

STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on March 27, 2012, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. James Pawlak	Justice	\$60.00

The following claims were considered and decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
2. AT&T Wisconsin	Transportation	\$229.78
3. Hakim Shirwa	Revenue	\$6,920.00
4. St. Mary's Cement	Agriculture, Trade & Consumer Protection	\$1,355.00
5. Wolf Farms, LLC	Agriculture, Trade & Consumer Protection	\$253.19
6. Jonathan Wojak	Agriculture, Trade & Consumer Protection	\$1,088.63
7. Oscar Garner	Corrections	\$175.21
8. Charles Sheppard	Corrections	\$1,261.14
9. Elhajjalik Brickhouse	Corrections	\$395.00
10. Rosemary Cleveland	Corrections	\$259.00
11. Regina Ferrell	Corrections	\$151.00
12. Holly Ferry	Corrections	\$540.00
13. Brooke Gagliano	Corrections	\$250.00
14. Michael Gollinger	Corrections	\$726.00
15. Latacia N. Jewell	Corrections	\$624.99
16. Kimberly Malone	Corrections	\$461.00
17. Nicole McDade	Corrections	\$230.00
18. Mandy L. (Meekma) Castillo	Corrections	\$96.00
19. Jada Miller	Corrections	\$826.67
20. Natalie Mustapich	Corrections	\$368.00
21. Angelique Richards	Corrections	\$325.83
22. Betty E. Salahadyn	Corrections	\$1,135.95
23. Heather (Schloerke) Scharlau	Corrections	\$359.30
24. Rebecca Schultz	Corrections	\$304.89
25. Alacia Smith	Corrections	\$375.00

The Board Finds:

1. **James Pawlak** of West Allis, Wisconsin claims \$60.00 for refund of a concealed carry application fee and miscellaneous costs associated with bringing this claim. In November 2011 the claimant submitted a concealed carry application, along with the \$50 application fee. The claimant believes this fee is unconstitutional. The claimant states that the right to keep and bear arms is guaranteed by the Wisconsin Constitution and that nothing in the Constitution gives the legislature, courts, or executive branch the authority to limit that right. The claimant further states that the US Supreme Court has declared the right to bear arms to be an individual right unrelated to membership in any militia. The claimant states that the carrying of concealed weapons constitutes the full exercise of the right to bear arms. The claimant believes that requiring a license to exercise that right and charging a fee for that license is the equivalent of a poll tax, which has been declared illegal by the US Supreme Court. The claimant therefore requests reimbursement of his \$50 application fee, along with \$10 for postage and other costs related to bringing this claim.

DOJ recommends denial of this claim. The claimant argues that because the US Supreme Court in *District of Columbia v. Heller* and *Harper v. Virginia State Bd. Of Elections*,

found that the right to bear arms is an individual right, any requirement that a citizen obtain a license and pay a fee is unconstitutional. However recent case law makes it quite clear that the right to bear arms under the Second Amendment of the US Constitution does not include a general right to carry handguns outside the home. DOJ also points to the fact that laws prohibiting or limiting the carrying of concealed weapons have been upheld by the courts and that such limitations exist in virtually all states, including Wisconsin. DOJ therefore recommends denial of this claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. *(Member Means not participating.)*

2. AT&T Wisconsin of Milwaukee, Wisconsin claims \$229.78 for cost of damage to a service wire caused by a DOT soil boring crew. The DOT crew was taking soil samples at a site in Wrightstown, WI on August 2, 2011. The claimant states that one of the samples was taken outside the area that DOT asked Digger's Hotline to mark prior to the dig (sample site #10). The claimant states that the boring crew struck and damaged an underground service line at that location. The claimant further states that their repair person did not see any lath at the damage site. The claimant believes DOT was negligent and requests reimbursement for damage to the line.

DOT recommends denial of this claim. DOT states that lath was placed at each of the dig site locations prior to contacting Digger's Hotline and that DOT requested marking of any utilities within 50' of the lath. No utilities were marked near dig site #10. DOT notes that each lath contained ground elevation information that was then entered on the Field Boring Log by the soil boring crew on the day of sampling. DOT states that the lath was the boring crew's only source of the elevation information and the fact that the elevation information for dig site #10 is clearly marked on the log is proof that lath was in place at dig site #10.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

3. Hakim Shirwa of Columbus, Ohio claims \$6,920.00 for 2004 and 2005 tax refunds. Claimant states that when he filed his 2000-2005 tax returns, he was a new immigrant and did not understand tax law. He states that his original tax preparer had him file as single, even though he had a wife and six children. The claimant later hired a new tax preparer to file several years of back taxes and also review his 2000-2005 filings. The new preparer filed amended and revised returns for 2000-2005 and also filed the claimant's 2006-2009 taxes, all as married-filing-jointly. In February 2011, DOR intercepted the claimant's 2010 Federal refund. The claimant's tax preparer again filed amended 2004 and 2005 state returns requesting refunds of \$4,200 and \$2,720, respectively, however DOR denied the refunds. The claimant believes it was unfair for DOR to intercept his Federal refund after he had correctly re-filed all of his Wisconsin returns.

DOR recommends denial of this claim. In 2005, DOR issued an assessment to disallow the claimant's homestead credits claimed and allowed for tax years 2001-2003 and denied the credit for 2004. The claimant appealed the assessment but was unable to provide records to verify his rent paid and also acknowledged that other people had lived with him. DOR and the claimant entered into a settlement allowing for half of the verified rent paid for 2001-2003 and disallowing any credit for 2004. The claimant signed a formal settlement agreement stipulating to an adjusted amount due. The claimant again filed for homestead credit in 2005, which was denied. The claimant did not appeal this denial. Pursuant to an installment agreement, the claimant made payments on the amount due from November 2006 through 2007. In 2009, DOR received amended tax returns for 2001-2005 from the claimant's new tax preparer (Mr. Kerner). DOR notified Mr. Kerner that these tax years were closed and the amended returns would not be accepted. In February 2011, DOR intercepted the claimant's 2010 Federal refund, which paid his remaining account balance in full. Mr. Kerner again filed 2004 and 2005 amended returns on behalf of the claimant and the department again notified Mr. Kerner

that these returns would not be accepted and the refunds were denied. DOR believes there is no basis for payment of this claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

4. St. Mary's Cement, Inc. of Manitowoc, Wisconsin claims \$1,355.00 for damage to a security gate card reader stanchion caused by a DATCP employee. On October 19, 2011, a DATCP inspector arrived at St. Mary's Cement to inspect a vehicle scale. When the inspector arrived, the contact person from St. Mary's was not yet present. The inspector did not want to block the driveway, so he backed his truck out of the entrance. While doing so, he struck a speaker post with a card reader that was in his blind spot. The entire post broke off at ground level and damaged the bottom of the stanchion. The claimant requests reimbursement for the cost of replacing the stanchion and mounting base.

DATCP has no objection to payment of this claim. Although DATCP believes this event was an accident not caused by the negligence of its employee, it does agree that the claimant's property was damaged by the DATCP employee. Because there was no negligence in this case, DATCP requests that the board not charge DATCP's budget for payment of this claim.

The Board concludes the claim should be paid in the amount of \$1,355.00 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade and Consumer Protection appropriation § 20.115(1)(j), Stats.

5. Wolf Farms, LLC of Bonduel, Wisconsin claims \$253.19 for cost to replace a time clock that was broken by a DATCP employee. On August 22, 2011, a DATCP inspector was conducting a survey at Wolf Farms. While walking into the milk house, the inspector stumbled and fell against a shelf holding the time clock, which fell to the floor and broke. The claimant requests reimbursement for the cost to replace the time clock.

DATCP has no objection to payment of this claim. Although DATCP believes this incident was an accident and not caused by any negligence of the DATCP employee, the department agrees that the time clock was damaged by its employee. Because there was no negligence involved in this case, DATCP requests that the Claims Board not charge this payment to DATCP's budget.

The Board concludes the claim should be paid in the amount of \$253.19 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade and Consumer Protection appropriation § 20.115(1)(gb), Stats.

6. Jonathan Wojak of West Allis, Wisconsin claims \$1,088.63 for cost to repair a vehicle damaged by an Emerald Ash Borer trap that fell from a tree and struck the claimant's truck. On July 1, 2011, the claimant's vehicle was parked at a campsite at Goose Island Campground in LaCrosse, Wisconsin. The Emerald Ash Borer trap fell from a tree and hit the claimant's vehicle, scratching and denting it several places. The claimant has received an estimate of \$1,088.63 to repair his vehicle and requests reimbursement in that amount.

DATCP has no objection to payment of this claim in the reduced amount of \$750, the claimant's auto insurance deductible. DATCP has been conducting surveys to detect the presence of the Emerald Ash Borer since 2009. As part of that survey program, the department has placed approximately 19,000 purple prism traps in ash trees throughout the state. DATCP staff is trained to install the traps with the utmost care; however severe weather will occasionally cause traps to fall from trees. The department notes that severe weather was reported in the area of the campground at the time of this incident. DATCP also notes that during the three years of this survey program, this is the only reported incident of property damage caused by a falling trap. DATCP has no objection to payment of this claim but recommends the reduced amount of the claimant's insurance deductible. DATCP also requests that because there was no employee negligence in this incident, that the Claims Board not charge this payment to DATCP's budget.

The Board concludes the claim should be paid in the reduced amount of \$750.00 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade and Consumer Protection appropriation § 20.115(7)(m), Stats.

7. Oscar Garner of Waupun, Wisconsin claims \$175.21 for reimbursement for property allegedly lost by DOC staff. In 2006 the claimant was transferred from Green Bay Correctional Institution (GBCI) to the Wisconsin Secure Program Facility (WSPF). In February 2008 the claimant was transferred to Waupun Correctional Institution (WCI). He states that he received his property form at WCI on February 7, 2008, and realized he was missing a pair of sunglasses, a pair of tennis shoes and three pairs of socks. He filed an Inmate Complaint but it was dismissed as being past the 14 day time limit. DOC stated he was past the time limit because he had received a property list after his 2006 transfer from GBCI to WSPF that showed no sunglasses, tennis shoes or socks inventoried. DOC stated that the claimant should have filed the complaint for missing property at that time. The claimant states that he was in segregation prior to 2008 so he did not have access to his property and therefore had no way to know any was missing. On July 8, 2009, the claimant was placed in temporary lock up and released on July 9. The claimant states that when he received his property inventory on July 9, he noticed that tennis shoes, canteen items and an electric razor were missing. He filed an Inmate Complaint, which was dismissed by DOC on the basis that the items may have been stolen from his unsecured footlocker. The claimant states that he was not given a chance to lock his footlocker because the guard made him come to the door immediately and took him to temporary lock up. The claimant states it was DOC's fault that he was not given a chance to secure his property and he should therefore be reimbursed for his damages.

DOC recommends denial of this claim. DOC notes that the claimant's first complaint regarding missing property was made one-and-a-half years after he was first notified that these items were not in his property inventory. DOC points to the note at the bottom of the 2006 inventory stating that the claimant received a copy of the form on October 24, 2006. As to the second complaint, DOC notes that their inventory form shows no shoes in his inventory when he went into lock-up, however, the form submitted by the claimant has a check mark next to shoes. DOC believes the claimant has submitted a forged form to the Claims Board and is considering disciplinary action against the claimant. DOC further notes that the inventory form notes a razor in the claimant's property but not an electric razor. DOC states that any electric razor possessed by the claimant may have been traded or stolen prior to his being placed in lock-up. Similarly, any canteen items may have been consumed or stolen. DOC records indicate that the claimant's footlocker was unsecured in violation of DOC rules. Inmates are provided with padlocks and are responsible for keeping their valuables secure at all times. DOC believes there is no evidence that any of the claimant's property was lost due to staff negligence and requests denial of this claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

8. Charles Sheppard of Portage, Wisconsin claims \$1,261.14 for value of property allegedly improperly designated as contraband and destroyed by DOC staff. The claimant is an inmate at Waupun Correctional Institution. On May 3, 2010, he filed an Inmate Complaint (ICE) relating to property that was designated as contraband when he was placed in segregation in April. On June 15, 2010, the claimant contacted the warden to check on the status of his ICE and was told there was a backlog but that the claimant could appeal directly to the Corrections Complaint Examiner (CCE), which he did on June 17, 2010. The claimant states that at all times he kept property room staff up to date on the status of his complaint and appeal. On July 6, 2010, the claimant received a letter from the CCE extending their response time for his appeal and indicating that his administrative remedies had not been exhausted until they made their response. The claimant states that he believed this meant that no decision had been made regarding disposition of his property. On July 12, 2010, the claimant was released from segregation and was told by the property room that his property

had been destroyed after the warden dismissed his ICE. The claimant alleges he was never notified that his ICE had been dismissed and believes that his property should have been retained through the end of his appeals process and then he should have been allowed to mail out his property. The claimant states that DOC's Attachment 1, page 25, shows that he signed the form on April 20, 2010, but the staff note relating to destruction of his property was added later, and is therefore not proof that he was informed he needed to dispose of his property. The claimant also filed an ICE relating to designation of several family photos as gang-related contraband. The claimant believes this designation was unfair, noting that one of the photos was of his one-year-old nephew. The claimant alleges that he never provided an envelope to DOC for them to mail out the photos and believes they were improperly destroyed.

DOC recommends denial of this claim. DOC records indicate that all the property items related to this matter were correctly designated as contraband either because they were broken/alterd or were in amounts over institution limits. DOC notes that the claimant is routinely found to have property in excess of DOC limits. DOC records indicate that the claimant's property was held in excess of the required 30 day limit and that the warden had made a decision dismissing the claimant's ICE. DOC form 237A (Attachment 1, page 25), indicates that the claimant was informed that he needed to dispose of his property but refused to deal with property room staff, therefore, his property was destroyed. The department notes that DOC 303.10(3), Wis. Admin. Code provides that the "institution shall retain property until the warden makes a final decision" not until the inmate has exhausted all available appeals. As to the photographs designated as contraband, DOC staff determined that they contained gang-related activity. DOC records indicate that, although the photos were temporarily misplaced, they were eventually located and the two photos that were not allowed were mailed out in an envelope provided by the claimant in September 2010.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

9-25. 17 claimants claim the amounts shown below for value of personal property. On August 24, 2010, the DOC office on Capitol Drive in Milwaukee, Wisconsin, was destroyed by fire. Along with departmental property, personal property of DOC employees was destroyed. The claimants were DOC employees at the Capitol Drive office and request reimbursement for the value of their personal property.

DOC recommends payment of these claims in reduced amounts. In order to provide for a fair system of reimbursement, DOC has evaluated the property claimed by Capitol Drive employees using the IRS's general depreciation schedule. DOC recommends reimbursement in the depreciated amounts shown below.

<u>Claimant</u>	<u>Claimed Amount</u>	<u>DOC Recommended Amount</u>
Elhajjalik Brickhouse	\$395.00	\$150.71
Rosemary Cleveland	\$259.00	\$235.14
Regina Ferrell	\$151.00	\$62.25
Holly Ferry	\$540.00	\$240.73
Brooke Gagliano	\$250.00	\$142.88
Michael Gollinger	\$726.00	\$375.71
Latacia N. Jewell	\$624.99	\$502.84
Kimberly Malone	\$461.00	\$461.00
Nicole McDade	\$230.00	\$173.55
Mandy (Meekma) Castillo	\$96.00	\$67.87
Jada Miller	\$826.67	\$329.08
Natalie Mustapich	\$368.00	\$236.09
Angelique Richards	\$325.83	\$85.66
Betty E. Salahadyn	\$1,135.95	\$990.35
Heather (Schloerke) Scharlau	\$359.30	\$148.56
Rebecca Schultz	\$304.89	\$271.48
Alacia Smith	\$375.00	\$260.86

On August 12, 2011, the Claims Board initially reviewed these claims. For each claim, each employee listed various items of personal property that he or she kept at the office. DOC reviewed the claims and, following review, DOC recommended that each and every item of personal property listed be reimbursed, subject only to the standard IRS depreciation schedule.

State Risk Management generally does not provide coverage for employee personal property "except as needed for legitimate state business purposes as determined and agreed to in writing in advance by the agency risk manager." Given the wide variety of personal property that was listed for reimbursement, the Claims Board questioned whether all of it was actually work related. Because of the Risk Management policy and the Claims Board's questions, the Claims Board asked DOC to confirm the work related nature of the personal property. The Board specifically asked DOC to decide which personal property items could be characterized as having a legitimate state business purpose. DOC responded by affirming that every item listed by each claimant was legitimately work related.

Based solely on DOC's affirmation that all claimed property is legitimately work related, the Board concludes the claims should be paid in the reduced amounts recommended by DOC, based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation § 20.410 (1)(b), Stats. The Board further reaffirms the precedent set forth in its December 13, 1977, decision of the claim of Karen Gruba, that state employees not be reimbursed for the loss of "personal property brought to their work station for their convenience and enjoyment," and states that the payment of these claims is not intended to serve as future precedent for similar claims.

The Board concludes:

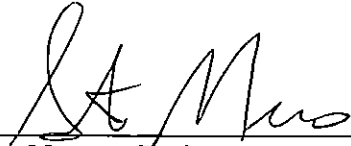
That the following identified claimants are denied:

James Pawlak
AT&T Wisconsin
Hakim Shirwa
Oscar Garner
Charles Sheppard

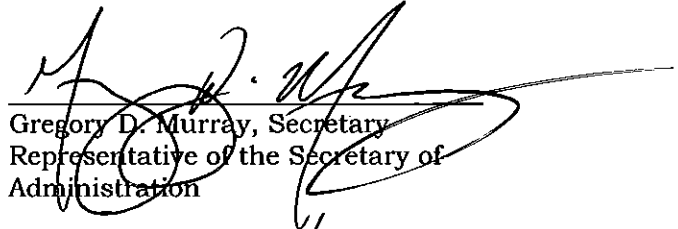
That payment of the below amount to the identified claimant from the following statutory appropriation is justified under § 16.007, Stats:

St. Mary's Cement	\$1,355.00	§ 20.115(1)(j), Stats.
Wolf Farms, LLC	\$253.19	§ 20.115(1)(gb), Stats.
Jonathan Wojak	\$750.00	§ 20.115(7)(m), Stats.
Elhajjalik Brickhouse	\$150.71	§ 20.410(1)(b), Stats.
Rosemary Cleveland	\$235.14	§ 20.410(1)(b), Stats.
Regina Ferrell	\$62.25	§ 20.410(1)(b), Stats.
Holly Ferry	\$240.73	§ 20.410(1)(b), Stats.
Brooke Gagliano	\$142.88	§ 20.410(1)(b), Stats.
Michael Gollinger	\$375.71	§ 20.410(1)(b), Stats.
Latacia N. Jewell	\$502.84	§ 20.410(1)(b), Stats.
Kimberly Malone	\$461.00	§ 20.410(1)(b), Stats.
Nicole McDade	\$173.55	§ 20.410(1)(b), Stats.
Mandy Castillo	\$67.87	§ 20.410(1)(b), Stats.
Jada Miller	\$329.08	§ 20.410(1)(b), Stats.
Natalie Mustapich	\$236.09	§ 20.410(1)(b), Stats.
Angelique Richards	\$85.66	§ 20.410(1)(b), Stats.
Betty Salahadyn	\$990.35	§ 20.410(1)(b), Stats.
Heather Scharlau	\$148.56	§ 20.410(1)(b), Stats.
Rebecca Schultz	\$271.48	§ 20.410(1)(b), Stats.
Alacia Smith	\$260.86	§ 20.410(1)(b), Stats.

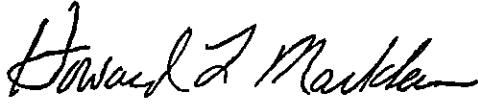
Dated at Madison, Wisconsin this 17th day of April, 2012.



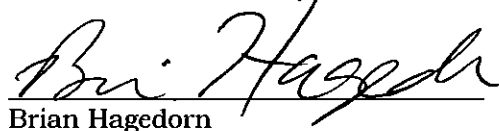
Steve Means, Chair
Representative of the Attorney General



Gregory D. Murray, Secretary
Representative of the Secretary of
Administration



Howard Marklein
Assembly Finance Committee



Brian Hagedorn
Representative of the Governor