

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

DWAYNE ANDERSON #124529,)
) Claim No. T20150070
 Claimant,)
)
 vs.)
)
 STATE OF TENNESSEE,)
) Regular Docket
 Defendant.)

FILED
TN CLAIMS COMMISSION
CLERK'S OFFICE
2015 OCT 27 P 4:03

ORDER OF DISMISSAL

This matter came on for adjudication before Robert N. Hibbett, Commissioner and judge of the facts and law. This is a claim for negligent care, custody or control of personal property proceeding on affidavits pursuant to Tenn. Code Ann. § 9-8-403(h). The claimant, Dwayne Anderson, is an inmate in the custody of the Tennessee Department of Correction. The Claimant alleges that his property was lost by Tennessee Department of Correction employees.

Claimant's Allegations

The Claimant was an inmate in the custody of the Tennessee Department of Correction ("TDOC"), housed at the Charles Bass Correctional Complex ("CBCX") during all times relevant to this claim. Claimant alleges that, on June 29, 2014, he was transferred from one housing location to another within the

CBCX. Claimant further alleges that his belongings were “thrown into two (2) large trash bags,” and when he inventoried his property, he discovered that he was missing the following items: a remote control, a mirror, headphones extension cord, and some legal documents. Lastly, Claimant alleges that Officer Kemp, an employee of the TDOC “fail[ed]... to act as a reasonably prudent and careful person would act under similar circumstances.” See Notice of Claim for Damages Against State of Tennessee.

Claimant’s Proof

The problem with the Claimant’s case is his failure to file affidavits or statements under oath to prove his claim. Because this is an inmate property claim to be adjudicated on the record, the burden is on the Claimant to file affidavits or statements under oath to prove his case. Since this claim was transferred to the Tribunal, he has not filed any affidavits or statements under oath.

In its Order filed May 14, 2015, the Tribunal extended time to the parties to file proof, affidavits, or motions:

Time shall be extended for the parties to file further proof, affidavits, or motions on the Claimant’s underlying and substantive claim of missing property. **The parties shall have until June 30, 2015 to file**

said documents or proof. Thereafter, the Tribunal shall adjudicate the claim based on the submitted record.

The Claimant filed motions but no affidavits or proof.

In its Order Extending Time to Submit Proof filed July 15, 2015, the Tribunal again directed the parties to file evidence or documentation to support their positions. The Claimant did not file any evidence or documentary evidence to support his claim.

Finally, in its Order Extending Time to Submit Affidavits and/or Statements Under Oath filed August 27, 2015, the Tribunal stated the following:

This matter is before the Tribunal on a claim that is to be adjudicated on the submitted record because it is an inmate property claim. It appears to the Tribunal that neither party has filed any affidavits and/or statements under oath. Time will be extended to allow the parties to submit affidavits and/or statements under oath in this matter before adjudication on the submitted record.

IT IS THEREFORE ORDERED:

That the parties file with the Clerk of the Claims Commission affidavits and/or statements under oath in support of their positions. Said filings shall be submitted by September 30, 2015. Thereafter, the Tribunal will adjudicate the claim based upon the record submitted.

To date, the Claimant has not filed affidavits and/or statements under oath to prove his claim. His most recent filings are headed with Clerk's Official

Misconduct and Clerk's Neglect of Duty. The Tribunal makes a specific finding that the Clerk of the Claims Commission has fulfilled all of her duties in filing the pleadings and as custodian of the records. The Claimant's allegations in this regard are without merit.

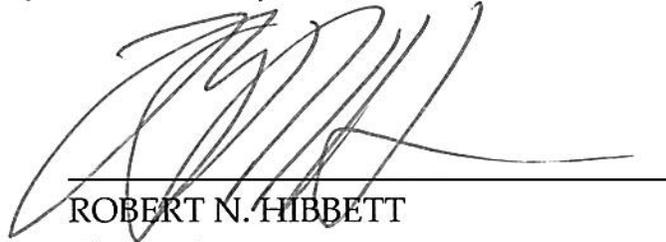
Conclusion

The burden remains on the Claimant to prove his case by preponderance of the evidence. Because the Claimant has not filed any affidavits and/or statements under oath to prove his allegations as directed by the Tribunal, his claim fails on the merits and must be dismissed.

IT IS, THEREFORE, ORDERED:

1. That the Claim is dismissed with prejudice.
2. That this is a final judgment

ENTERED this 23 day of October, 2015.



ROBERT N. HIBBETT
Claims Commissioner
Sitting as the Trial Court of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

ERIC A. FULLER
Attorney General's Office
P.O. Box 20207
Nashville, TN 37202
(615) 532-2500

DWAYNE ANDERSON #124529
RMSI
7475 Cockrill Bend Blvd
Nashville, TN 37209

This 27 day of Oct., 2015.

Paula Merrifield

PAULA MERRIFIELD
Administrative Clerk
Tennessee Claims Commission