

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
MIDDLE DIVISION

FILED  
THE CLAIMS COMMISSION  
CLERK'S OFFICE

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JACK WARREN #130172, )  
 ) Claim No. T20110786  
 Claimant, )  
 )  
 vs. )  
 )  
 STATE OF TENNESSEE, )  
 ) Regular Docket  
 Defendant. )

**JUDGMENT FOR STATE AND DISMISSAL OF CLAIM**

This claim came for trial on the merits before Robert N. Hibbett, Commissioner and Trial Judge of the facts and law, on December 15, 2015 in the Rachel Jackson State Office Building by video conference. Claimant, Jack Warren, alleges that on March 16, 2010 he was involved in a physical altercation with another prisoner at Turney Center of the Tennessee Department of Correction and received a severe laceration to his upper right arm. He further alleges that the injury was caused by a protruding side metal plate that was welded to the frame of the bottom bunk. He also states that prison officials knew or should have known that the metal plate was a potential hazard. Senior Counsel Arthur Crownover, II, of the Attorney General's Office represented the

State of Tennessee. The Claimant was self-represented. The Trial Transcript was filed on January 4, 2016.

### JURISDICTION

The authority of the Claims Commission to render damages is set forth by statute. If a claim falls outside of the categories specified in Tenn. Code Ann. § 9-8-307(a), then the State retains its immunity from suit, and a claimant may not seek relief from the State. *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000).

It appears to the Court that Tenn. Code. Ann. § 9-8-307 defines the jurisdiction of the Claims Commission concerning this specific claim:

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of "state employees," as defined in § 8-42-101(3), falling within one (1) or more of the following categories:

...

(C) Negligently created or maintained dangerous conditions on state controlled real property. The claimant under this subsection must establish the foreseeability of the risks and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

...

(E) Negligent care, custody and control of persons.

Claimant's medical malpractice claim was previously dismissed by the Trial Court.

## FINDINGS OF FACT

### Testimony of Claimant, Jack Warren

Mr. Warren testified he and his cellmate, Lloyd Denim, were involved in an altercation in their cell. His cellmate swung at him, they grabbed each other, and were holding one another. During this time, Mr. Warren's arm pressed up against a metal plate protruding downward from the bunkbed. As he was trying to break the hold of his cellmate, his arm pressed up against the plate and cut through the skin, muscle and all the way to the bone. After the laceration occurred, the altercation was over. Mr. Warren believed if the metal plate had been rounded off, it would not have cut his arm. The metal was so sharp that if you had rubbed a shoe string back and forth on it, it would cut it in half. The plate connects the bottom bunk to the top bunk and there are two on each side of the bed. The plates look like punched steel.

He went to General Hospital where his laceration was sewn and he was sent back to the prison. During the investigation, he confessed that he was involved in an altercation and received disciplinary action. He was once gifted in all sports but can no longer bench press, play softball, or play basketball. The

pain was very bad while his arm was “messed up.” Once it finally healed, there was no pain but his arm has lost the mobility to do certain things.

The Claimant admitted that he has been convicted of second-degree murder, aggravated assault, and felony theft of property. Notwithstanding his felony convictions, the Court believes and accredits the testimony of the Claimant.

### **Testimony of Mark Turney**

Mark Turney, at the time of this incident, was the institutional investigator at Turney Center. Since then, he has retired. His duties as institutional investigator were to investigate any fights, “write-ups” or other incidents as assigned by the warden. The warden directed Mr. Turney to investigate the incident between Mr. Warren and his cellmate.

He first went and searched the total cell. He found no weapon of any kind. He also found nothing that protruded that could make a cut. All the metal was properly in place. He then spoke with Mr. Warren and the Claimant stated that they were fighting. Mr. Turney charged them both with fighting and after they pleaded guilty, he filed an incompatibility report.

He saw the cut on Mr. Warren's arm and it appeared it had been made by a prison-made weapon, but no weapon was ever found. He determined that nothing in the cell could make a deep cut like the one on Mr. Warren's arm. He did not find any blood on any metal or the bed, just blood on the floor. Mr. Turney charged the two inmates with fighting, but not assault because he could not find a weapon.

The cell where the fight took place is exactly like the other cells at Turney Center. Mr. Turney observed that there were no sharp edges on the cell beds, at least not sharp enough to cut to the bone on a person's arm. He admitted that it was possible that some of the brackets are sharper than others or might not have been rounded. The Tribunal believes and accredits Mr. Turney's testimony except for his opinions concerning the existence of a weapon. Although he was sincere in his belief, there is simply no evidence that a weapon was used in this incident.

### CONCLUSIONS OF LAW

In order to establish a claim under Tenn. Code Ann. § 9-8-307(a)(1)(C) and (E), Mr. Warren must prove the elements of common law negligence: (1) a duty owed to the plaintiff; (2) conduct below the applicable standard of care that

amounts to a breach of that duty; (3) injury or loss; (4) cause in fact; and (5) proximate cause. *Kilpatrick v. Bryant*, 868 S.W.2d 594 (Tenn.1993); *Lewis v. State*, 73 S.W.3d 88, 92 (Tenn.Ct.App. 2001). Furthermore, the Claimant must prove that the State or its employees were negligent.

The questions of proximate cause and comparative fault were discussed by our Court of Appeals in a case involving an inmate operating manufacturing equipment in a state prison.

Proximate causation is a mixed question of law and fact. *Wyatt v. Winnebago Industries, Inc.*, 566 S.W.2d 276 (Tenn.Ct.App.1977). It is to be decided "upon mixed considerations of logic, common sense, justice, policy and precedent." *Mullins v. Seaboard Coastline Railway Co.*, 517 S.W.2d 198 (Tenn.Ct.App.1974). But, procedurally, the issue is one for the trier of fact. *Wyatt v. Winnebago Industries, Inc.*, 566 S.W.2d at 281. "The asserted level of fault of a party is a circumstance for the finder of fact to consider when determining the percentage of fault of each party in producing the injury." *Prince v. St. Thomas Hospital*, 945 S.W.2d 731 at 736 (Tenn.Ct.App.1996).

*Lewis v. State*, 73 S.W.3d 88, 94-95 (Tenn. Ct. App. 2001)

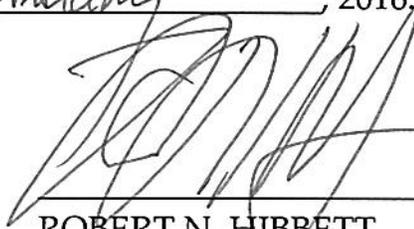
The evidence is clear and convincing that the Claimant's cut occurred when his arm struck the metal plate on the bed. There is no other reasonable explanation based on the evidence. However, this does not mean the metal plate was an inherently dangerous condition. Even if it constituted a dangerous condition, there is no evidence the State had notice of it before the incident.

Furthermore, the existence of a dangerous condition does not make it the legal or proximate cause of Claimant's injury. The proximate cause of the injury is the fight that took place between the Claimant and his cellmate. But for the altercation, the injury would have never occurred. Therefore, the Claimant and his cellmate are one hundred percent comparatively at fault for Claimant's injury. The State bears no fault for this incident. It is not necessary to apportion fault between Mr. Warren and Mr. Denim because the Court does not have jurisdiction over Mr. Denim.

**IT IS, THEREFORE, ORDERED, DECREED, AND ADJUDGED:**

1. That the State of Tennessee is not liable for the injury sustained by the Claimant.
2. That this claim is respectfully dismissed.
3. This is a final judgment for purposes of appeal.

ENTERED this 21 day of January, 2016.



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:

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Clifton, TN 38425-0279

This 26<sup>th</sup> day of Jan., 2016.

*Paula Merrifield*

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PAULA MERRIFIELD  
Administrative Clerk  
Tennessee Claims Commission