

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

Tuesday, January 3, 2017
Room 218-N—Statehouse

Members Present

Representative James Todd, Chairperson
Senator Dan Kerschen, Vice-chairperson
Senator Terry Bruce
Senator David Haley
Representative Mike Houser
Representative Craig McPherson
Representative Kathy Wolfe Moore

Staff Present

Dylan Dear, Kansas Legislative Research Department
Whitney Howard, Kansas Legislative Research Department
Natalie Nelson, Kansas Legislative Research Department
Mike Heim, Office of Revisor of Statutes
David Wiese, Office of Revisor of Statutes
Deb Burns, Committee Assistant

Conferees

Dennis Depew, Kansas Office of the Attorney General
Todd Fertig, Kansas Department of Corrections
Edie Martin, Kansas Department of Revenue
Russell Parker, Kansas Department of Revenue
Libby Snider, Kansas Department of Corrections
Kathy Winters

Morning Session

Chairperson Todd called the meeting to order at 9:00 a.m.

Motor Fuel Tax Refunds for FY 2017 were submitted by Edie Martin, Kansas Department of Revenue (Attachment 1). *Senator Kerschen moved to approve; Representative McPherson seconded the motion; the motion carried.*

HEARING ON THE RECORD

Claim No. 6798, Claimant, Christopher Forbush-Willis #96841

**v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$111.69**

Claimant stated when he was sent to segregation he was allowed a limited amount of his property minus his electronics and he signed the property inventory sheet. While in segregation he was transferred to another facility and the property he was in possession of was packed out by facility staff. Upon release from segregation he collected his property and his mp4 player was missing. He asserts the player was listed on the inventory sheet and he seeks reimbursement for the claimed property along with the cost of the downloaded music he had purchased.

**Respondent, Department
represented by Libby Snider, Staff Attorney, Department**

Respondent stated Claimant was mistakenly given his mp4 player while in segregation and he was in possession of it prior to being transferred to another facility. His loss cannot be substantiated, and the Department recommends that this claim be denied. If not denied, recovery on the claim should be limited to the purchase price of the device, which was \$75.73.

Following discussion, the Joint Committee recommended Claim No. 6798 be allowed for the amount of \$75.73. (See section captioned "Committee Action and Recommendation.")

HEARINGS FROM ELLSWORTH CORRECTIONAL FACILITY

Claim No. 6752, Claimant, Joseph Chung #95306

**v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$49.08**

Claimant stated he was moved from south unit to central unit when his shower bag went missing. He was later moved to another facility and his rechargeable batteries, laundry bag, extension cord, and shorts went missing. Claimant stated he filed a facility property claim and was offered \$10.85.

**Respondent, Department
represented by Libby Snider, Staff Attorney, Department**

Respondent stated Claimant accepted a facility award of \$10.85 related to the claimed items and signed acceptance as "full and final settlement" of the claim. A second claim for lost canteen items was settled for \$1.46, and the combined awards were transferred to the Claimants facility account in a single credit. Because the Claimant has been reimbursed for these items in accordance with the terms of the settlement, the Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6752 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6781, Claimant, Garland Hill #37748

**v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$15.96**

Claimant stated he was pre-approved for purchase of a dog deodorizer. The money was taken from Claimants spending account, but when the order arrived it was seized by warehouse staff and a notice sent to Claimant that the claimed property would not be allowed in the facility. Claimant states other inmates had previously been permitted this same deodorizer and so should he. Claimant seeks reimbursement for the purchase price of the claimed item, and mailing costs associated with this claim.

Respondent, Department

represented by Libby Snider, Staff Attorney, Department

Respondent stated the facility investigator responded that the claimed product had been disapproved by a Deputy Warden previously and would not be allowed into the facility. The response identified one offender who had been denied the product, but he re-ordered it after a staff change, and it was erroneously allowed. Claimant's facility property claim was denied because there was no error in denying entry of the product into the facility. The Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6781 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6808, Claimant, Anthony Richardson #59546

**v. Respondent, Department of Corrections (Department)
due to personal injury in the amount of \$500,000.00**

Claimant stated while working at his appointed job in the facility he was kicked in the chin by a contracted worker; the same leg he had broken a few years prior. He claims that he will need medical treatment and possible surgery to his leg when he is released from custody.

Respondent, Department

represented by Libby Snider, Staff Attorney, Department

Respondent stated the Claimant was seen by facility medical staff and no injury was noted to his leg. The contracted employee's supervisor was contacted to ensure corrective action would be taken but the Claimant's facility claim was denied due to being unfounded, and the matter complained of "did not involve a KDOC employee, was not supervised by a KDOC employee and was not on grounds owned or operated by the KDOC." The Department recommends that this claim be dismissed pursuant to Committee Rule 2 or denied for lack of any showing of negligence or wrongdoing by the Department.

Following discussion, the Joint Committee recommended Claim No. 6808 be dismissed without prejudice under Committee Rule 2 (exhaustion of administrative or judicial remedies.) (See section captioned "Committee Action and Recommendation.")

Claim No. 6809, Claimant, Anthony Richardson #59546

**v. Respondent, Department of Corrections (Department)
due to personal injury in the amount of \$500,000.00**

Claimant stated while working at his job in the contracted food service facility he was punched in the face by a contracted worker causing pain to his neck. He claims to have plates and screws to that side of his face from a previous injury. He stated because of the attack he has lost his sense of being safe in a secured facility and has aggravated his prior injury. He claims he will need surgery to his neck and will be limited in his ability to work.

**Respondent, Department
represented by Libby Snider, Staff Attorney, Department**

Respondent stated Claimant's facility claim was denied due to the claimed incident "did not involve a KDOC employee, was not supervised by a KDOC employee and was not on grounds owned or operated by the KDOC." The contracted worker involved in the alleged assault self-reported slapping the Claimant and was immediately terminated by contracted staff. The Department recommends that this claim be dismissed pursuant to Committee Rule 2 or denied for lack of any showing of negligence or wrongdoing by the Department.

Following discussion, the Joint Committee recommended Claim No. 6809 be dismissed without prejudice under Committee Rule 2 (exhaustion of administrative or judicial remedies.) (See section captioned "Committee Action and Recommendation.")

HEARINGS FROM HUTCHINSON CORRECTIONAL FACILITY

Claim No. 6786, Claimant, Charles Denmark-Wagner #93947

**v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$11.88**

Claimant stated his cell was searched and canteen items were removed by officers. When he later received his property he determined that four items were missing.

**Respondent, Department
represented by Libby Snider, Staff Attorney, Department**

Respondent stated investigators determined that for two of the claimed items, there is no proof of purchase, and the other two items were not reported missing until after the Claimant took possession and control of the property. These facts fail to demonstrate that the Claimant suffered a loss as a direct result of negligence on the part of Department staff. The Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6786 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6787, Claimant, Charles Denmark-Wagner #93947
v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$12.95

Claimant stated he gave his sweat shorts to an inmate porter to be laundered and were never returned to him.

Respondent, Department
represented by Libby Snider, Staff Attorney, Department

Respondent stated an inmate porter verified that he placed the Claimant's sweat shorts in a laundry cart. The claimed sweats were not logged in as having been received by Laundry. The claim investigator concluded the claimed item must have been removed from the cart before being taken to the Laundry. It appears that any loss suffered by the Claimant resulted from the conduct of another offender and was not the direct result of staff negligence or wrongdoing.

Following discussion, the Joint Committee recommended Claim No. 6787 be denied. (See section captioned "Committee Action and Recommendation.").

Claim No. 6794, Claimant, Michael Vanderpool #91131
v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$77.50

Claimant stated the claim has been settled.

Following discussion, the Joint Committee recommended Claim No. 6794 be dismissed without prejudice. (See section captioned "Committee Action and Recommendation.")

Claim No. 6795, Claimant, Benson Jackson #105170
v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$7,000.00

Claimant stated he broke his wrist when he slipped on floor cleaner that had been spilled by a corrections officer. He claims that because the officer was at fault he is due either monetary reimbursement or a television, canteen items, and his level returned to him.

Respondent, Department
represented by Libby Snider, Staff Attorney, Department

Respondent stated the Claimant was specifically warned by staff to avoid the area while warning signs were being obtained. While it does appear the Claimant suffered an injury, he

received medical attention and there is no showing the injury was the direct result of staff negligence or wrongdoing. The Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6795 be dismissed without prejudice under Committee Rule 2 (exhaustion of administrative or judicial remedies.) (See section captioned "Committee Action and Recommendation.")

Claim No. 6796, Claimant, Joshua Alexander Duque #99972

**v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$830.68**

Claimant stated this claim encompasses four separate incidents of property loss: 1) he was transferred to segregation when at some point his personal property was lost by officials, including his mp4 player, batteries and headphones with music downloads; 2) he lost his extension cord when it was inadvertently packed out by officers with his cellmates property; 3) some of his magazines went missing while he was in segregation; 4) canteen items purchased by the Claimant just prior to his placement in segregation were not included with his property that was returned to him.

**Respondent, Department
represented by Libby Snider, Staff Attorney, Department**

Respondent replied to each claim: 1) Claimant refused the settlement that was offered by the facility; 2) Claimant's loss could not be substantiated and he admitted to contributing to the loss by co-mingling his property with the cellmate's property; 3) Claimant refused the settlement that was offered by the facility; 4) Claimant signed the property inventory sheet without noting any discrepancies, making his claimed loss unsubstantiated. The Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6796 be allowed in the amount of \$82.16. (See section captioned "Committee Action and Recommendation.")

Claim No. 6805, Claimant, Alexander Louis #98080

**v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$205.51**

Claimant stated staff packed out his property when he was moved to segregation. When he was later allowed to retrieve his property he discovered several items missing. He alleges loss was due to facility staff negligence.

**Respondent, Department
represented by Libby Snider, Staff Attorney, Department**

Respondent stated the Claimant was housed in a five-man cell, and none of the claimed items were in his bunk area or secured in his locker when his property was gathered and inventoried by facility staff. There is no showing the claimed items were among his property when staff packed it. The Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6805 be denied. (See section captioned "Committee Action and Recommendation.)

Claim No. 6818, Claimant, Jeffrey Scott #38151

**v. Respondent, Department of Corrections (Department)
due to personal injury in the amount of \$500.00**

Claimant stated an officer used excessive force when cuffing him, injuring his left wrist. The injury caused loss of his assigned job and subsequent earnings.

**Respondent, Department
represented by Libby Snider, Staff Attorney, Department**

Respondent stated the facility claim investigator reported the Claimant objected to the handcuffs when they were applied but said little else about it until the following morning, and his claims of injury are at odds with his medical records. The claim cannot be substantiated and the Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6818 be denied. (See section captioned "Committee Action and Recommendation.)

HEARINGS ON THE RECORD

Claim No. 6826, Claimant, Terry Clutchey #102938

**v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$218.97**

Claimant stated the claim has been settled.

Following discussion, the Joint Committee recommended Claim No. 6826 be denied. (See section captioned "Committee Action and Recommendation.)

Claim No. 6817, Claimant, Tod Pabst #65728

**v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$428.00**

Claimant stated he gave his glasses to a guard to be stored in the guard's briefcase for safe keeping during his open heart surgery and when he later asked for them the claimed property could not be found.

**Respondent, Department
represented by Libby Snider, Staff Attorney, Department**

Respondent stated staff are not responsible for keeping track of an inmate's property when it is in possession, and the claim was not filed within the time limit set forth in statute. Moreover, by policy, the claim value was limited to replacement through the facility medical authority and the Claimant was encouraged to make an appointment with the medical provider. The Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6817 be denied. (See section captioned "Committee Action and Recommendation.)

HEARINGS FROM LANSING CORRECTIONAL FACILITY

**Claim No. 6822, Claimant, William Brown #101244
v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$10.00**

Claimant stated some of his canteen property was stolen while he was a patient at the facility clinic. He claims that he did not have a lock available to secure his property prior to going to the clinic.

**Respondent, Department
represented by Libby Snider, Staff Attorney, Department**

Respondent stated because the Claimant's property was not secured within his living area, it could not be proven that the claimed items were present when staff packed his property. The Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6822 be denied. (See section captioned "Committee Action and Recommendation.)

HEARING ON THE RECORD

**Claim No. 6793, Claimant, Darwin Enloe #54505
v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$7.90**

Claimant stated some of his canteen items went missing from his locker after a cell search by officers. He asserts every day he takes care in making sure his locker is locked before leaving his living unit, but when staff searched his cell they did not secure the lock properly.

**Respondent, Department
represented by Libby Snider, Staff Attorney, Department**

Respondent stated though the Claimant asserts the officer failed to lock the locker, the officer states that he did lock it. Under the circumstances, it has not been established that the Claimant suffered a loss as a direct result of staff negligence. The Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6793 be allowed. (See section captioned "Committee Action and Recommendation.)

AFTERNOON SESSION

Senator Kerschen moved to approve the December 12, 2016, minutes; Representative Houser seconded the motion; the motion carried.

HEARING ON THE SEXUALLY VIOLENT PREDATOR (SVP) EXPENSE FUND

**Claim No. 6759, Claimant, Board of Barton County Commissioners
v. Respondent, State of Kansas
due to reimbursement of fees incurred defending sexually violent predator cases in
the amount of \$22,166.36**

Claimant stated the request submitted to the State of Kansas for reimbursement of all costs and expenses the county incurred defending sexually violent predator cases was denied due to lack of funding, leaving the county to file the present claim for reimbursement pursuant to statute.

**Respondent, State of Kansas
represented by Dennis Depew, Deputy Attorney General**

Respondent acknowledged the request for reimbursement and recommend that this claim be allowed.

Following discussion, the Joint Committee recommended Claim No. 6759 be allowed. (See section captioned "Committee Action and Recommendation.)

HEARINGS

Claim No. 6814, Claimant, City of Roeland Park, Kansas (City)

**v. Respondent, Office of Kansas Treasurer
due to refund of fees or other payments to state in excess of amount due in the
amount of \$138,838.00**

Claimant stated the City submitted a “current valuation” amount that was incorrect for the amount of ad valorem property tax reduction payments for the Parkland District for the years 2010 through 2014. As a result, the City was underpaid by the State Treasurer. This claim is an attempt to claim what rightfully belongs to the Parkland District.

**Respondent, Office of Kansas Treasurer
represented by Roger Basinger, Department of Administration**

Respondent stated they are in agreement with the revised calculations and recommend the claim be allowed.

Following discussion, the Joint Committee recommended Claim No. 6814 be allowed. (See section captioned “Committee Action and Recommendation.”)

Claim No. 6811, Claimant, Katherine Winters

**v. Respondent, State of Kansas
due to personal injury in the amount of \$15,320.54**

Claimant stated she suffered injuries when she tripped on the steps of the Kansas Statehouse. Her injuries included a broken nose, loose tooth, torn rotator cuff, and injured knee cap. She has been through several surgeries with more expected in the future and continues to suffer pain and headaches. She concludes in addition to reimbursement of her medical expenses she asserts a handrail is needed on the full length of the Statehouse steps.

**Respondent, State of Kansas (State)
represented by Roger Basinger**

Respondent stated the Statehouse stairs are protected from a design defect claim pursuant to statute, and because the stairs of the statehouse are protected by recreational use immunity for any other tort claim, the Claimant must establish gross or wanton negligence to be able to recover. No gross or wanton conduct is alleged or present in regard to this claim. The State recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6811 be dismissed without prejudice. (See section captioned “Committee Action and Recommendation.”)

Claim No. 6780, Claimant, Larry Curtis

**v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$1,000.00**

Claimant stated he suffered injury to his elbow, hand and foot during an attack by another inmate. As a result of the attack he claims to suffer mental damage which requires medication. His claim also includes loss of property due to negligence by facility officers who packed out his property at various times.

Respondent, Department

represented by Libby Snider, Staff Attorney, Department

Respondent stated the claim is rambling and vague as to specific losses and dates. The Department requests the claim be carried over to permit investigation, review of documentation and possibly additional input from the Claimant.

Following discussion, the Joint Committee recommended Claim No. 6780 be carried over. (See section captioned "Committee Action and Recommendation.)

Claim No. 6785, Claimant, Thomas White

**v. Respondent, Department of Corrections (Department)
due to refund of fees in the amount of \$15.01**

Claimant stated he was attacked by two inmates and taken to the facility clinic. While at the clinic his property was stolen. He asserts facility staff was responsible for packing his property and negligent in allowing it to be stolen by other inmates.

Respondent, Department

represented by Libby Snider, Staff Attorney, Department

Respondent stated the facility claim investigator recommended payment in the amount of \$15.01. The Department recommends that this claim be allowed.

Following discussion, the Joint Committee recommended Claim No. 6785 be paid by the Department. (See section captioned "Committee Action and Recommendation.)

HEARING ON THE RECORD

Claim No. 6791, Claimant, Donald Rowell, Jr.

**v. Respondent, Department of Corrections (Department)
due to property loss in the amount of \$13.91**

Claimant stated the facility mailed out his two packets of legal mail via certified mail, even after he had specifically requested flat rate postage and crossing out the certified mail options on the forms. His account was assessed \$6.25 for each packet. He seeks reimbursement for the excess mailing costs and mailing costs associated with this claim.

Respondent, Department

represented by Libby Snider, Staff Attorney, Department

Respondent stated copies of the forms filled out by the Claimant had all three boxes for postage options marked, including the box for certified mail. Mailroom staff indicated that they always employ the highest level of postage indicated on the form, so the certified mail option was followed for Claimant's packages. The Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6791 be denied. (See section captioned "Committee Action and Recommendation.)

HEARING

Claim No. 6778, Claimant, Gregory O'Connor

**v. Respondent, Department of Corrections (Department)
due to personal injury in the amount of \$100,000.00**

Claimant stated he asked for be placed in a 1-man cell because he feared for his safety. In the interview with the segregation review board, Claimant did not explain why he feared for his safety, but he asked to speak to the mental health staff about the reason. Claimant was sent back to his 5-man cell, and was attacked. He sustained several injuries, had to have stitches above his right eye, and continues to be in segregation for his own safety.

Respondent, Department

represented by Libby Snider, Staff Attorney, Department

Respondent stated at the Claimant's Segregation Review Board meeting it was explained to him that if he refused to provide information about his reason for requesting a 1-man-cell he would be sent back to his cell and his reply was "then send me back." Later in the day, he was involved in a physical altercation and received medical attention. There is no showing the altercation was the direct result of any negligence on the part of correctional staff and the Department recommends that this claim be denied.

Following discussion, the Joint Committee recommended Claim No. 6778 be denied. (See section captioned "Committee Action and Recommendation.)

The meeting adjourned at 3:40 p.m.

Prepared by Deb Burns
Edited by Dylan Dear, Whitney Howard,
and Natalie Nelson

Approved by the Committee on:

October 30, 2017

(Date)