

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

November 1, 2011
546-S—Statehouse

Members Present

Representative Joe Patton, Chairperson
Senator Terry Bruce
Senator Kelly Kultala
Senator Ty Masterson
Senator Dennis Pyle
Representative Rob Bruchman
Representative Bill Feuerborn
Representative Bob Grant
Representative Phil Hermanson
Representative Mitch Holmes
Representative Steve Huebert

Members Absent

Senator Tim Owens, Vice-chairperson
Representative Gregory Smith

Staff Present

Cindy Lash, Kansas Legislative Research Department
Dylan Dear, Kansas Legislative Research Department
Mike Heim, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Kathy Letch, Committee Secretary

Conferees

Libby Snider, General Counsel, Kansas Department of Corrections

Morning Session

Chairperson Patton called the meeting to order.

Representative Feuerborn moved to approve the minutes of the September 15, 2011, meeting of the Joint Committee on Special Claims Against the State; Senator Masterson seconded the motion; the motion carried.

**CLAIM FROM INMATE AT
EL DORADO CORRECTIONAL FACILITY**

The Chairperson opened the telephone hearing filed by an inmate at El Dorado Correctional Facility.

Claim No. 6338, Claimant, Cledith Bohanon #30993
v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$21.47

Claimant summarized his claim. He stated his boots were not on his property inventory sheet upon his release from segregation. His property sheet did list boots upon his transfer from Hutchinson Correctional Facility. The KDOC response states his property claim was not submitted within the required time limit. He stated he submitted the claim at the first available time to get it notarized; the delay of submission was not his delay.

Respondent, Hutchinson Correctional Facility/Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the Claimant's inventories are signed and no notation was made of any missing property. She stated his internal property claim was not submitted within the time allowed and scarcity of notaries is not usually a problem. Claimant stated that he saw on the inventory sheet that his boots were not listed. All inmates are given a copy of the rule book that describes the inventory sheet procedure. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6338 be denied. (See section captioned "Committee Action and Recommendation.")

**CLAIMS FROM INMATES AT
HUTCHINSON CORRECTIONAL FACILITY**

The Chairperson opened the telephone hearings filed by inmates at Hutchinson Correctional Facility.

Claim No. 6318, Claimant, Ryan Pinkston #65424
v. Respondent, El Dorado Correctional Facility
due to loss of property in the amount of \$31.70

Claimant summarized his claim. He stated upon transfer to Hutchinson Correctional Facility and receiving his property, some of his property was missing.

Respondent, El Dorado Correctional Facility/Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the claim was regarding a mass shakedown. The investigating officer is one of the officers that was present at the shakedown. She stated some of the

property was sent back to the facility stockroom, where it should have been kept. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6318 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6329, Claimant, Gary Lynn Gillom Jr #87778
v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$113.73

Claimant summarized his claim. He stated his inventory sheet did not list all his property when he was packed out to segregation. He was not given a confiscation sheet showing the missing property was confiscated. The missing property was not returned.

Respondent, Hutchinson Correctional Facility/Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the property inventories do not have notation of missing property at the time of signing the inventories. The missing property claim was not submitted within the time limit. There was no way to substantiate the property had been within his possession at the time of inventorying. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6329 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6341, Claimant, Hector Ponce #79202
v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$29.96

Claimant summarized his claim. He stated he placed an order at the canteen and the money was debited from his account. He was put into segregation, and therefore could not receive his canteen order. The money was not put back into his account. He could not check his account while in segregation. He filed the claim upon release from the hold.

Respondent, Hutchinson Correctional Facility/Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the Claimant's property claim was not submitted for three months. Fifteen day within the discovery of the loss is the time frame allowed for submitting a property claim. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6341 be allowed \$29.96 from Hutchinson Correctional Facility. (See section captioned "Committee Action and Recommendation.")

Claim No. 6352, Claimant, Charles H. Roberson #6000743

**v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$300.00**

Claimant summarized his claim. He stated his property was packed out of his cell when he was put into the clinic; the inventory sheets did not list all his property.

**Respondent, Hutchinson Correctional Facility/Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC**

Respondent stated the only item missing upon return of his property was his fan. The inventory sheets were signed. The property was secured; not left at the station. The recommendation is this claim be denied.

The claimant stated when his property was in the closet, the porters went through his property. He asked for video to be reviewed. The theft occurred before the inventory was made, but after it was put in the closet. He mistakenly put the \$300 amount for this claim; the claim is for \$112.96.

Following discussion, the Joint Committee recommended that Claim No. 6352 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6347, Claimant, Nicholas Gene Miesner # 81283

**v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$42.18**

Claimant summarized his claim. He stated since being put in segregation, some of his property has been missing.

**Respondent, Hutchinson Correctional Facility/Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC**

Respondent stated the property claim was made almost a year after the occurrence of the loss. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6347 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6359, Claimant, Lucas R. Scales # 57889

**v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$1,116.66**

Claimant summarized his claim. He stated he was returned to HCF from work release. He had been put into segregation several times, lost his level status, and each time property was missing from the inventory sheets. He was told to wait until his level status was restored.

After escaping from work release, he turned himself in, and his property was not sent to his family nor returned to him, regardless of his loss of level.

**Respondent, Hutchinson Correctional Facility/Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC**

Respondent stated some of the claimant's property was returned to him upon his return. His claims were not made within the 15 days required. Personal property left by an inmate at a facility is considered abandoned and forfeited. The facility recommended \$34.61 be paid. The claimant refused the partial payment. The recommendation is this claim be denied.

A master list of registered property is kept; it is up to the inmates to see that their property is registered.

Claimant states he was in segregation, therefore he could not claim missing items, as he was not given property. Some of the property was originally sent to him by his family.

Following discussion, the Joint Committee recommended that Claim No. 6359 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6355, Claimant, Leonard Mills #24700

**v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$12.99**

Claimant summarized his claim. He stated while in segregation, he left a book. He reported the missing book; they found the book; and took it to C Unit. It was then lost.

**Respondent, Hutchinson Correctional Facility/Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC**

Respondent stated the 15 days for claims to be filed was expired. The recommendation is this claim be denied.

At the bottom of the form, the warden stated it was staff fault and the claim should be paid. The reason it was then denied is that it was not filed in a timely manner.

The officers asked the Claimant to wait to file the property loss claim, because the officers knew they previously had possession of the book.

Following discussion, the Joint Committee recommended that Claim No. 6355 be allowed for \$12.99 from Hutchinson Correctional Facility. (See section captioned "Committee Action and Recommendation.")

Claim No. 6357, Claimant, Patrick D. Clay # 71823
v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$8.75

Claimant stated the depreciated amount for his missing sweatshirt, for which the Respondent recommended payment, would be acceptable.

Following discussion, the Joint Committee recommended that Claim No. 6357 be allowed for \$4.38 from Hutchinson Correctional Facility. (See section captioned "Committee Action and Recommendation.")

Claim No. 6363, Claimant, Douglas Aldrich # 79156
v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$7.76

Claimant summarized his claim. He stated his gym shorts were turned in to be laundered; they were not returned to the Claimant. His number was stenciled on the shorts. The internal claim was denied due to personal property being owned at their own risk. They are not allowed to launder in their cells, nor hang clothing to dry in their cells. Many people handle property.

Respondent, Hutchinson Correctional Facility/Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated there is no substantiation that the shorts were turned in for laundering, nor failed to be returned. There is no documentation showing negligence on the part of the state. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6363 be allowed for \$7.76 from Hutchinson Correctional Facility. (See section captioned "Committee Action and Recommendation.")

Claim No. 6372, Claimant, Hugo V. Aquilera # 95714
v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$230.00

Claimant summarized his claim. He stated his television was taken due to his loss of level. When it was time to get it back, they told him they thought he had sold it.

**Respondent, Hutchinson Correctional Facility/Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC**

Respondent stated the television was stored when his incentive level was reduced. When he regained his incentive level, his television was missing. No inventory was taken when his level was reduced. There was no evidence the television was taken by staff and no inventory sheet. It is staff responsibility to fill out inventory sheets upon taking control of inmate property. There is no evidence of staff taking control of the Claimant's property. If they did, the Claimant should have asked for the inventory sheet. Two possibilities exist: the property did not exist, or the property was taken and staff lost it out of negligence. The recommendation was the claim be denied.

There was no dispute that he had owned the television. It is not uncommon for an inmate to loan or sell property when knowing an incentive level is changing. There is no proof the television was taken.

The Claimant stated the camera should show the television was taken. He stated the transition happened, yet he was written up for having a television while in incentive level 1; this should prove the television was still in his possession.

Following discussion, the Joint Committee recommended that Claim No. 6372 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6335, Claimant, Lewin Anderson #92556
v. Respondent, Hutchinson Correctional Facility/KDOC
due to personal injury in the amount of \$5,000.00**

Claimant summarized his claim. He stated he was given the wrong medication. He did not know he had taken the wrong medication, until he returned to his cell and he got down on the floor. The officers took him to the medical unit; his body felt like it was on fire for 20 seconds or so, he dry heaved, and then he passed out. He awoke in the hospital. He wants an apology from the state, not to put the state in financial difficulty.

**Respondent, Hutchinson Correctional Facility/Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC**

Respondent stated the claimant may have been given the wrong medication. If so, the only side-effect would have been sleepiness. The only lasting effect was soreness from staff's attempts to revive him. There were no indications he was given CPR or any other reasons for being sore. It appears the sole injury is that the Claimant slept. The recommendation is this claim be denied.

The Claimant stated the nurse did not tell him to go back to the clinic for assessment; the officer would have been notified. The medication's colors may change at times, as they are generic medications. The reason for soreness may have been from being given a different medication to wake him up, Narcaine.

Following discussion, the Joint Committee recommended that Claim No. 6335 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6320, Claimant, David L. Woodward #55044
v. Respondent, El Dorado Correctional Facility
due to property damage in the amount of \$5.82

Cindy Lash, KLRD, summarized the claim. The claimant's cell had an infestation of ants. The issue was not addressed in a timely manner.

Respondent, El Dorado Correctional Facility
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the Claimant complained of ants in his cell. Schendel Pest Control was on site once a month. Appropriate action was taken. The infestation was handled. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6320 be denied. (See section captioned "Committee Action and Recommendation.")

The Committee recessed for lunch.

Afternoon Session

The Chairperson reconvened the meeting.

CLAIMS FROM INMATES AT
LANSING CORRECTIONAL FACILITY

The Chairperson opened the telephone hearings filed by inmates at Lansing Correctional Facility.

Claim No. 6331, Claimant, Aaron R. Suits #20994
v. Respondent, Hutchinson Correctional Facility/KDOC
due to loss of property in the amount of \$23.54

Claimant summarized the claim. He stated, upon going to segregation, some of his property was not packed out. When they brought the inventory sheet to him, he refused to sign it because of the missing items. He filed the property claim upon getting out of segregation.

**Respondent, Hutchinson Correctional Facility/KDOC
represented by Libby Snider, Legal Counsel, KDOC**

Respondent stated the Claimant's refusal to sign the inventory sheet and filing of a claim prompted an investigation; some of the property was located, some had been altered and destroyed, and some not listed on the original inventory.

Following discussion, the Joint Committee recommended that Claim No. 6331 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6370, Claimant, Travis B. Cogle # 82049
v. Respondent, Lansing Correctional Facility
due to loss of property in the amount of \$615.09**

Claimant summarized the claim. His property was given to two officers due to the Claimant being dropped a level. He then received a letter saying he had to mail it out. He requested the property be held through the appeals process. An email was sent to Property asking for his property to be held. Claimant sent a form 9 asking for his mp3 player to be mailed out to his daughter. The form 9 was never returned. While conducting a search, his mp3 player was found in another inmate's possession.

**Respondent, Lansing Correctional Facility
represented by Libby Snider, Legal Counsel, KDOC**

Respondent stated the Claimant has not suffered a loss. His mp3 player was taken, stored, stolen, recovered, and stored as evidence. The mp3 player is still in storage and the songs are still on it.

The Claimant has made arrangements with the property manager to wait to mail out the mp3 player until this claim has been heard and decided. The mp3 player has been disabled by the company; upon a favorable decision by the Committee, the mp3 player will be turned on for him to send it out.

Following discussion, the Joint Committee recommended that Claim No. 6370 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6369, Claimant, Barbara C. Berggren
v. Respondent, Kansas Bureau of Investigation (KBI)
due to error causing incorrect KPERS benefit in the amount of \$2,280.15**

Claimant summarized the claim. The Human Resources Department of the KBI, in completing her retirement paperwork, made an error, thus making the Claimant assume her retirement income would be an amount sufficient for her to retire. If she had known the correct amount of the retirement figure, she would have worked another year to increase her retirement benefit. The claim is for the KBI to take responsibility for the error.

KPERS receives the numbers and date from the KBI. KPERS notified KBI of the overpayment. No one notified the Claimant of the overpayment. Therefore, her benefits are being reduced by \$50 per month for approximately 48 months to repay the overpayment.

**Respondent, Kansas Bureau of Investigations
represented by Laura Graham, General Counsel, KBI**

Respondent stated the calculation error was made by an employee new to the task of submitting retirement figures and documents, an overage of \$101.53 per check. The error came to no one's attention at that time. When it was discovered, the HR employee asked her supervisor if she should contact the Claimant and was told not to; they would handle the matter. The benefits were overpaid; the KBI recommendation is that this claim be denied.

The Chairperson recognized KPERS General Counsel. KPERS is a trust fund that is required by law to correct any mistakes in benefits. An offer has been made to the claimant to collect less per month for a longer period of time. The administrative appeal within KPERS was denied by the claimant, as she thought KBI should have to pay for the error.

Following discussion, the Joint Committee recommended that Claim No. 6369 be denied. (See section captioned "Committee Action and Recommendation.")

HEARING - CARRIED OVER
FOR CONFIRMATION OF AMOUNT OF PAYMENT

Claim No. 6362, Claimant, David J. Sharp
v. Respondent, Kansas Bureau of Revenue
Refund of income tax paid to KS - owed to CO in the amount of \$5,266.00

Dylan Dear, KLRD, summarized the claim and answered the questions the Committee previously had asked whether \$5,266.00 was the correct amount the Claimant had erroneously paid KDOR and owed Colorado; and whether the Claimant had received no notice of the claim prior to April 26, 2011. The State of Colorado had sent no notice to Claimant prior to the letter he shared in his documentation. Mr. Dear stated the amount of the claim was the correct amount due Claimant.

Following discussion, the Joint Committee recommended that Claim No. 6362 be allowed in the amount of \$5,266.00 from the Kansas Department of Revenue. (See section captioned "Committee Action and Recommendation.")

HEARING – CLAIM WITHDRAWN

Claim No. 6330, Claimant, John Edwards #31681
v. Respondent, Ellsworth Correctional Facility
Due to Loss of property in the amount of \$530.00

Claimant had submitted a letter requesting withdrawal of claim no. 6330, because it had been handled internally.

Following discussion, the Joint Committee recommended that Claim No. 6330 be denied. (See section captioned "Committee Action and Recommendation.")

HEARING ON CLAIM FROM
TOPEKA CORRECTIONAL FACILITY

Claim No. 6373, Claimant, Patience Jane Theiss #94695
v. Respondent, Topeka Correctional Facility
Due to Loss of property in the amount of \$20.00

Cindy Lash, KLRD, summarized the claim. The Claimant's reading glasses were stolen when she was out to court. She gets headaches and needs prescription reading glasses.

Respondent, Lansing Correctional Facility
represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the Claimant had not noted any discrepancies on the inventory sheets involved. The property claim was not filed within the 15 days allowable. The recommendation was the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6373 be denied. (See section captioned "Committee Action and Recommendation.")

The next meeting of the Committee was scheduled for December 15, 9:00 a.m. Committee consideration of claims were reviewed. The meeting was adjourned.

Prepared by Kathy Letch
Edited by Cindy Lash and Dylan Dear

Approved by Committee on:

December 15, 2011
(Date)