

STATE OF WISCONSIN CLAIMS BOARD

On December 10, 2019, at the State Capitol Building in Madison, Wisconsin, the State of Wisconsin Claims Board considered the following claims:

Hearings were conducted for the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Joseph Hupf	Revenue	\$17,848.53

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
2. Gregory a. Allen	Corrections	\$54.81
3. Unquail Kennedy	Corrections	\$190.00
4. Matthew Vanpietersom	Corrections	\$30.15
5. Alexander Armstrong	Corrections	\$250.00
6. Andre D. Hill	Corrections	\$3,139.19

With respect to the claims, the Board finds:

(Decisions are unanimous unless otherwise noted.)

1. Joseph Hupf of Appleton, Wisconsin claims \$17,848.53 for refund of overpayments made on late filed tax returns. Claimant failed to file income tax returns from 2003 through 2015. Claimant admits he was at fault for not filing the returns but believes the amount of overpayment collected by the Department of Revenue is excessive. Claimant paid a tax resolution company to assist him and thought they were handling the issue. Claimant states that he was unaware of the four-year statute of limitations and did not receive the initial notices sent by DOR, which were mailed to an old address. Claimant points to several instances where IRS employees were caught cheating on their taxes yet kept their jobs and had interest reduced or waived. Claimant believes it is not fair that government employees are given leniency, while ordinary taxpayers get none and lose all their money. Claimant notes he has paid a total of \$32,736.87 towards his tax debts. If the overpayment cannot be returned to him, claimant requests that it be applied to any outstanding current or future taxes owed.

DOR recommends denial of this claim, which is based on late filed income tax returns for the years 2003-2016. In June 2009, DOR issued estimated assessments for claimant's failure to file returns for 2003-2007. Claimant filed those returns on April 20, 2017. Section 71.75(5), Wis. Stats., provide that no refund may be issued because more than four years have passed since the assessment was issued. The overpayment for those years is \$17,848.53.

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.

2. Gregory A. Allen of New Lisbon, Wisconsin claims \$54.81 for property allegedly lost by staff at New Lisbon Correctional Institution. In February 2019, claimant was transferred to the Restrictive Housing Unit (RHU) at New Lisbon. When he arrived at RHU, Department of Corrections staff completed an intake property sheet (DOC-796), which listed one pair of shoes (white tennis shoes claimant was wearing). Claimant states that other DOC staff packed and inventoried the property in his cell and indicated on that property inventory form (DOC-236) that he had one pair of shoes in his cell. Claimant states that only personal property is noted on form DOC-236. Claimant states that when he was released from RHU and received his property, his white tennis shoes were missing. He filed an inmate complaint regarding the missing shoes. Claimant notes that during DOC's investigation of his complaint, RHU property staff told the investigator that claimant arrived at RHU wearing white tennis shoes. Despite

that testimony, claimant's complaint was denied. As proof that he owned two pairs of personal shoes, claimant points to the RHU officer's testimony, as well as the fact that both property forms listed one pair of personal shoes: DOC-796, which documented what he was wearing and DOC-236, which documented what property was left in his cell. Claimant states that DOC's assertion that he may have lost or traded the white tennis shoes prior to his transfer to RHU is refuted by the evidence he has provided.

DOC recommends denial of this claim. DOC states that the investigation into claimant's inmate complaint determined that the only pair of shoes in his possession when he was transferred to RHU was a pair of black Velcro medical shoes. DOC states that form DOC-236 includes all of claimant's personal property, including the property listed on form DOC-796, which simply documents which of that property claimant was wearing on arrival at RHU. Claimant is incorrect in his belief that property listed on the forms should be added together to arrive at the total amount of property. DOC states that, although claimant provides a 2016 receipt for white tennis shoes, that receipt only proves that he had those shoes over three years ago. DOC notes that the shoes could have been traded, lost, stolen, or given away at any time between their purchase in 2016 and claimant's 2019 transfer to RHU.

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. Unquail Kennedy of Waupun, Wisconsin claims \$190.00 for the value of property allegedly improperly destroyed as contraband by staff at Waupun Correctional Institution. Claimant was transferred to restricted housing in June 2019. Department of Corrections staff packed up his property and later informed him that two items had been declared contraband: his tablet because it was allegedly altered and damaged, and his black Nike shoes because they were not listed on his master inventory. DOC staff destroyed both items. Claimant filed inmate complaints regarding the items but both complaints were denied. Claimant states that DOC has provided no proof that he damaged the tablet and not DOC staff. He also believes DOC has provided no evidence to back up their claim that he previously discussed trading in the black Nikes for a new pair of shoes. Claimant believes DOC has a poor record regarding inmate property complaints and requests reimbursement for these items.

DOC recommends denial of this claim. DOC's investigation into claimant's inmate complaint regarding his tablet determined that claimant had peeled back the security sticker and tried to pry open the SD card storage slot on the tablet. DOC's investigation into the black Nike shoes found that claimant had purchased them in 2018, and that he also had another pair of shoes in his possession (white Under-Armor). In April 2019, claimant purchased a third pair of shoes (also Under-Armor). Because inmates are only allowed two pairs of shoes, DOC staff told claimant he had to turn in one pair before he would get the new pair of shoes. DOC states that claimant told property staff that he no longer had the black Nike shoes. DOC staff took the black Nikes off claimant's property inventory and gave him the new Under-Armor shoes. Claimant's complaints regarding these issues were denied and claimant did not appeal. DOC believes that both of these items were properly designated as contraband and destroyed.

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. Matthew Vanpietersom of Winnebago, Wisconsin claims \$30.15 for property allegedly lost by Department of Corrections staff. On 4/12/19 claimant was sent to segregation at Waupun Correctional Institution. Claimant notes that once he was sent to segregation, the property left in his single cell was under sole control of DOC staff. Claimant alleges that when his property was returned to him on 4/23/19, a coaxial cable and pair of Koss ear buds were missing. Claimant's property receipts show that he had just purchased both items in October 2018. Claimant filed an inmate complaint, which was dismissed. Claimant believes the property was lost while under DOC control and that he should therefore be reimbursed for the lost items.

DOC believes there is no evidence of staff negligence and recommends denial of this claim. A complaint examiner investigated this claim and found that the items in question were not listed on the cell packing sheet completed when claimant was sent to segregation, which proves that the items were not in his cell. The receipts provided by claimant only prove that he had the items six months prior to this incident. DOC notes that the items could have been sold, traded, stolen, or otherwise disposed of during that time. DOC believes claimant has submitted no proof that staff was responsible for the alleged loss of this property.

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.

5. Alexander Armstrong of Redgranite, Wisconsin claims \$250.00 for refund of a DNA surcharge which he alleges the Department of Corrections should not have taken from his inmate account. Claimant was convicted and sentenced in 2001 on two counts of violating Wis. Stat. § 940.225 and one count of violating Wis. Stat. § 948.02. His court obligations, including a DNA surcharge, were paid from his bail bond money at the time of his sentencing. DOC later deducted \$710 from his inmate account for the same court obligations, plus another DNA surcharge. He filed an inmate complaint, but DOC only reimbursed him \$460 for the previously paid court costs, alleging that he owed \$250 for a second DNA surcharge. Claimant states that the DNA analysis surcharge statute in effect at the time he was convicted, Wis. Stat. § 973.046 (1r), only allowed the court to impose "a [DNA] analysis surcharge of \$250." In 2014, that statute was changed to allow a \$250 surcharge "for each felony conviction." Claimant believes that nothing in the statutes or case law allows for charging additional DNA surcharges for each case, victim, or count. He submits case law that he believes supports his argument that this surcharge can be assessed only once for convictions prior to 2014.

DOC recommends denial of this claim. DOC admits that it incorrectly deducted \$460 from claimant's inmate account for obligations that had been previously paid from his bail bond. The department reimbursed claimant that money. The \$250 retained by DOC is for a DNA surcharge on a second conviction. DOC notes that claimant was convicted twice and sentenced twice in two different cases. The DNA surcharged set forth in Wis. Stat. § 973.046 (1r), was mandatory at the time of claimant's convictions, and remained mandatory after changes to the law in 2014. The court properly assessed a DNA surcharge for each of claimant's convictions as required by law. DOC notes that claimant petitioned the court to quash the second surcharge in 2009, 2017, and 2019, and the court rejected his motion every time. DOC also notes that the case law cited by claimant is either irrelevant to his case or has been overturned. DOC believes it followed a lawful court order when it deducted the second DNA surcharge from claimant's account.

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.

6. Andre D. Hill of Fox Lake, Wisconsin claims \$3,139.19 for funds incorrectly deducted from his inmate account. In 2006, claimant was convicted in case no. 03CF2252, and was ordered to pay his victim \$3,400. That money was taken from his bail bond and the victim was paid in full. From 2008 to 2015, the Department of Corrections deducted money from his inmate account. Because the inmate account statements at that time did not show the case number associated with the payments, he believed the money was going towards his obligations on another conviction. Claimant was released on supervision in 2015. When he later returned to custody, DOC had switched to a new accounting system, which did show case numbers on inmate account statements and claimant realized DOC was incorrectly deducting money for case no. 03CF2252. Claimant accepts DOC's proposed resolution that the \$3,139.19 overpayment be applied to his current outstanding obligations, with any remaining balance deposited in his trust account.

DOC recommends that the board direct DOC to reimburse \$3,139.19 to claimant but that the funds be used to pay his outstanding restitution on another case, and any other outstanding fines, costs, and surcharges. Any money remaining after these obligations are paid

will be remitted to claimant. DOC admits that it erred when staff entered the \$3,400 victim restitution into the accounting system because that money had already been paid from claimant's bail bond. DOC acknowledges that because account statements generated by the old accounting system did not show case numbers, claimant had no way to know of the error until DOC switched to new accounting software.

The Board concludes the claim should be paid in the amount of \$3,139.19 based on equitable principles. The Board further concludes, under authority of Wis. Stat § 16.007(6m), payment should be made from the Department of Corrections appropriation Wis. Stat. § 20.410(1)(a).

The Board concludes:

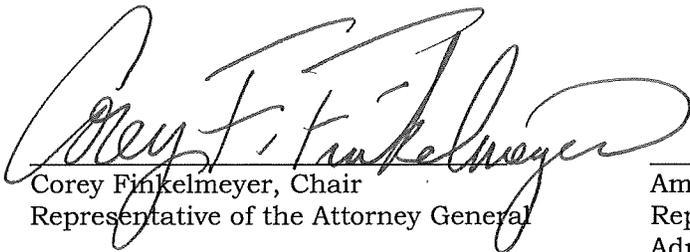
That payment of the amount below to the identified claimant from the following statutory appropriation is justified under Wis. Stat. § 16.007(6)(b).

Andre D. Hill	\$3,139.19	Wis. Stat. §20.410(1)(a)
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That the following identified claimants are denied:

Joseph Hupf
Gregory A. Allen
Unquail Kennedy
Matthew Vanpietersom
Alexander Armstrong

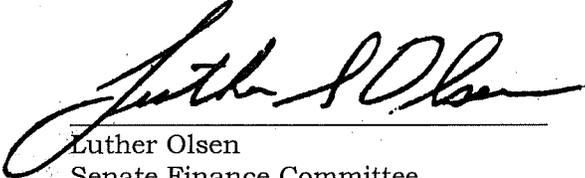
Dated at Madison, Wisconsin this 30th day of DECEMBER, 2019



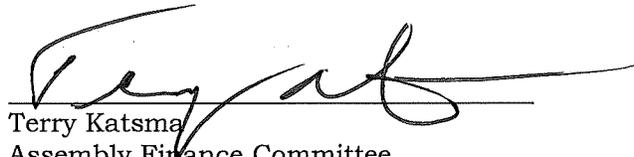
Corey Finkelmeyer, Chair
Representative of the Attorney General



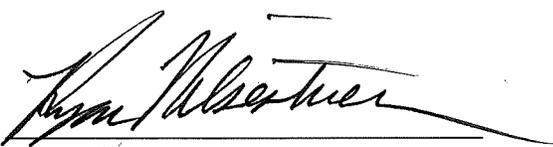
Amy Kasper, Secretary
Representative of the Secretary of Administration



Luther Olsen
Senate Finance Committee



Terry Katsma
Assembly Finance Committee



Ryan Nilsestuen
Representative of the Governor