

STATE OF WISCONSIN CLAIMS BOARD

On September 11, 2013, at the State Capitol Building in Madison, Wisconsin, the State of Wisconsin Claims Board considered the following claims without hearings.

On September 11, 2013, The Claims Board also held a hearing on the Claim of David R. Turnpugh for Innocent Convict Compensation. The Claims Board will issue a separate written decision in that matter.

Claims considered without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Masse's Floor Coatings, Inc.	University of Wisconsin	\$30,496.00
2. Yvonne Sanders	State Fair Park	\$3,497.77
3. Robert & Jessica Stark	Safety & Professional Services	\$16,402.51
4. Brian A. Grant	Corrections	\$576.94
5. Terrence Hood	Corrections	\$221.29
6. Derrick P. Jones	Corrections	\$111.85
7. Mario A. Martinez, Jr.	Corrections	\$38.50
8. Hershel McCradic	Corrections	\$109.75

With respect to the claims, the Board finds:

1. **Masse's Floor Coatings, Inc.** of Green Bay, Wisconsin claims \$30,496.00 for refund of credit assessed against the claimant by UW for allegedly unacceptable work on the UW-Oshkosh Recreational Wellness Center project. The claimant performed work as a flooring subcontractor of the general contractor for the project in 2007. Upon completion of the project, UW demanded a credit of \$30,496 based on allegations that the floor installed by the claimant was unacceptable and needed to be removed and replaced. The general contractor for the project withheld the credit amount from its final payment to the claimant. Several years later, the claimant learned that UW had never replaced the flooring. The claimant states that UW initially wanted a terrazzo floor for the project but could not afford it. UW instead chose a less expensive micro-topping concrete overlay known as "poor-man's terrazzo." The claimant states that this product was installed correctly, pursuant to the design specifications and industry standards. The claimant also states that contrary to UW's assertions, there was not excessive turnover of staff working on the project. The claimant states that over two-thirds of the flooring work was done by the same three employees with considerable industry experience, two of which had managerial or supervisory roles on the project. The claimant states that the overlay product chosen by UW is susceptible to environmental conditions and that heat and UV exposure may lead to color fade or fine surface-level cracks. The claimant states that these changes are naturally occurring, are not considered a defect of the product, and do not affect the durability of the floor. The claimant notes that both the general contractor and the architect were satisfied with the floor as installed. The claimant believes that UW is experiencing "buyer's remorse" because they wanted the look of terrazzo but were not willing to pay for it. The claimant believes that UW's decision not to replace the floor demonstrates the acceptability of the product. Finally, the claimant states that it would have fought the withholding of the credit amount if it had known UW was never going to replace the floor. The claimant believes the floor was properly installed and accepted by UW and that the claimant should therefore be fully reimbursed for its work on the project.

UW states that the flooring as installed was unacceptable in appearance and did not meet design specifications. UW believes that high turnover in the claimant's staff during the installation led to an inferior product, with variations in color between sections of the floor and other imperfections. UW accepted a credit for the sub-standard floor and asked the project's general contractor to seek bids to replace the floor. The cost for replacing the floor was \$77,300, well over the amount of the credit, so UW made the decision to keep the floor. UW notes that

funds from the credit were used for redoing a test area of the floor and then restoring that area when the repair was deemed unsuccessful. Funds from the credit were also spent on stair treads and risers. UW states that only \$5,617 of the credit remains. UW states that the credit was not contingent on replacing the floor but was due to the floor's inferior appearance and the claimant's failure to meet the design specifications. UW 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 with the state should assume and pay based on equitable principles.

2. Yvonne Sanders of Milwaukee, Wisconsin claims \$3,497.77 for medical bills, damaged clothing and personal property allegedly related to a fall at State Fair Park. On 10/21/12, the claimant was attending a snow removal equipment training event, which was held on the infield of the racetrack at SFP. SFP staff had removed the wall surrounding the infield to allow access to the area but forgot to place the covers over the 3 x 8" post-hole openings in the ground. The claimant states that she followed the direction indicated by SFP staff while crossing the grounds to the infield. The claimant states that she was looking ahead and did not see the post-holes in the ground and that there were no warning flags or cones placed to indicate the danger. She unexpectedly stepped into one of the holes and her leg sank down up to her knee. The claimant states that she injure her foot, knee, leg, back, and the heels of her hands where she caught herself as she fell forward. The claimant also states that her partial denture was knocked out of her mouth and her shoes, jeans, and iPhone were damaged. The claimant states she was in a great deal of pain but did not want an ambulance called due to the cost. The claimant states that SFP employee and event manger, Mr. Peach, convinced her to allow EMT's to be called and stated that SFP would cover the costs. The claimant assumes this was done because she never received a bill for ambulance services. The claimant states that she called SFP staff and the security station later that day and asked that they search for her missing dental partial. The claimant notes that regardless of whether Mr. Peach had the "authority" to approve payment of bills, he was very kind and helpful. The claimant states that SFP staff should have been aware of the holes in the ground and failed to properly warn attendees of the event. She requests reimbursement for her medical bills and personal property damage.

SFP does not dispute that when staff removed the infield wall, they failed to complete the job by placing the covers that usually go over the post-holes. However, SFP believes that a person paying reasonable attention while they walked could have noticed the holes and that the claimant's inattentiveness contributed to her injury. SFP notes that it has many part-time employees such as Mr. Peach, who work diligently to provide good customer service to visitors; however, Mr. Peach did not have authorization to promise payment of the claimant's bills. SFP states that there was no indication in the police report related to this incident of a missing dental partial, a damaged phone, or damaged clothing. SFP notes that the claimant's jeans were not damaged in the fall but were cut by the responding West Allis Fire Department EMTs. Based on this information, SFP does not believe it should be held liable for replacement of the claimant's dental partial, phone, shoes, or jeans.

The Board concludes the claim should be paid in the reduced amount of \$1,485.77 based on equitable principles. The Board further concludes, under authority of § 16.007(6m), Stats., payment should be made from the Wisconsin State Fair Park appropriation § 20.190 (1)(H), Stats.

3. Robert and Jessica Stark of Eau Claire, Wisconsin claim \$16,402.51 for electricity and maintenance costs, court fine, and costs of a Private Onsite Wastewater Treatment System (POWTS), which was installed illegally. The claimants built their home in 2008 with a POWTS. The Wisconsin Administrative Code (SPS 383.21) requires that a signed POWTS maintenance contract with a certified plumber be filed with the register of deeds before a legal sanitary permit can be issued. The claimants state that they were never presented with or signed a POWTS maintenance contract and therefore the sanitary permit issued by DSPS was illegal. The claimants state they were not aware there was a problem until several months later when

the vendor who had sold the POWTS to their home builder attempted to get the claimants to sign a blank contract for continuing maintenance on their POWTS. The claimants requested a copy of the original contract but the vendor was unable to produce one. The claimants state they made numerous attempts to meet with the original plumbing contractor who installed the POWTS, Eau Claire County Public Health officials, and district waste water specialists, but their concerns were ignored. They state that Eau Claire County officials pressured them to sign the blank maintenance contract and eventually fined them for not having a legal sanitary permit. The claimants state that they contacted 30-40 area plumbers in an attempt to find someone who would perform the necessary maintenance or replace the system, however the plumbers they contacted would not get involved and one even alluded to pressure he was receiving from government officials to not work on the claimants' POWTS. The claimants were eventually able to retain a soil tester and plumber from outside the area to replace the POWTS in November 2012. The claimants were forced to take a loan from their parents to replace the POWTS and are still paying for the original installation cost of the POWTS through their home mortgage. Upon replacement of the POWTS, the claimants' electric bills decreased dramatically and the maintenance costs for the new mound system are significantly lower than those for the POWTS. The claimants state that they never asked for the POWTS and that DSPS should never have approved the sanitary permit without the required maintenance contract. They request reimbursement for the costs they incurred due to the illegally installed system.

DSPS recommends denial of this claim. DSPS states that the agency approves plans for Private Onsite Wastewater Systems but does not issue sanitary permits. Sanitary permits are approved and issued by the local government, in this instance, Eau Claire County. The application for the claimants' sanitary permit, which should have included the maintenance contract, would have been submitted to Eau Claire County for approval. DSPS does not believe there is any evidence of negligence by its employees in this matter.

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 with the state should assume and pay based on equitable principles.

4. Brian A. Grant of Boscobel, Wisconsin claims \$576.94 for property allegedly damaged while under DOC staff control. The claimant is an inmate at Waupun Correctional Institution (WCI). In September 2012, the claimant was placed in segregation and his personal property, including court documents, stamps, envelopes, his prayer rug, and shampoo, was packed up in three separate bags. The claimant states that when he was released from segregation and his property was returned, it was all covered by a sticky substance. The claimant contacted the property room and was told by the property room staff that the shampoo bottle in the claimant's property was found open and the shampoo had spilled out of the bottle onto all of his property. The claimant filed an inmate complaint (ICE). During the ICE investigation, property room staff told the investigator that the shampoo bottle was found closed but that the cap was cracked, causing the shampoo to leak out. The claimant states this contradicts the earlier information provided by property room staff. The claimant's ICE was denied by DOC. The claimant states that regardless of whether the shampoo bottle cap was cracked or missing, it would be impossible for the shampoo, which was stored in one bag of property, to accidentally leak onto all three bags of his property. The claimant denies DOC's allegations that he falsified the letters he submitted from attorneys as proof of the cost of his transcripts. The claimant states that he has no control over how attorneys choose to correspond. The claimant further states that he has had no access to a typewriter since his property was damaged. The claimant believes that the shampoo was deliberately poured over his three bags of property by DOC staff. The claimant notes that if he damaged DOC property, he would be held responsible. He therefore requests reimbursement for the cost of his damaged property items.

DOC recommends denial of this claim. DOC states that the ICE investigation found no evidence of staff misconduct or negligence. The ICE concluded that the shampoo bottle cap was cracked, which caused the shampoo to leak out while the property was stored. The ICE noted that the shampoo bottle cap could have been cracked while under the claimant's control. DOC notes that close inspection of the receipts for transcripts allegedly from the claimant's

attorneys show multiple spelling and grammatical errors. In addition, DOC conducted an Internet search for the attorneys' and law firms' names and found no evidence they exist. DOC believes the claimant has submitted no legitimate evidence that the legal documents ever existed, much less were damaged by DOC staff.

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 with the state should assume and pay based on equitable principles.

5. Terrence Hood of Waupun, Wisconsin claims \$221.29 for cost of television allegedly damaged by DOC staff. The claimant is an inmate at Waupun Correctional Institution (WCI). The claimant states that he was moved out of segregation on 10/29/12 and that when his property was returned to him, his TV had sound but no picture. The claimant states that he noticed damage to the screen and the right side of the TV. He states that he immediately wrote to the property room regarding the damage and asked that someone come inspect the TV. The claimant was told to file an inmate complaint (ICE). The claimant filed an ICE on 11/1/12. The claimant states that on 11/7/12, he wrote to the warden, again asking that someone come inspect the damage to his TV. The claimant received a reply that because he had filed an ICE, WCI would conduct an investigation. The claimant states that no DOC staff ever came to inspect his television, so he returned it to the vendor he purchased it from. That vendor replied that the damage was "self-inflicted" and that the TV was not reparable. The claimant purchased a new TV from the vendor. On 1/7/13, the claimant's ICE was denied as moot because he had purchased a new television. The claimant states that the TV was only 11 months old. The claimant believes it is clear that the TV was damaged while under DOC staff control, he therefore requests reimbursement for the cost to purchase a new television.

DOC recommends denial of this claim. DOC states that the claimant filed his ICE on 11/1/12. DOC notes that the claimant purchased his new television on 11/12/12 and returned his damaged TV to the vendor on 11/15/12. DOC states that the claimant was aware that ICE was conducting an investigation but he made the decision to mail out his damaged TV before DOC staff had an opportunity to inspect it and determine, if possible, the cause of the damage. DOC states that the claimant's ICE was dismissed as moot because the claimant chose to mail out the damaged TV before the investigation was complete.

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 with the state should assume and pay based on equitable principles.

6. Derrick P. Jones of Green Bay, Wisconsin claims \$111.85 for property allegedly lost by DOC staff. In September 2012 the claimant was transferred from Oshkosh Correctional Institution (OSCI) to the Wisconsin Secure Program Facility (WSPF). The claimant states that when he arrived at WSPF he was given his property inventory list and noticed many items missing. The claimant believes that a comparison of his property inventory lists from before and after he transferred to WSPF proves that his property went missing while under DOC staff control. The claimant states he had been in segregation at OSCI from June 2012 through his transfer to WSPF and that he did not have access to his property while in segregation. The claimant states that a number of his property items were brand new, purchased shortly before he was placed in segregation at OSCI. He requests reimbursement for his lost property.

DOC recommends denial of this claim. DOC states that a comparison of his outgoing and incoming property inventories from OSCI and WSPF do not show any discrepancies or missing property. DOC believes that the claimant has provided no evidence that any property was lost while under DOC staff control or any negligence by DOC employees.

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 with the state should assume and pay based on equitable principles.

7. Mario A. Martinez, Jr. of Boscobel, Wisconsin claims \$38.50 for value of 22 pages of legal documents allegedly lost by DOC staff. In 2012 the claimant was an inmate at Waupun Correctional Institution. The claimant states that his personal property was returned to him on

9/3/12 when he was released from segregation and that he noticed that all of his transcripts and portions of other legal documents were missing. The claimant states that DOC 310.09(6) requires that inmates first communicate with staff in an attempt to resolve an issue before filing an inmate complaint (ICE) regarding missing property. This policy also instructs inmates to allow a reasonable amount of time for staff to respond. The claimant states that he wrote the property department and that property staff found and returned the transcripts to the claimant but were unable to locate 22 pages of other missing legal papers. He then contacted the security department regarding the 22 missing pages. The security department responded that they were unable to locate the missing pages. The claimant states that it was only at that point, on 9/24/13, that he was able to confirm that the 22 pages were lost. The claimant filed at ICE on 10/1/13. The claimant's ICE was rejected because he had failed to file it within 14 days of the occurrence giving rise to the complaint, which ICE determined was the claimant's 9/3/13 receipt of his property. The claimant disputes the ICE's determination. He states that DOC rules required him to communicate with staff prior to filing a complaint and that furthermore, until he had communicated with the staff, he had no way of knowing that the 22 pages of legal papers were truly missing. The claimant believes that the incident giving rise to the complaint was therefore the 9/24/13 communication from the security department confirming that the pages were lost. The claimant states that these were original legal documents and requests reimbursement for the missing 22 pages at the rate of \$1.75 per page.

DOC recommends denial of this claim. DOC states that the allegedly missing pages could be mixed in with other paperwork or that the claimant could have disposed of them in some manner prior to being placed in segregation. DOC does not conduct a page by page inventory of inmates' legal papers. DOC states that inmates are well aware of this, which makes it easy for them to claim DOC staff is responsible for allegedly missing documents. DOC notes that if the claimant had kept his legal paperwork together or secured in his footlocker, no pages should have gone missing. DOC notes that property staff would have no reason to pull random pages from the claimant's legal paperwork. DOC believes the claimant has submitted no evidence that the allegedly missing pages were lost while under DOC control.

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 with the state should assume and pay based on equitable principles.

8. Hershel McCradic of Redgranite, Wisconsin claims \$109.75 for cost of television allegedly damaged by DOC staff. The claimant was transferred from Green Bay Correctional Institution (GBCI) to Redgranite Correctional Institution (RGCI) on 7/25/12. GBCI's outgoing property inventory form indicates that "all electronics are in good working order and physical condition." The claimant states that when he received his property at RGCI, his TV would not turn on. The claimant informed DOC staff of the problem with his TV and filed an inmate complaint (ICE). The claimant was notified in August 2012 that his ICE was denied because there was no physical damage to the box the TV was shipped in from GBCI. The claimant notes that DOC rules require property staff to inspect electronics upon arrival at an institution to insure that they are in good working order. The claimant states that RGCI staff only inspected the outside of the box and not the TV, therefore, how could they have determined that the damage did not occur during transfer of his property, while it was under the care and control of DOC staff? The claimant states that when he left GBCI his TV was working properly and that it was clearly damaged while being moved by DOC staff from GBCI to RGCI. He requests reimbursement for the cost of the television.

DOC recommends denial of this claim. RGCI issued the claimant's property to him on 7/30/12. Shortly thereafter, he reported to DOC staff that his TV was not working. DOC notes that RGCI found no external damage to the shipping container or to the TV itself when it was returned to the claimant. DOC states that the ICE concluded that there was insufficient evidence to determine why the TV was no longer working. DOC notes that the TV set was seven years old and that even if reimbursement was a consideration, the depreciated value of the TV set would be no more than \$33.00.

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 with the state should assume and pay based on equitable principles.

The Board concludes:


That the following identified claimants are denied:

- Masse's Floor Coatings, Inc.
- Robert & Jessica Stark
- Brian A. Grant
- Terrence Hood
- Derrick P. Jones
- Mario A. Martinez, Jr.
- Hershel McCradic


That payment of the amounts below to the identified claimants from the following statutory appropriations is justified under § 16.007, Stats:

Yvonne Sanders \$1,485.77 20.190 (1)(H), Stats.

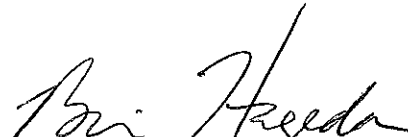
Dated at Madison, Wisconsin this 15th day of OCTOBER, 2013




 Steve Means, Chair
 Representative of the Attorney General



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



 Brian Hagedorn
 Representative of the Governor



 Joseph Leibham
 Senate Finance Committee



 Patricia Strachota
 Assembly Finance Committee