

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

January 11, 2019
Room 218-N—Statehouse

Members Present

Senator Dan Kerschen, Chairperson
Representative Bradley Ralph (substituting as Vice-chairperson for this meeting)
Senator David Haley
Senator Dennis Pyle
Representative Brenda Dietrich (substituting for Representative John Whitmer)
Representative Sean Tarwater (substituting for Representative Erin Davis)
Representative Jim Ward (substituting for Representative Kathy Wolfe Moore)

Staff Present

Natalie Nelson, Kansas Legislative Research Department
Whitney Howard, Kansas Legislative Research Department
Isaac Elyacharshuster, Kansas Legislative Research Department
Mike Heim, Office of Revisor of Statutes
Zach Fridell, Office of Revisor of Statutes
Melissa Lowrey, Committee Assistant

Conferees

Libby Snider, Staff Attorney, Kansas Department of Corrections
Lesia Dipman, Claimant (appearing by telephone)
Zachary Lippa, Claimant (appearing by telephone)
Teri Agnew, Public Service Administrator II, Kansas Department of Revenue
Edie Martin, Public Service Administrator II, Kansas Department of Revenue

Others Attending

No other attendees present.

Morning Session

Welcome

The Chairperson called the meeting to order at 8:10 a.m.

Claim No. 6930, Claimant, Matthew Perez #86814 CARRY OVER
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$229.51

Claimant was sent to segregation and his property was packed out by staff. Claimant stated various items were missing when he received his stored property on August 16, 2017, and alleged officers failed to secure his property and failed to follow pack-out procedures.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, Kansas Department of Corrections
(KDOC)

Respondent stated Claimant's facility claim was filed outside of the allowed time limits and his documentation failed to substantiate the claimed items were in Claimant's possession at the time of the pack out. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6930 be denied.

Claim No. 6959, Claimant, Ray Floyd Garcia, Jr. #6002627 CARRY OVER
v. Respondent, Lansing Correctional Facility (LCF)
due to property loss in the amount of \$216.15

Claimant stated he returned from the library and "assorted inmates" told him an officer had removed property from the cell.

Respondent, LCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated security footage was reviewed, and Claimant was seen leaving his cell at 7:07 p.m. and returning at 7:39 p.m. During that time frame, the cell door was not opened and there was no indication anything was removed from the cell. Claimant's allegations could not be substantiated. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6959 be denied.

Claim No. 6962, Claimant, Ray Floyd Garcia, Jr. #6002627 CARRY OVER
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$84.00

Claimant alleged money was taken from his account to purchase Fresh Favorites tickets at EDCF, but he was transferred to Lansing Correctional Facility where such tickets are not accepted and his money has not been refunded.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated Claimant filed a facility claim for \$84.00, seeking a refund for Fresh Favorites tickets. The claim investigator responded tickets were given to the Aramark supervisor and the investigator received a signed envelope indicating they had been received. Claimant's banking history indicated \$90.00 was refunded to him for Fresh Favorites. Claimant's claim could not be substantiated. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6962 be denied.

Claim No. 6973, Claimant, Ray Floyd Garcia, Jr. #6002627
v. Respondent, Lansing Correctional Facility (LCF)
due to property loss in the amount of \$361.50

Claimant alleged his eyeglasses, which were purchased from an outside vendor and not from the facility's health authority, were damaged after he gave them to staff at the LCF clinic. Claimant requested \$199.00 for the frames, \$150.00 for the lenses, and \$12.50 for shipping and handling.

Respondent, LCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated when eyeglasses purchased from an outside vendor are lost or damaged, the sole remedy through the property claims procedure is replacement of the eyeglasses with those provided by the facility health authority and shall not exceed the established value limit. Further, inmates are permitted to possess eyeglasses valued up to \$200.00, but KDOC's liability is expressly "limited to value of eye glasses issued by the facility's health authority." Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6973 be denied.

Claim No. 6942, Claimant, Brett Wheeler #46584
v. Respondent, KDOC
due to property loss in the amount of \$1,500.00

Claimant alleged his legal materials were lost when he was transferred from Shawnee County Jail to Ellsworth Correctional Facility on April 5, 2018. According to his claim, his legal documents, including transcripts purchased, were taken by the KDOC transport officer and placed in a locked compartment on the KDOC bus; Claimant never saw his documents again. Claimant stated he paid \$802.97 for transcripts and it would cost him the same amount to purchase them again.

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

Respondent stated Claimant's claimed loss could not be substantiated and there is no showing of any such loss is a direct result from staff negligence. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6942 be denied.

Claim No. 6943, Claimant, Brett Wheeler #46584
v. Respondent, KDOC
due to personal injury in the amount of \$500,000.00

Claimant alleged a parole officer fabricated testimony to have his parole revoked and threatened him. He claimed the officer said people like him should not be alive, told him when he would be transported to prison, and said she hoped somebody would get rid of him.

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

Respondent stated, per IMPP 01-118D, all claims must be made within ten calendar days of the claimed personal injury. Claimant's claim was outside the ten-day limit for any injury alleged to have occurred. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6943 be denied.

Claim No. 6951, Claimant, Brett Wheeler #46584
v. Respondent, KDOC
due to personal injury in the amount of \$500,000.00

Claimant requested \$500,000.00 for personal injury due to KDOC improperly calculating his sentence and keeping him in custody 13 years longer than authorized. Claimant argued after he served his determinate sentence for the crime he committed while on parole, he should never be "restrained or held to answer for Shawnee county [sic] Case No 86-CR-2627 again."

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

Respondent cited KSA 2008 Supp. 22-3717(f) as follows:

The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is . . . an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the prisoner review [parole] board.

Claimant's ten-years-to-life indeterminate sentence has a maximum term of life, thus invoking the lifetime postrelease supervision found in KSA 2008 Supp. 22-3717(f). KDOC's computation of Claimant's sentence is consistent with applicable law and has been upheld by the Ellsworth County District Court, and Claimant did not appeal the court's September 17, 2018, ruling. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6951 be dismissed without prejudice under Committee Rule 2.

Claim No. 6991, Claimant, Clyde Sullivan #0044512
v. Respondent, Lansing Correctional Facility (LCF)
due to property loss in the amount of \$10.81

Claimant stated he was taken to restriction housing and his property was packed out by staff. When he retrieved his property, he was missing a black cable cord valued at \$4.82, flex pens valued at \$4.08, and one light bulb valued at \$1.91.

Respondent, LCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated the claim investigator determined Claimant's flex pens and light bulb were discarded by staff, but there was no cable in his property when it was packed.

According to KAR 44-16-105 and IMPP 01-118, inmates own personal property at their own risk and claims shall not be paid "unless the loss or damage directly resulted from the intentional or negligent act or omission of a correctional employee." The claimed loss of a cable cord could not be substantiated and there was no record of purchase of flex pens within 90 days prior to the pack out. As stated in the facility claim response, Claimant should be reimbursed for the loss of a light bulb, which he purchased for \$1.76, plus sales tax. Respondent recommended the claim be approved in the amount of \$1.91.

Following discussion, the Committee recommended Claim No. 6991 be approved in the amount of \$1.91.

Claim No. 6992, Claimant, Clyde Sullivan #0044512
v. Respondent, Lansing Correctional Facility (LCF)
due to property loss in the amount of \$2.00

Claimant asserted he was improperly charged a \$2.00 sick call fee because he is on chronic care for high blood pressure.

Respondent, LCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated the Health Services Administrator had been consulted and determined the sick call in question was for a non-chronic care issue, so the charge was appropriate. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6992 be denied.

Claim No. 6987, Claimant, Raymond Davis #55434
v. Respondent, Lansing Correctional Facility (LCF)
due to property loss in the amount of \$195.85

Claimant was unavailable at the time of his hearing, so his claim was summarized by Committee staff. Claimant reported when he was taken to segregation, his personal items remained in his cell to be packed out by staff. When Claimant was released and he retrieved his property, his television with remote and eyeglasses were missing.

Respondent, LCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated a review of recorded video revealed an undetermined occupant of the inmate's formerly assigned multi-occupancy cell passed the inmate's television to another inmate through the cell bars shortly after he went to segregation. This other inmate was identified, charged with theft, and restitution in the amount of \$185.85 (the cost of the television) was imposed.

According to KAR 44-16-105 and IMPP 01-118, inmates own personal property at their own risk and claims shall not be paid "unless the loss or damage directly resulted from the intentional or negligent act or omission of a correctional employee." Claimant's television was stolen by an inmate. Claimant's claimed loss was not the direct result of any negligence or mishandling by staff, and he will be compensated through disciplinary restitution. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6987 be denied.

Claim No. 6919, Claimant, Matthew Wimberly #110720 CARRY OVER
v. Respondent, KDOC
due to property loss in the amount of \$92.98

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6919 be denied due to settlement.

Claim No. 6928, Claimant, Vincent Lowe #61931
v. Respondent, Norton Correctional Facility (NCF)
due to property loss in the amount of \$6.60

Claimant alleged his headphone extension and sport socks were missing after retrieving his property upon release from segregation.

Respondent, NCF
represented by Libby Snider, Staff Attorney, KDOC

IMPP 12-120.VII provides that inmates are responsible for noting any discrepancies when signing property inventory forms, and Claimant signed this inventory without noting any discrepancies. According to KAR 44-16-105 and IMPP 01-118, inmates own personal property at their own risk, and claims shall not be paid “unless the loss or damage directly resulted from the intentional or negligent act or omission of a correctional employee.” It appears Claimant’s missing socks have been replaced, and his headphone extension was not missing, but was broken and consequently removed from his property with his acknowledgment. There is no showing Claimant has suffered a loss as the direct result of staff negligence. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6928 be denied.

Claim No. 6947, Claimant, Eric David Keller #105346 CARRY OVER
v. Respondent, KDOC
due to property loss in the amount of \$424.51

Claimant stated many items of his personal property were stolen after KDOC staff gave other inmates unlawful access to his cell.

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

Respondent stated she did not have a written response to this claim as she understood a settlement proposal had been offered to Claimant. Respondent recommended the claim be denied as a settlement with the facility appears to have been reached.

Following discussion, the Committee recommended Claim No. 6947 be denied.

Claim No. 6963, Claimant, Steve Genton #93753
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$246.97

Claimant stated he reported to staff he was in danger and was taken into protective custody. Claimant asserted KDOC is responsible for his missing property, including a television, headphones, headphone extension, and coaxial cable, because his cell and his property were not secured when he was taken into protective custody.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC

KDOC is not an insurer of inmate property, and inmates should be discouraged from viewing correctional staff as security guards for their property. IMPP 12-120.I.A. and KAR 44-16-105 provide that inmates are permitted to own property at their own risk. IMPP 12-120 II.C. states:

Offenders shall assume responsibility for the care and control of all properly inventoried and registered personal property. KDOC shall take reasonable measures to prevent damage to inmate property, but shall not assume liability for the loss or damage of allowable property possessed by offenders.

Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6963 be denied.

Claim No. 6967, Claimant, Eusebio Sierra-Medrano #6012089
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$600.00

The Committee received a letter prior to the hearing that the Claimant wished to withdraw his claim. *Claim No. 6967 was withdrawn from the agenda.*

Claim No. 6969, Claimant, Irineo Garcia #105180
v. Respondent, Hutchinson Correctional Facility (HCF)
due to property loss in the amount of \$250.00

Claimant stated he received his replacement television, so the claim has been settled.

Following discussion, the Committee recommended Claim No. 6969 be denied due to settlement.

Claim No. 6970, Claimant, Christopher Wallace #115975
v. Respondent, Hutchinson Correctional Facility (HCF)
due to property loss in the amount of \$230.00

Claimant alleged when he was released from segregation, he was missing boots, a cooler, lamp, books, hot pot, surge protector, and hygiene items, and all of the property was brand new. He stated his facility property claim was denied because inventory sheets were forged.

Respondent, HCF
represented by Libby Snider, Staff Attorney, KDOC

The facility claim response indicated Claimant's property inventory sheets showed he had received and signed for all of his property and inmates are responsible for noting any discrepancies when signing property inventory forms. Claimant signed the inventories without noting any discrepancies. Claimant asserted he did not sign the inventory sheets, someone else forged the signatures, and the inmate numbers are even wrong on some of the signatures, but there is nothing to substantiate this assertion. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6970 be denied.

Claim No. 6985, Claimant, William May #96951
v. Respondent, Hutchinson Correctional Facility (HCF)
due to property loss in the amount of \$300.00

Committee staff summarized Claimant's claim as Claimant was unavailable at the scheduled hearing time. Claimant claimed his television with remote, cable, radio, and headphones were not mailed out as anticipated, and the property is now lost.

Respondent, HCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated this claim originally went to HCF, but needs to go to El Dorado Correctional Facility (EDCF). Respondent has not yet received a response from EDCF on this claim, so Respondent requested the claim be carried over for more time to complete the investigation.

Following discussion, the Committee recommended Claim No. 6985 be carried over.

Claim No. 6990, Claimant, Rex Rhoten Jr. #0117919
v. Respondent, Hutchinson Correctional Facility (HCF)
due to property loss in the amount of \$76.32

Claimant stated his Reebok shoes were stolen by inmates when he was in the shower.

Respondent, HCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated Claimant alleged property was stolen from his cell while he was in the showers on June 21, 2018. He stated a number of hygiene products were taken, as well as a pair of state-issued boots and a pair of Reebok running shoes. He requested compensation only for the running shoes. On June 22, 2018, Claimant filed a facility property claim for the alleged loss of his shoes. There was no showing of an intentional or negligent act or omission of staff as the cause of the claimed loss. In addition, there was no way to know if the claimed items

were stolen, if they were sold by Claimant, or if they were even in his possession at the time of the claimed theft. IMPP 12-120 II.C. states:

Offenders shall assume responsibility for the care and control of all properly inventoried and registered personal property. KDOC shall take reasonable measures to prevent damage to inmate property, but shall not assume liability for the loss or damage of allowable property possessed by offenders.

Locking cabinets are provided and inmates are encouraged to secure their property therein. To the extent they choose to own property that is not or cannot be so secured, policy and regulations make it clear they do so at their own risk. Claimant's claimed loss could not be substantiated, and there is no showing of any such loss was the direct result of staff negligence. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6990 be denied.

Claim No. 6994, Claimant, Deaarion Potts #109587
v. Respondent, Hutchinson Correctional Facility (HCF)
due to property loss in the amount of \$103.16

Claimant stated he was sent to segregation and officers packed out his property. He stated a pair of work boots, a thermal top, and one sweatshirt were missing when he returned from segregation and retrieved his property.

Respondent, HCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated she did not have a written response prepared for this claim, so she could either summarize KDOC's response on the record or ask for a carry over to provide a written response from KDOC. The Chairperson stated a summary of the response was fine. Respondent stated there was no property inventory for the dates the Claimant claims his property went missing. By his own admission, he saw the inventory and the items he claimed to be missing were not there nor on the inventory list. Because they were not on the inventory list, it is impossible to establish his items were ever in staff possession and there is no evidence to substantiate the Claimant's claim. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6994 be denied.

Claim No. 6996, Claimant, Eugene Keltner #69046
v. Respondent, KDOC
due to personal injury in the amount of \$75,000.00

Claimant stated he was beaten by officers while being seen for a medical issue.

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

Respondent stated she did not have a written response prepared for this claim, but she would give a verbal response on the record as to Claimant's claim. Medical staff reported Claimant was placed in a separate room due to his behavior of biting at his hands, banging his head on the walls, and eating paint chips off the wall. After being evaluated by the nursing staff, he was found to be under the influence of drugs. Due to his behavior, he was placed under a crisis level and staff had to remove him and place him in a supervised crisis level cell. Claimant resisted being placed in a crisis level cell, stating staff was physically harming him. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6996 be denied.

Claim No. 6998, Claimant, Michael Vanderpool #91131
v. Respondent, Hutchinson Correctional Facility (HCF)
due to property loss in the amount of \$165.00

Claimant alleged his cell was searched on March 22, 2018, and various items of property were destroyed and thrown in the trash.

Respondent, HCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated on April 20, 2018, Claimant filed a facility property claim for the alleged loss of these items. The claim investigator stated the cushion was accounted for, but reported no keyboard, charger, paints, or markers were removed from the cell. The cushion was believed to be an altered pillow from the dog program and Claimant was not properly in possession of a pillow associated with the dog program. He would not be entitled to compensation for the cushion, as it was altered and considered to conceal contraband, which was confiscated and destroyed. Documentation showed Claimant had received acrylic paints and markers, but the claim investigator concluded he would not be entitled to compensation because they were purchased by someone else. No documentation was identified showing Claimant had the claimed keyboard or charger at the time of the search. According to KAR 44-16-105 and IMPP 01-118, claims shall not be paid "unless the loss or damage directly resulted from the intentional or negligent act or omission of a correctional employee." The claimed loss of the remaining items could not be substantiated, and there is no showing of any such loss was the direct result of staff negligence. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6998 be denied.

Claim No. 6983, Claimant, Lesia Dipman
v. Respondent, Larned State Hospital (LSH)
due to property loss in the amount of \$1,776.44

Claimant, appearing by telephone, stated her vehicle was hit by a security vehicle while her car was parked in the parking lot of LSH.

Respondent, Kansas Department for Aging and Disability Services (KDADS)

Respondent provided a written response to Claimant's claim stating Respondent does not contest the claim.

Following discussion, the Committee recommended the claim be approved in the amount of \$1,776.44.

Claim No. 6964, Claimant, Zachary Lipka

**v. Respondent, Office of the Attorney General (OAG)
due to personal injury in the amount of \$100,000.00**

Claimant, appearing by telephone, stated Attorney General Derek Schmidt made a slanderous statement about him to media outlets regarding litigation in which he was involved when the Attorney General said Claimant failed to respond to a motion in the case. Claimant stated court staff said he had shown a history of being cooperative and communicating well with the court. Claimant stated the slanderous statement was given to *The Topeka Capital-Journal* and KCTV 5 and he lost \$50,000.00 in business revenue as a result. Claimant requested an additional \$50,000 for emotional distress.

Respondent, OAG

Respondent submitted a written response the claim. Respondent stated Claimant has failed to file a response as afforded him within the confines of pending litigation, and it would be premature to consider the claim until action has been completed in Shawnee County District Court.

Following discussion, the Committee recommended Claim No. 6964 be denied.

Approval of November 13, 2018, Minutes

Senator Haley moved to approve the November 13, 2018, minutes and Representative Tarwater seconded. The motion carried.

Lunch

The Chairperson recessed the meeting for lunch at 11:55 a.m.

Afternoon Session

The Chairman reconvened the meeting at 1:02 p.m.

Motor Fuel Tax Refunds

Motor fuel tax refunds for the previous year were presented by Teri Agnew, Kansas Department of Revenue.

Senator Pyle moved to approve the motor fuel tax refunds and Representative Ralph seconded the motion. The motion carried.

Claim No. 6905, Claimant, Jeffrey Collier #47548 CARRY OVER
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$259.02

The Chairperson informed the Claimant the claim would be carried over because the Respondent had indicated the claim has not been fully investigated.

Following discussion, the Committee recommended Claim No. 6905 be carried over.

Claim No. 6901, Claimant, Michael Rogers #115224 CARRY OVER
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$1,835.97

During the time of the hearing, the Committee was unable to contact Claimant. His claim was summarized by Committee staff. Claimant alleged three boxes of his property were shipped to Kansas when he was transferred from Florida Department of Corrections to KDOC. He did not receive one of those boxes, even though that box was shipped *via* FedEx and was tracked to the facility.

Respondent, EDCF
Represented by Libby Snider, Staff Attorney, KDOC

Respondent stated Claimant filed this claim seeking \$1,835.97 for property loss. The claim was scheduled to be heard on December 14, 2017, and KDOC requested it be carried over to allow additional time to investigate. The claim was scheduled to be heard on November 13, 2018, but on the day of the hearing, Claimant approached facility staff regarding settlement of the claim. On November 21, 2018, Claimant signed an agreement withdrawing his claim and forfeiting all rights to any prior property claims in exchange for property received. Claimant sought and entered into settlement of the claim. Respondent recommended the claim withdrawal be accepted or the claim be denied.

Following discussion, the Committee recommended Claim No. 6901 be denied.

Claim 6979, Claimant, Frederick Fritz IV #99194
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$56.89

Claimant stated various canteen items previously ordered and paid for were stolen during a robbery of the canteen on July 1, 2018.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated Claimant's facility claims were initially denied because the loss was not caused by staff negligence, but the decision was reversed and payment was made from the Inmate Benefit Fund. Facility staff explained:

The offender filed his initial property claim in the amount of \$49.42 which was received on 7/24/18; a second facility claim was received on 8/15/18 in the amount of 56.89. Offender was paid the \$49.42 due to it being the first property claim being submitted. The amount that was taken from his account for canteen on 6/27/18 was the \$56.89. However, the facility did not look up each offender's purchase, but went off of the claims. The offender's money from his initial property claim of \$49.42 was returned to his account.

Respondent recommended the claim be carried over.

Following discussion, the Committee recommend Claim No. 6979 be carried over.

Claim No. 6980, Claimant, Frederick Fritz IV #99194
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$49.42

Claimant stated this claim has been settled.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated Claimant's facility claims were initially denied because the loss was not caused by staff negligence, but the decision was reversed and payment was made from the Inmate Benefit Fund. Claimant has been compensated for his claimed loss. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6980 be denied due to settlement.

Claim No. 6965, Claimant, Troy Snell #0047435
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$48.11

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6965 be denied due to settlement.

Claim No. 6977, Claimant, William Dotson #108702
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$60.07

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6977 be denied due to settlement.

Claim No. 6981, Claimant, Tracallen Woods Streeter #85157
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$63.83

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6981 be denied due to settlement.

Claim No. 6978, Claimant, Roger Deere II #0070912
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$4.09

Claimant stated he ordered and paid for \$4.09 worth of canteen items and never received the items.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated KDOC needs to gather more information and recommended the claim be carried over.

Following discussion, the Committee recommended Claim No. 6978 be carried over.

Claim No. 6984, Claimant, Curtis Ayers #110133
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$27.03

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6984 be denied due to settlement.

Claim No. 6989, Claimant, Leon Mitchell III #59874
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$49.43

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6989 be denied due to settlement.

Claim No. 6993, Claimant, Marquez Ridge #63002
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$14.95

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6993 be denied due to settlement.

Claim No. 6999, Claimant, Armando Mosqueda #62824
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$22.42

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6999 be denied due to settlement.

Claim No. 7002, Claimant, Jermaine Cardona #100845
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$49.50

The Chairperson informed the Claimant the claim would be carried over because the Respondent had indicated the claim could not be fully investigated.

Following discussion, the Committee recommended Claim No. 7002 be carried over.

Claim No. 6986, Claimant, Lawrence Stafford #34647

**v. Respondent, KDOC
due to property loss in the amount of \$2.30**

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6986 be denied due to settlement.

Claim No. 6982, Claimant, Billie Elliott #44808

**vs. Respondent, KDOC
due to property loss in the amount of \$32.04**

Claimant alleged he ordered a watch with the wrong inmate number engraved on it, which was then corrected by a property officer. He refused to accept the watch with the corrected and initialed engraving, citing a regulation that defines altered property as contraband. He requested \$30.33 for the cost of the watch, plus \$1.71 for copies and postage.

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

Respondent stated the Unit Team advised Claimant he would not receive a refund because the engraving did not destroy the integrity of the item, and he would be required to donate, destroy, or mail the item out of the facility by November 9, 2017, which Claimant failed to do. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6982 be denied.

Claim No. 6997, Claimant, Zachary Brooks #96519

**v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$225.00**

Claimant alleged his television, headphones, and headphone extension were missing when he returned from dinner. The items were found the same day in another inmate's cell and were sent out as disciplinary evidence. Claimant later learned his property had been destroyed.

**Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC**

Respondent stated theft by another inmate is not a result of staff neglect, and Claimant's claim was not filed within the 15 working days allowed by KAR 44-16-102; the claim was not filed until two months after the discovery of the loss. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6997 be denied.

Claim No. 7000, Claimant, Brian Jones #99726
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$250.00

Claimant alleged he was taken to segregation and his property, including a variety of items, was lost or stolen.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC

Claimant filed a facility property claim on March 12, 2018, and the response to that claim was:

This is a duplicate claim that was denied due to being untimely. The duplicate was filed on 11/20/17, which is outside of the time frame per JMPP I-1 I 8D. This claim is also untimely as well being filed 3/12/18 for a loss that occurred on 9/21/17. Claimant does not dispute this in his present claim or offer any justification for the delay.

Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 7000 be denied.

Claim No. 6966, Claimant, Tod Pabst #65728
v. Respondent, KDOC
due to property loss in the amount of \$251.28

Claimant stated his 15-inch Cleartunes television quit working 102 days after receiving it. He stated two officers inspected the television before it was sent for repairs and did not appear to have visible damage. The television was still in the 180-day warranty provided by Cleartunes and was sent to U.S. Commissary Solutions for warranty repair. They denied service due to “signs of tampering” and the television cabinet looked to have been opened. They could not determine whether the television was defective or had been misused or tampered and the television was returned to Claimant who completed a “Request or Authorization to Remove Personal Property” with the chosen disposition of “Destroy” selected. Claimant then filed a property damage loss claim and was denied.

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

According to KAR 44-16-105 and IMPP 01-118, claims shall not be paid “unless the loss or damage directly resulted from the intentional or negligent act or omission of a correctional employee.” The facts presented do not establish Claimant’s television was mishandled by KDOC staff or his loss is the direct result of staff negligence. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6966 be denied.

Claim No. 6968, Claimant, Randy Jennings #111399
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$201.65

During the time of the hearing, the Committee was unable to contact Claimant. His claim was summarized by Committee staff. Claimant alleged when claiming his items upon release from segregation, his television was missing, and correctional staff failed to pack it.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent recommended the claim be carried over.

Following discussion, the Committee recommended Claim No. 6968 be carried over.

Claim No. 6974, Claimant, Robert Jenkins #109454
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$581.30

Claimant alleged all of his property was stolen, including his television, cooler, and hot pot, due to his cell not being secured when he was removed from his cell.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated claimant was removed from his cell because of his visitor failing to clear the K-9 drug screen upon entering the facility and being found in possession of contraband. His cell was searched, and a stolen television was recovered, as well as an altered hot pot. There were cabinets in the cell that can be locked with padlocks to secure offender property. The claim investigator concluded, "Offender Jenkins could have secured these items in his locker/cabinet prior to leaving his living area." According to KAR 44-16-105 and IMPP 01-118, inmates own personal property at their own risk, and claims shall not be paid "unless the loss or damage directly resulted from the intentional or negligent act or omission of a correctional employee." Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6974 be denied.

Claim No. 6975, Claimant, Matthew McDaniel #98722
v. Respondent, Lansing Correctional Facility (LCF)
due to property loss in the amount of \$124.12

The Chairperson informed the Claimant the claim would be carried over because the Respondent had indicated the claim could not be fully investigated.

Following discussion, the Committee recommended Claim No. 6975 be carried over.

Claim No. 6950, Claimant, Santo Cabrales #0113255
v. Respondent, Hutchinson Correctional Facility (HCF)
due to personal injury in the amount of \$3,000.00

The Chairperson informed the Claimant the claim would be carried over because the Respondent had indicated the claim could not be fully investigated.

Following discussion, the Committee recommended Claim No. 6950 be carried over.

Claim No. 6971, Claimant, Benjamin Milbrandt #82765
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$29.89

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6971 be denied due to settlement.

Claim No. 6995, Claimant, Joet Ramsey #117987
v. Respondent, KDOC
due to property loss in the amount of \$29.67

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6995 be denied due to settlement.

Claim No. 7001, Claimant, Keaton Mollerker #114281
v. Respondent, KDOC
due to property loss in the amount of \$1,320.36

The Chairperson informed the Claimant the claim would be carried over because the Respondent had indicated the claim could not be fully investigated.

Following discussion, the Committee recommended Claim No. 7001 be carried over.

Claim No. 6972, Claimant, Robert Blessman #96561
v. Respondent, KDOC
due to property loss in the amount of \$373.86

On June 4, 2018, Claimant filed a facility property claim stating his electronics were confiscated on February 14, 2018, due to his drop in incentive level. On February 16, 2018, he received a property disposition slip in the mail giving him one week to destroy, donate, or mail the property out of the facility. Claimant failed to make removal arrangements, and the items were donated on February 28, five days after the deadline.

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

The Respondent stated IMPP 11-101 clearly provides for the removal of property on an inmate's second reduction within five years, and Lansing Correctional Facility General Order allows offenders seven days to make disposition arrangements. According to KAR 44-16-105 and IMPP 01-118, inmates own personal property at their own risk, and claims shall not be paid "unless the loss or damage directly resulted from the intentional or negligent act or omission of a correctional employee." Claimant engaged in conduct that resulted in a second reduction in incentive level and deprived him of the privilege of possessing certain items in the facility. He was notified he needed to arrange for removal of the items, and he failed to do so. The property was held five days beyond the given deadline, and then it was disposed of in accordance with policy. There is no showing he has suffered a loss as the direct result of staff negligence. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6972 be denied.

Claim No. 6988, Claimant, Stephen James Ard #117599
v. Respondent, El Dorado Correctional Facility (EDCF)
due to property loss in the amount of \$49.76

Claimant stated this claim has been settled.

Following discussion, the Committee recommended Claim No. 6988 be denied due to settlement.

Claim No. 6960, Claimant, Ryan Cheatham #96193
v. Respondent, Ellsworth Correctional Facility (ECF)
due to personal injury in the amount of \$500,000.00

Claimant stated he was injured when he was forced to stand up while handcuffed in the shower on April 27, 2018.

Respondent, ECF
represented by Libby Snider, Staff Attorney, KDOC

Claimant was involved in a fight on April 27, 2018, to which he pleaded guilty, but he did not file a personal injury claim with ECF regarding the alleged elbow injury; however, he did file a grievance. Although he alleges the elbow injury occurred on April 27, 2018, the medical records reveal the first time he reported an elbow injury is the evening of May 18, 2018, three weeks after the alleged injury incident, even though he was seen by medical staff on April 27, 2018, and on April 30, 2018, but made no complaints about an elbow injury. Claimant's elbow was x-rayed on May 25, 2018, after he first raised concern about his elbow on May 18, 2018.

Medical records established Claimant has an injured elbow; however, when and how the injury occurred are unknown. This investigation found no evidence to establish the injury occurred on April 27, 2018, and in the manner he claims. There are no incident reports to show the elbow injury occurred or when and how it occurred. Additionally, the medical records show

Claimant first raised the elbow injury with medical staff three weeks after the alleged date of the injury. Respondent recommended the claim be denied.

Following discussion, the Committee recommended Claim No. 6960 be denied.

Adjourn

The Chairperson adjourned the meeting at 4:06 p.m.

Prepared by Melissa Lowrey

Edited by Natalie Nelson and Whitney Howard

Approved by the Committee on:

June 24, 2019

(Date)