

COMMONWEALTH OF KENTUCKY
Claims Commission
Agenda
March 27, 2018

*Minutes
Approved*

The Kentucky Claims Commission received 86 negligence claims filed against the Commonwealth during the month of February, 2018. Angela reports that 37 of these claims were set up for under \$2,500.00.

Investigators Angela Robertson and Raymond Shields decided 31 claims under \$2,500.00 in February, 2018. Angela reports that 22 of these claims were dismissed and nine (9) were awarded, for a total amount awarded of **\$3,976.03**.

At its meeting on February 27, 2018, the Kentucky Claims Commission dismissed 11 negligence claims and awarded none. Together with the claims investigated in-house, the Claims Commission dismissed a total of 33 negligence claims and awarded a total of nine (9) negligence claims for a total amount awarded of **\$3,976.03** in February, 2018.

FOR INSTRUCTIONS FROM THE COMMISSION:

BC-2014-745 and BC-2014-746 (Consolidated)

Wendy Poe and William Poe v. University of Kentucky

Notes: Agreed Order of Dismissal filed as these consolidated claims were settled in the Fayette Circuit Court.

Counsel's Recommendation: Enter the Agreed Order of Dismissal as agreed by the parties.

BC-2016-500

Debra Fugate v. Transportation Cabinet, Dept. of Highways

Notes: Agreed Order of Dismissal filed awarding the Claimant \$3,500.00.

Counsel's Recommendation: Enter the Agreed Order of Dismissal awarding the Claimant \$3,500.00 in settlement of this claim.

BC-2017-273

Michal Korzeniowski v. Transportation Cabinet, Dept. of Highways

Notes: Agreed Order of Dismissal filed awarding the Claimant \$2,500.00.

Counsel's Recommendation: Enter the Agreed Order of Dismissal awarding the Claimant \$2,500.00 in settlement of this claim.

BC-2017-523

Elizabeth McMillan-McCartney v. Northern Kentucky University

Notes: Settlement Agreement and General Release entered into by the parties for \$3,100.00.

Counsel's Recommendation: Enter an Order awarding the Claimant \$3,100.00 in settlement of this claim.

FULL COMMISSION REVIEWS:

BC-2017-231

Uriah M. Pasha #092028 v. Justice & Public Safety Cabinet, Dept. of Corrections

Notes: The Claimant stated that on March 31, 2017 he was transferred from Kentucky State Reformatory to Eastern Kentucky Correctional Complex due to "personal bias" at KSR. The Claimant stated he was "blackballed" from obtaining or maintaining employment at EKCC and he was not placed in honor housing upon his transfer. The Respondent investigated this claim and stated it is standard procedure at KSR to facilitate movement and bed space when receiving inmates from other institutions, as was the case in the subject claim. Clearance for transfer is based on medical issues and mental health issues, conflicts and program assignments and that the Claimant was randomly selected for transfer based upon the criteria. KSR staff properly notified EKCC that the Claimant was previously employed as a dormitory janitor. The Respondent's policy regarding job placement is "to the extent that jobs are available" as stated in the memo to the Claimant on May 26, 2017. The Claimant cannot be assigned a job if none exists. The Claimant requested a Full Commission Review on March 2, 2018, stating that he was transferred for someone else's discipline, he was transferred out of honor housing and employment after working 30 years to get to that position. The transfer has set the Claimant back mentally "50 years" and EKCC is the badlands of the Department of Corrections.

Investigator's Recommendation: Uphold the previous denial of this claim.

BC-2017-285

Leslie Haun #205731 v. Justice & Public Safety Cabinet, Dept. of Corrections

Notes: The Claimant states that he was placed in restricted housing on January 20, 2017 and the guards placed his property into five yellow tubs. On January 26th, the Claimant discovered "extreme loss" upon doing an inventory of his property. The Claimant attempted to submit a grievance report due to alleged theft but was unable to obtain the required forms. The Claimant ultimately filed his grievance in February, but it was dismissed as being untimely filed. The Claimant was allowed to refile the grievance but he was transferred and did not appoint another inmate to finish the grievance so it was dismissed. The Claimant asserts the Respondent was negligent because institutional records would prove that the type of loss/ theft was common due to inmates not being adequately supervised. The Respondent stated that cameras were reviewed, but it did not find any footage of the alleged theft. The Claimant's property sheet listed three tubs and was signed by the Claimant. None of the property listed stolen was inventoried on January 20th. EKCC never took possession of the property and requested this claim be dismissed. The Claimant stated there were five tubs packed but only three returned to him multiple times, but nowhere in the record does it show five tubs. The Claimant signed the property form that nothing was missing. None of the items listed were accounted for on the EKCC staff inventory list so they were never in possession on these items. The Claimant submitted a Full Commission Review stating that he requested access to the video footage and was denied and that he signed the property form under duress. The Claimant provided

duplicate copies of information already in the file, but did not submit proof that the missing property was ever in the possession of EKCC.

Investigator's Recommendation: Uphold the previous denial of this claim.

BC-2017-306

Lisa Byrd v. Transportation Cabinet, Dept. of Highways

Notes: The Claimant was driving her 2006 Harley Davidson motorcycle northbound on I-64 and was about 15 yards from Mile Marker 136 when she drove over a section of road that was uneven and her motorcycle bottomed out and the force caused her to rise about three inches off the seat. The Claimant was able to maintain control of the vehicle, but the impact caused damage to her motorcycle. The Claimant asserts that the Respondent was negligent because its road construction should be non-hazardous. The Respondent stated that its District 5 investigated the claim and found no prior calls or complaints regarding issues in this area. A "slight bump" is located near the yellow line but the Respondent's crew cannot grind the asphalt any further. The area in question is not a recurring problem area and the Respondent requested the claim be dismissed. The Claimant did not provide evidence that the Respondent was aware of the issue, while there is confusion on the extent of the road condition, without further evidence being offered the condition cannot be determined to be of such nature as to have been able to cause the extent of damages to the Claimant's motorcycle. The Claimant requested a Full Commission Review but has not submitted any additional information.

Investigator's Recommendation: Uphold the previous denial of this claim.

BC-2017-326

Richard M. Preece v. Transportation Cabinet, Dept. of Highways

Notes: The Claimant stated that on July 10, 2017, he was traveling on KY HWY 1927 in Clark County when he entered a curb and encountered a red vehicle in the middle of the road. In order to avoid striking the vehicle, the Claimant was forced to hit a ditch where the road had broken off, causing damage to his vehicle. The Claimant asserts negligence because the roadway had been neglected for quite some time, causing the road to break off. The Respondent stated District 7 investigated the claim and stated a "hole" was reported on July 10, 2017. The Respondent also stated that the Claimant's photographs show that the subject ditch was outside of the roadway and the rumble strips. The Respondent requests the claim be dismissed. The Claimant should have been aware of the hazard and the Respondent made repairs in a reasonably prompt manner. The Claimant noted that the collision was the result of another motorist improperly operating their vehicle. The Claimant requested a Full Commission Review on 2/26/2018 because he disagrees with the decision and stated that his photographs show that the road was neglected.

Investigator's Recommendation: ~~Recommend the dismissal be upheld.~~

Reverse + Award \$450.92

MOTIONS:

BC-2015-794

Clyde Smith, Jr. v. Transportation Cabinet, Dept. of Highways

Notes: Claimant's Motion to Dismiss filed. ✓

Counsel's Recommendation: Enter an Order of Dismissal dismissing this claim without prejudice at the request of the Claimant.

BC-2017-549

Weslee D. Farley v. Cabinet for Health & Family Services

Notes: Respondent's Motion to Dismiss and Claimant's response filed thereto.

Counsel's Recommendation: ~~For discussion.~~ *Dismiss*

RECOMMENDED ORDERS:

BC-2015-317

Roberta L. Curtis v. Morehead State University

Notes: Hearing Officer James Howard's Recommended Order of Dismissal in response to the parties' Joint Motion to Dismiss.

Counsel's Recommendation: Adopt the recommendation of the hearing officer.

BC-2016-419

Estate of David Gibbs v. Transportation Cabinet, Dept. of Highways

Notes: Hearing Officer Allen Wilson's Findings of Fact, Conclusions of Law and Recommended Order of Dismissal denying payment of the claim and the Claimant's exceptions filed thereto.

Counsel's Recommendation: Adopt the recommendation of the hearing officer. ✓

BC-2016-483

Dorothy Coleman v. University of Kentucky

Notes: Hearing Officer Patrick Flannery's Recommended Order of Dismissal with prejudice at the written request of the Claimant.

Counsel's Recommendation: Adopt the recommendation of the hearing officer.

BC-2017-221

Danny Bridwell v. Transportation Cabinet, Dept. of Highways

Notes: Hearing Officer James Howard's Findings of Fact, Conclusions of Law and Recommended Order denying payment of the claim.

Counsel's Recommendation: Adopt the recommendation of the hearing officer.

BC-2017-253

Darius Hoskinson v. Tourism, Arts & Heritage Cabinet, Dept. of Parks

Notes: Hearing Officer Tim Cocanougher's Findings of Fact, Conclusions of Law and Recommended Order denying payment of the claim.

Counsel's Recommendation: Adopt the recommendation of the hearing officer.

BC-2017-256

Anthony Guinyard, Jr. v. Transportation Cabinet, Dept. of Highways

Notes: Hearing Officer Tim Cocanougher's Findings of Fact, Conclusions of Law and Recommended Order granting Motion to Dismiss.

Counsel's Recommendation: Adopt the recommendation of the hearing officer.

BC-2017-274

Mechelle Fair v. Transportation Cabinet, Dept. of Highways

Notes: Hearing Officer James Howard's Findings of Fact, Conclusions of Law and Recommended Order awarding the Claimant the sum of \$5,279.76 in damages..

Counsel's Recommendation: Adopt the recommendation of the hearing officer.

Total number of Claims: 17