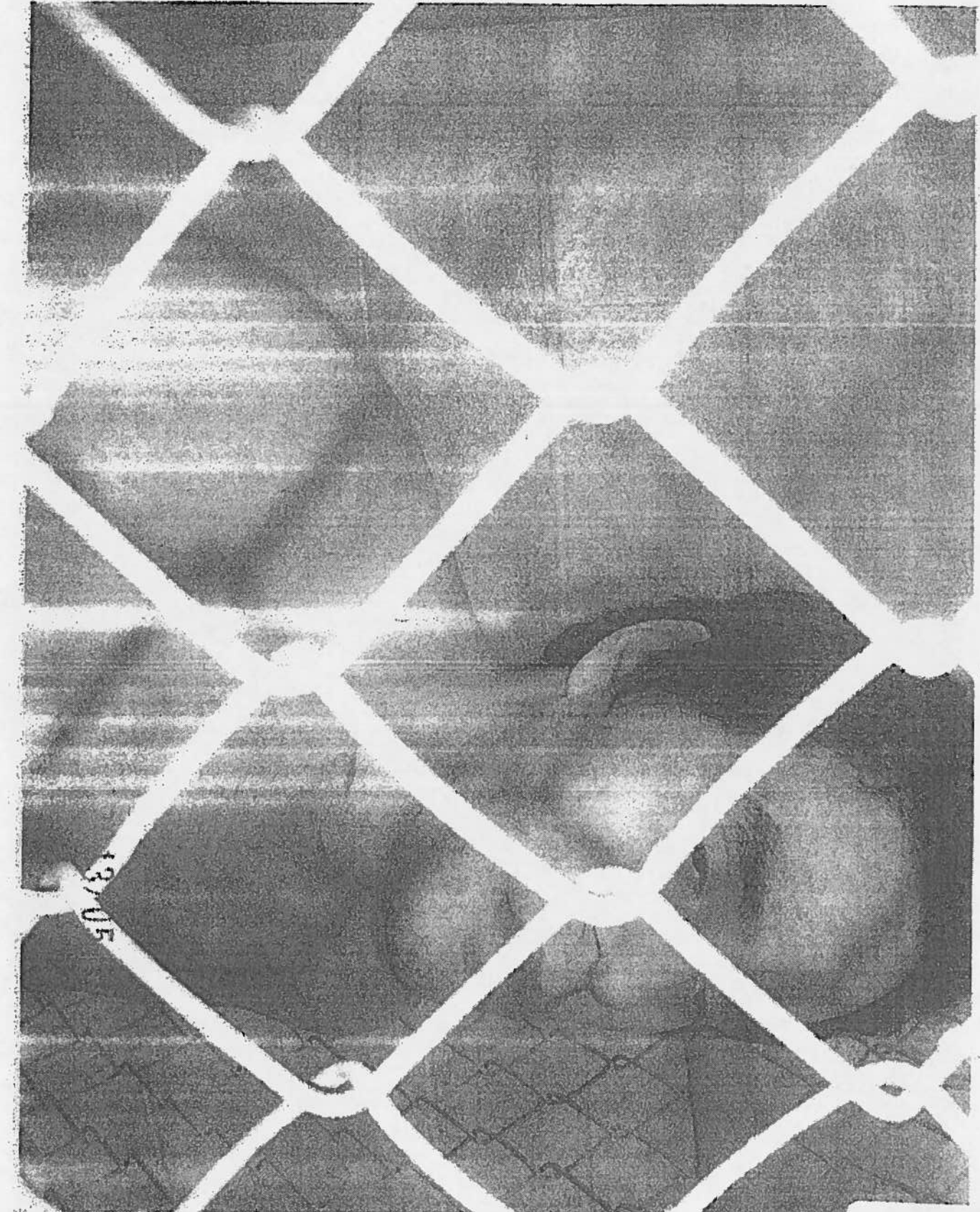


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**ADC**  
Arkansas Department of Corrections

RFP

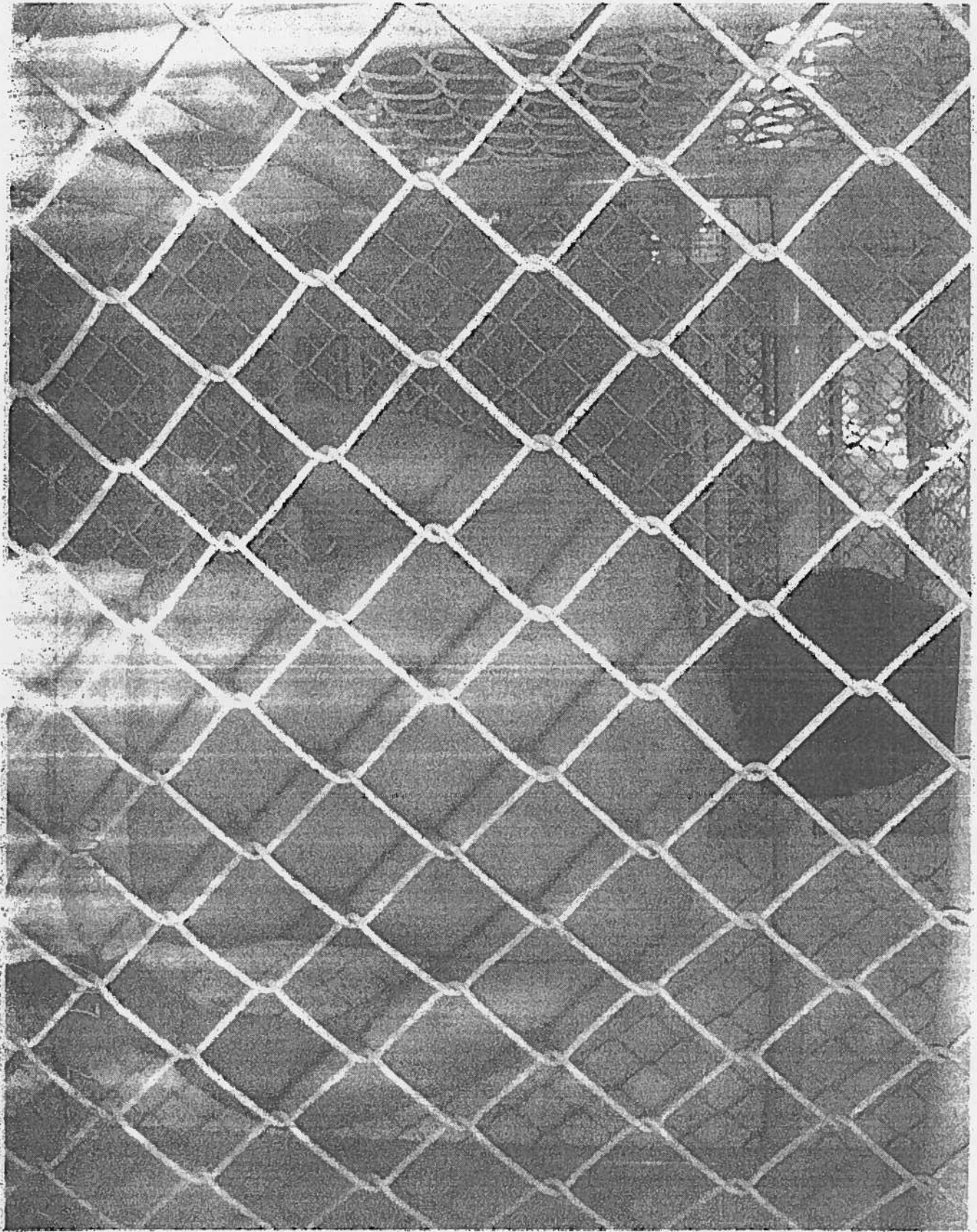
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9

Before the ARKANSAS State Claims Commission

Daniel Hurlbut #658898

-v-

No. 14-0397-CC

Arkansas Department of Correction

Claimant  
Respondent

Arkansas  
State Claims Commission  
DEC 18 2013

Claimant's Response in Opposition to Respondent's  
Motion to Dismiss 3  
Motion for Fines and Sanctions 3  
Request to Subpoena Un-Altered photos

1. On Dec. 3, 2013. Claimant received Respondent's motion to Dismiss and Response to Initial Discovery Requests
2. Claimant did not refuse to return to his barracks. On the contrary, he asked for assistance in the form of a wheel chair, which would have been the least amount of force necessary for an escort, but was denied.
3. At 7:15 to 7:30 pm, all inmates are in their barracks except for those who have pill call or library call, and therefore would not be anywhere near the Captain's office at this time. The riot gate was opened for claimant by another officer.
4. In reference to "Exhibit A" which Respondent attached to their Motion to Dismiss, I find these photos very troubling. For one, it's hard to make out anything. The only thing

I can see, is that judging by photos 3, 4, & 5, both of those are black male officers with hair. This is especially troubling because Cpl. Edward Lucas, as Respondent stated is the officer who assisted Lt. Michael Williams, is neither black, nor has hair. ~~He~~ Cpl. Lucas is a white male officer who has advanced male pattern baldness. These photos that ADC respondent alleges show claimant getting up and being carried under his arms, are NOT of him, nor of Cpl. Lucas & Lt. Williams.

Claimant STRONGLY urges that this honorable commission subpoena recent, photos of Cpl. Edward Lucas of his shoulders and head, in 1) front; 2) side & 3) rear view... in full color. ~~The~~ The commission will be able to see very clearly that these photos do not show Cpl. Lucas and therefore can't possibly be of the Claimant.

I pray that the honorable commission seriously consider entering judgement in favor of the ~~full amount~~ claimant for the full amount sought.

5. Further, Claimant asserts that he was never assisted by being carried under his arms, Rather, as he stated in his Complaint and Grievances this whole time, ~~was punch~~ he was punched in the stomache then carried with his shirt choking him and his elbows hyperextended & shoulders dislocated. He did not "refuse to stand up as the photos show" he had the wind knocked out of him from a hard blow to the stomache, and was already weak from his disease.

6 The "pre-lock up" exam done on the Claimant was cursory at best, and still, as respondent states, "The nurse noted red marks to his neck" which is consistent to being choked. However, the nurse ignored the claimant's other complaints, and did not even check his blood pressure. The Claimant prays and urges that the honorable commission subpoena video footage of the 9:50 pm pre-lock up, it will prove that the nurse barely glanced at the claimant and probably just guessed at his vital signs.

7. Respondent also refers to photos of the claimant while in the holding cage, and alleges that no injuries exist, no one saw any and the pictures prove it. ~~Then~~ These pictures are very grainy, distorted, and the Claimant believes, altered to the point that it is hiding the true evidence. When the officer approached to take these photos, she used a hand-held sony digital camera. As she took the photos, claimant challenged her as to why there was no flash going off, and she told him she really did take the photo, and turned the camera around to show him the view-finder/display to prove it.

As I observed the photo on the screen, it was clear and in vivid color, as one would expect from a high-end camera from a brand like sony. It also showed, very clearly in fact, distinct bruising on the claimant's solar plex/sternum.

These photos, one can hardly even discern claimant's male

nipples and belly button. Nor can one make out the marks on his neck, as respondent indicated the nurse took note of. You can however, note the date/time stamp at the bottom right hand corner, which is typical of digital photos, but even these are hard to make out. Common sense tells us this is not the intended design feature of the manufacturer. The date/time stamp of the original photos must be clearer and vividly defined, such would be a desirable design feature.

The photos are obviously of very poor quality. ADC respondents can it possibly expect anyone to believe this is the standard quality of photo that their camera takes, -- the camera they use to preserve evidence.

While one can only speculate that someone took the original photos, uploaded them to photoshop, and tinkered with the grain, contrast & saturation until they achieved their desired quality (terrible) capable of masking large distinct bruising... AFTER, of course first changing them from color to black/white.

One thing is for sure, these are not the original photos. The honorable Commission should subpoena the COLOR format of these photos, AND the digital file which contains them to compare. Once it becomes obvious to the Commission that the photos have been toyed with, I, The Claimant pray that the Commission will enter judgement against the ~~defend~~ Respondents, in favor of the Claimant for the full amount sought, plus any fines or sanctions.

WHEREFORE, for the above stated reasons, the Commission should

1. Subpoena recent color photos of Cpl. Edward Lucas of his upper torso & face/head (without a hat) from front, side and back views. The commission should investigate and determine that this man is not in any of the photos submitted as "Exhibit A" and therefore the ~~persons in the~~ photos are of unknown persons not relevant to the claim. The commission should then enter judgement in favor of the claimant for the full amount sought, OR, in the alternative award fines and sanctions to the claimant and schedule an oral hearing
2. Subpoena the ~~color~~ COLOR version of the photos of the Claimant in the cage AND the ORIGINAL digital file which contains them. The commission should then investigate and discover that the original color photos show large, distinct bruising and the grainy black/white photos do not. Based on this the commission should enter judgement in favor of the claimant for the full amount sought, OR, in the alternative, award fines and sanctions against the Respondent to the claimant and schedule an oral hearing
3. See that submitting false and altered evidence is repugnant to the conscience, and should be grounds to find judgement in favor of the Claimant without a hearing for the full amount sought.

At the moment, there are too many issues of material fact in dispute. Further, Respondents, in their "Response to Claimant's Initial Discovery Requests", they object to all my requests, objection after objection, and then they refer to see other objections. The commission should DENY the "Respondent's Motion to Dismiss" and DISREGARD their "Response to Claimant's Motion to Subpoena Production of Documents"

4. IF the commission still finds it necessary and equitable, schedule an oral hearing and SUBPOENA the following documents:

- a. surveillance footage of Claimant  $\hat{=}$  Lt. Williams, Cpl. Edward Lucas, from the Captain's office, to the infirmary, while in the infirmary, and to the MAX holding cage/cell
- b. Color photos of Cpl. Edward Lucas' face  $\hat{=}$  uncovered head side, front  $\hat{=}$  back
- c. The original, COLOR photos of claimant while in the holding cage ~~and~~ in print AND digital format
- d. Photos taken by Lt Heath of Claimant's injuries
- e. medical grievance EAM13-01576 (all attachments)
- f. health service encounter  $\hat{=}$  prescription order
- g. surveillance footage of 9:50 pm pre-lock up, medical exam
- h. 5/16/2013 F-831-1 and ISSR100
- i. grievance EAM13-02516 (warden response only)
- j. 5/24/2013 F-831-2/F-831-3 AND ISSR101
- k. disciplinary audio recording/tape
- l. pages 15, 24, 25, 26 of policy AD 13-10
- m. Employee Conduct Standards

Rule 1.2 rule 3.2 and rule 4.5

Daniel Hulbut # 6588998

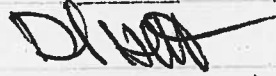
Respectfully Submitted,

Grimes Unit -- ADC

300 Correction Drive

Newport AR 72112

Date

  
12/12/13

### CERTIFICATE OF SERVICE

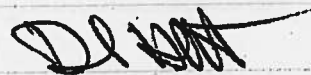
I certify that a copy of this "Claimant's Response in Opposition to Respondent's Motion to Dismiss ~~3~~ Motion for Fines and Sanctions ~~3~~ Request to subpoena Un-altered photos" has been served to ADC Respondents on December 12, 2013 via U.S. Mail to

Lisa Mills Wilkins

ADC -- Office of Counsel

P.O. Box 8707

Pine Bluff, AR 71611

  
Date 12/12/13

STATE CLAIMS COMMISSION DECISION  
OPINION

Amount of Claim \$ 12,000.00

Claim No. 14-0397-CC

Daniel Hurlbut, #658898 Claimant  
vs.

Attorneys  
Pro se Claimant

Department of Correction  
State of Arkansas Respondent

Lisa Wilkins, Attorney Respondent

Date Filed November 12, 2013

Type of Claim Failure to Follow Procedure, Personal Negligence Injury, Mental Anguish &

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 2-10 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 2-10 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing January 9, 2014

Date of Disposition January 9, 2014

Rubal May Chairman  
Arnone

Bill Jancato 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.

Daniel Hurlbut # 658898  
300 Correction Drive, Newport, AR 72412

January 23, '14

Mr. Norman L. Hodges, Director  
101 East Capitol Ave., Suite 410  
Little Rock, AR 72201-3823

Arkansas  
State Claims Commission  
JAN 24 2014

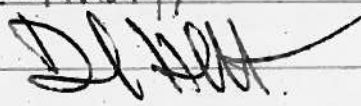
RE: Daniel Hurlbut Claim#: 14-0397-CC vs. DOC

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Dear Mr. Hodges,

My claim was dismissed without a hearing and without my evidence; the video, being reviewed. No subpoena was issued to compel discovery and the Respondent's exhibit and statements are false. I was denied justice. Please have this claim reconsidered and scheduled for trial. Enclosed is my Motion for Rehearing, please return a file marked copy to me.

Additionally, my prison's law library has no information on how to appeal a claim to the General Assembly (see enclosed writ request form) Please provide me with this info. Thank You.

Kindly,  


Daniel Hurlbut

Enclosure

250

# Inmate Request Form Newport Complex

RECEIVED  
JAN 16 2014

This form is to be used by inmates in contacting staff with requests on issues. Staff should be given 5 working days to respond.

Name: <u>Daniel Harbut</u>	ADC Number: <u>658878</u>	Date: <u>1/16/14</u>
Barrack Number: <u>150 225</u>	Job Assignment: <u>W/A</u>	
To (Staff Member): <u>Mr. Lockman</u>	Office: <u>Unit 10</u>	

I have a request concerning the following area (circle one):

- Classification      Parole      Visitation      Medical      Telephones      Property
- Mail      Law Library      Commissary      General Library      Job Assignment
- Staff      Mental Health      Personal Hygiene      Other: \_\_\_\_\_

Detailed Reason for Request: What is the procedure for appealing a state Claims Commission decision to the General Assembly?

Arkansas  
State Claims Commission  
JAN 24 2014

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Have you talked to any staff member about this request?  Yes  No If so, whom?  
Staff member(s) contacted: \_\_\_\_\_ Date: \_\_\_\_\_

[Signature] 1/16/14  
Inmate's Signature Date

\*\*\*\*\*

Staff Member Responding: <u>J. Lockman</u>	Date: <u>1/16/14</u>
--	----------------------

I have reviewed your request and my finding is as follows: \_\_\_\_\_

I do not know, and the Claims Commission information does not give details. I am attaching information on reconsiderations.

[Signature]  
Staff Signature

I am referring this request to: \_\_\_\_\_

Before the Arkansas State Claims  
Commission

Arkansas  
State Claims Commission  
JAN 24 2014

Daniel Hurlbut #658898

RECEIVED  
Claimant

v.

No. H-0397-CC

Arkansas Department of Correction

Respondent

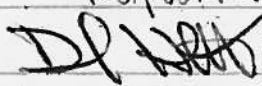
MOTION FOR RE-HEARING/RECONSIDERATION

Comes now, the claimant, Daniel Hurlbut, and humbly requests the commission to Reconsider its dismissal of his claim, because the video of the incident is the claimant's proof, and it was not received into evidence or reviewed by the commission, and because the claimant was unable to get any of his other evidence in possession of respondent or complete discovery, and that the allegations set forth in their motion to dismiss are untrue and unsubstantiated.

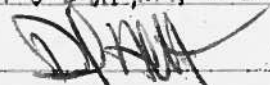
1. Video will show the claimant being dragged with his shirt around his throat, and suspended by only his handcuffs by ADC officers and that he did not resist at all. Video will also show that the claimant was never carried under his arms.
2. Cpl. Lucas is white and the photos in 'exhibit A' of Respondent's Motion to Dismiss are not of the claimant, 3 show only black officers
3. The photos showing claimant with his shirt off are extremely poor quality and black/white. When he first saw them they were color and showed bruising.

4. Claimant OBJECTS to the authenticity of all testimony and evidence submitted in their "Motion to Dismiss" and denies the genuineness of their photos.
5. On December 3, 2013, Respondents OBJECTED to every single item of discovery, interrogatory, documents and otherwise.
6. Claimant filed a second set of interrogatories and request for documents, and a letter trying to resolve discovery objections (file marked Jan. 6, 2014, see exhibit A) None of this was responded to or answered by the respondent.
7. On January 9, 2014 the Commission dismissed this claim without a hearing, without reviewing the video, without any of Claimant's evidence in possession of Respondent or a subpoena of said evidence and based on allegations Claimant denies are true and evidence which Claimant denies is genuine.

WHEREFORE, because of the absence of Claimant's evidence and the reasons stated above, the claim must be reconsidered and scheduled for a hearing.

Respectfully,  
, Daniel Hudt, Claimant  
GAMES, 300 Carreccion Drive  
Newport, AR 72112.

CERTIFICATE OF SERVICE I certify that a copy of this motion for Re-hearing/Reconsideration was served 1/23/14 by U.S. mail on respondent properly addressed to Lisa Mills Williams, P.O. Box 3707, Pine Bluff, AR 71601



Before the AR State Claims Commission

Arkansas  
State Claims Commis  
JAN 06 2014

Daniel Horlbut \*658898

CLAIMANT RECEIVED

v.

No. 14-0397-CC

Arkansas Department of Correction

Respondent

CLAIMANT'S SECOND SET OF INTERROGATORIES &  
REQUEST FOR DOCUMENTS

1. Has Claimant ever been given an Emergency Cortisone Shot while at Bertrams?  
A. How many times?
2. Was Claimant referred to a specialist in the free world for "Congenital Adrenal Hyperplasia"?  
A. Did treatment with cortisone continue after that consultation?
3. Based on the info. available in his jacket, can physical stress cause other medical problems such as "Adrenal Crises"?  
A. Based on info. in his jacket, would "Adrenal Crisis" be considered a medical emergency?  
B. Is a "sick call" the appropriate way for dealing with a medical emergency such as Adrenal Crisis or a heart attack?
4. Based on the info. in Claimant's jacket, what other symptoms can a person with this Adrenal disease experience?
5. Is there a camera in the Captain's office?  
A. Coming from the hall way, is there a riot gate before you can reach the Captain's office?  
B. How can an inmate, a person without keys or a radio, get through a riot gate?  
C. Does an inmate need permission from his barracks officer to leave his barracks?  
D. Will an officer, who does not think the inmate has a good reason to leave his barracks, allow that inmate to leave?

Before the ARKANSAS State Claims Commission

Daniel Hurlbut #658898 Claimant

-v- No. 14-0397-CC

Arkansas Department of Correction Respondent

Claimant's Response in Opposition to Respondent's  
Motion to Dismiss 3

Motion for Fines and Sanctions 3

Request to Subpoena Un-Altered photos

1. On Dec. 3, 2013 Claimant received Respondent's motion to Dismiss and Response to Initial Discovery Requests
2. Claimant did not refuse to return to his barracks. On the contrary, he asked for assistance in the form of a wheel chair, which would have been the least amount of force necessary for an escort, but was denied.
3. At 7:15 to 7:30 pm, all inmates are in their barracks except for those who have pill call or library call, and therefore would not be anywhere near the Captain's office at this time. The riot gate was opened for claimant by another officer.
4. In reference to "Exhibit A" which Respondent attached to their Motion to Dismiss, I find these photos very troubling. For one, it's hard to make out anything. The only thing

STATE CLAIMS COMMISSION CHECKET  
OPINION

Amount of Claim \$ 12,000.00

Claim No. 14-0397-CC

Daniel Hurlbut, #658898 Claimant  
vs.

Attorneys  
Pro se Claimant

Department of Correction Respondent  
State of Arkansas

Lisa Wilkins, Attorney Respondent

Date Filed November 12, 2013

Type of Claim Failure to Follow Procedure,  
Personal Injury & Mental Anguish

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 January 9, 2014, 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 January 9, 2014, order remains in effect.

Date of Hearing February 13, 2014

Date of Disposition February 13, 2014

Pat Moran Chairman  
Bill Lancaster Commissioner  
Richard May 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 the AR State Claims Commission

Arkansas General Assembly

Daniel Hurlbut

Claimant

v.

No. 14-0397-CC

Arkansas Dep't of Corrections

Respondent

Arkansas  
State Claims Comm  
FEB 28 2014

## NOTICE OF APPEAL

I. DISMISSAL WITHOUT TRIAL, BEFORE DISCOVERY ANSWERED,  
MATERIAL FACTS IN DISPUTE, WAS ERROR

RECEIVED

The dismissal of this claim without a trial or hearing was improper because there was no review of the video — which is my primary proof on this claim. I disputed the authenticity of Respondent's exhibits and opposed every fact alleged and relied upon by Respondent in its "Motion to Dismiss", thus, there are issues of material fact in dispute precluding a dismissal without a trial. Further, Respondent did not answer my Discovery and so there are documents and evidence improperly omitted from the record. Therefore, I request this claim be set for trial before the Arkansas General Assembly.

## II. QUESTIONS OF FACT - FOR TRIAL - PRECLUDING DISMISSAL

1. Whether I refused or was too sick to obey staff's order
2. Whether Lt. Williams or Cpl. Lucas punched me in the stomach
3. Whether video shows Cpl. Lucas suspending me off the ground by only my handcuffs
4. Whether video shows Lt. Williams dragging me down the hallway by my shirt collar choking me.
5. Whether original, digital color photos show bruising

6. Whether I refused to stand, or was too sick and injured from a blow to the stomach
7. Whether inmates were in the hallway
8. Whether video shows a proper pre-lockup medical evaluation was done
9. Whether photos taken days later by Lt. Heath show bruising
10. Whether I was injured
11. Whether I refused medical eval, or the nurse refused to look at me because I was too injured/sick to stand.

### III. DOCUMENTS IMPROPERLY OMITTED FROM THE RECORD

- 1) The video
- 2) Digital, color photos
- 3) Photos taken later by Lt. Heath
- 4) Video of "Pre-lockup"
- 5) My Discovery/Interrogatories
- 6) My medical diagnosis/history

WHEREFORE, for the foregoing, Claimant pray this Appeal be granted and set for trial before the Arkansas General Assembly

Respectfully Submitted

*DL Hurlbert*

Daniel Hurlbert #658798, claimant

300 Corrections Drive

Newport, AR 72112

### CERTIFICATE OF SERVICE

I hereby certify a copy of this Notice of Appeal was served 2/26/14 by U.S. mail on Respondents addressed to: Lisa Mills Wilkins, ADC Counsel  
P.O. Box 8707, Pine Bluff, AR 71601