

██████████ DOC # ██████████

GRIEVANT

v.

THE MARYLAND DIVISION
OF CORRECTION

* BEFORE MARY R. CRAIG,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DPSC-IGO-002V-19-29455
* IGO No.: ██████████

* * * * *

DECISION

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STATEMENT OF THE CASE

On July 25, 2018, the Grievant filed a grievance¹ with the Inmate Grievance Office (IGO),² which the IGO summarized as follows:

On ██████████ 2018 as Inmate ██████████ was entering his cell, CO ██████████ initiated the closing of the cell door. Inmate ██████████'s cellmate had installed a curtain covering the door which was blowing into Inmate ██████████'s face. According to Inmate ██████████'s version of the event, the door was closing at a fast rate, so he grabbed the curtain that was blowing in his face and turned to get inside before the door closed. He did not get fully inside his cell, resulting in a part of his left thumb

¹ A "grievance" is "the complaint of any individual in the custody of the Commissioner [of the Division of Correction (DOC)] or confined to the Patuxent Institution against any officials or employees of the Division or the Patuxent Institution arising from the circumstances of custody or confinement." Code of Maryland Regulations (COMAR) 12.07.01.01B(8).

² The IGO is part of the Department of Public Safety and Correctional Services (Department). Md. Code Ann., Corr. Servs. § 2-201(12) (Supp. 2020). The IGO receives complaints from inmates and refers those not found "wholly lacking in merit" to the Office of Administrative Hearings (OAH) for hearings. *Id.* § 10-207(c)(1) (2017).

getting caught and severed as the door shut.³ The Inmate alleges that CO [REDACTED] was not paying attention and looking at the panel that houses the door controls instead of looking down the tier. Had he done so, Corporal [REDACTED] would have seen Inmate [REDACTED] was still in the door opening when the button to close the door was pushed. Inmate [REDACTED] suffered permanent damage to his left hand and no longer is able to play the guitar or paint. He asserts that the cells in the newer section of the facility are equipped with safety devices which prevent the doors from closing when the inmates are in the cell doorway.

The Warden responds that the injury was not due to staff negligence, but due to Inmate [REDACTED]'s poor judgment for grabbing the curtain while the cell door was closing. He also states that there are no safety features that prevent the cell doors from fully closing in any of the cells at [REDACTED] [REDACTED].

The case was received at the OAH on September 18, 2019.⁴ On September 29, 2020, I held a hearing via videoconference. Md. Code Ann., Corr. Servs. § 10-207(c)(2) (2017); Md. Code Ann., State Gov't § 10-211 (2014); and COMAR 28.02.01.20B(1)(b). I was located at the OAH and the parties were at [REDACTED]. The Grievant represented himself. Lt [REDACTED] IGO/ARP Coordinator, represented the DOC.

The contested case provisions of the Administrative Procedure Act, the IGO's General Regulations, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 12.07.01; and COMAR 28.02.01.

ISSUE

Was the Grievant's right thumb injured due to the negligence of [REDACTED] staff in closing his cell door on his finger?

³ This reference to the Grievant's left thumb is an error; it is undisputed that the Grievant's right thumb was injured.

⁴ The case was originally scheduled for a hearing on September 29, 2019 and rescheduled due to a power failure at [REDACTED]. The case was rescheduled for November 26, 2019 and again February 25, 2020, both of which were postponed. The reasons for these postponements are not in the record.

SUMMARY OF THE EVIDENCE

Exhibits

I incorporated the entire IGO file into the record, which contained the following documents (duplicate copies are not noted):

- Request for Administrative Remedy # [REDACTED] received at Warden's office July 25, 2018
- Dismissal of Request for Administrative Remedy # [REDACTED] received at Warden's office July 31, 2018
- Letter from [REDACTED] February 5, 2019
- Dismissal of Request for Administrative Remedy # [REDACTED] February 21, 2019
- Administrative Remedy Procedure Case Summary, February 18, 2019
- Serious Incident Report [REDACTED] 2018
- Email from [REDACTED] February 5, 2019
- Offender Case Management Report, printed August 24, 2019
- Supplemental Prehearing Order, August 27, 2019
- Referral to the OAH, July 12, 2019
- Letter from [REDACTED] February 5, 2019 with Grievant's handwritten note, received by Inmate Grievance Office March 12, 2019
- Letter from Grievant to Mr. [REDACTED] March 2, 2019
- Handwritten statement of Grievant's reason for appeal, March 4, 2019
- Headquarters Appeal, March 4, 2019
- Petition circulated by the Grievant, March 2, 2019
- Letter from [REDACTED] Associate Director, Inmate Grievance Office, March 28, 2019
- Headquarters Appeal, January 28, 2019
- Headquarters Appeal in Grievance # [REDACTED] January 21, 2019
- Warden's response to Grievance # [REDACTED] September 14, 2018
- Appeal of Warden's dismissal of Grievance # [REDACTED] January 21, 2019
- Commissioner of Correction Appeal of unnumbered grievance, September 4, 2018
- Receipt for appeal to Warden of grievance # [REDACTED]
- Memo to file regarding IGO # [REDACTED] May 30, 2019

I admitted the following exhibit on the DOC's behalf:

DOC Ex. 1

- Excerpt from Inmate Handbook
- Request for Administrative Remedy # [REDACTED] July 25, 2018
- Warden's dismissal Request for Administrative Remedy # [REDACTED] August 2, 2018
- Letter from [REDACTED], February 5, 2019

- Letter from Warden to Grievant, February 21, 2019
- Administrative Remedy Procedure Case Summary, February 18, 2019
- Information Report, April 23, 2018

The Grievant offered no exhibits for admission into evidence.

At the hearing, the DOC requested permission to display outside the presence of the Grievant security footage from [REDACTED] showing the opening and closing of the cell doors. The Grievant had no objection to the request. On December 1, 2020 Lt. [REDACTED] displayed the video to me on the record in person at the OAH. The video was not entered into evidence for security reasons.

Testimony

The Grievant testified and presented testimony from [REDACTED] DOC# [REDACTED] and Correctional Officer (CO) [REDACTED]

Lt. [REDACTED] testified on behalf of the DOC and presented testimony from CO [REDACTED]

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On [REDACTED] 2018, and at all times relevant to this proceeding, the Grievant was housed at [REDACTED] in cell [REDACTED]
2. At approximately 8:10 p.m. on [REDACTED] 2018, the Grievant left his cell to obtain medication dispensed by the staff at [REDACTED]
3. Upon his return, the Grievant asked to have his cell door closed.
4. CO [REDACTED] the [REDACTED] correctional officer on duty, activated the mechanism to close the cell door after the Grievant was inside the cell.
5. The mechanism for opening and closing the cell doors requires the correctional officer to flip a switch. The correctional officer cannot control the speed of the door mechanism.

6. It takes approximately five seconds from activation of the switch for the heavy metal door to slide completely closed.

7. Prior to [REDACTED] 2018, either the Grievant or his cellmate hung a bedsheet over the cell door to act as a curtain to obscure the inside of the cell from inspection by the [REDACTED] staff, contrary to [REDACTED] rules.

8. As the Grievant was standing inside the cell the bedsheet blew into the path of the closing cell door.

9. The Grievant grabbed the bedsheet with his right hand to prevent it from becoming stuck in the closed door.

10. As the Grievant reached for the bedsheet the cell door closed on the Grievant's right thumb, catching it between the cell door and the door jamb.

11. The Grievant and other inmates called to the guards, alerting them that the Grievant's thumb was stuck in the cell door.

12. CO [REDACTED] opened the Grievant's cell door.

13. The Grievant was taken to the medical office at [REDACTED] and subsequently to [REDACTED] for treatment of a serious injury to the pad on his right thumb in which a portion of the pad on the top of the thumb was sliced off.

14. The [REDACTED] Inmate Handbook provides that arms and hands are to remain in the cell at all times and inmates must not prevent the cell door from closing in any manner.

15. The [REDACTED] Inmate Handbook prohibits the covering of cell doors by any means.

DISCUSSION

"[I]f an individual confined in a correctional facility in the [DOC] . . . has a grievance against an official or employee of the [DOC] . . . the individual may submit a complaint to the

[IGO] within the time and in the manner required by regulations adopted by the [IGO].”

Maryland Code Annotated, Corr. Servs., § 10-206(a) (2017). The IGO has specific regulations addressing certain types of grievances. As this grievance is not based on a disciplinary matter, an issue relating to his property, or an administrative decision by the DOC or Patuxent, the IGO has no regulation that specifically addresses this kind of complaint.⁵ Nevertheless, a State prisoner must exhaust remedies through the IGO in order to proceed with a claim under the Maryland Tort Claims Act. *McCullough v. Wittner*, 314 Md. 602 (1989); *see also Earle v. Gunnell*, 78 Md. App. 648 (1989). “A court may not consider an individual’s grievance that is within the jurisdiction of the [IGO] or the [OAH] unless the individual has exhausted the remedies provided in this subtitle.” Md. Code Ann., Corr. Servs. § 10-210(a) (2017).

In any inmate grievance, the Grievant bears the burden of proving his case by a preponderance of the evidence. COMAR 12.07.01.08A(1). The administrative law judge must conduct the hearing according to standards established under State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland. In order to prevail, a grievant has to present substantial evidence in support of his claim. COMAR 12.07.01.08A(2). The Grievant is seeking an award of monetary damages at this time.

⁵ COMAR 12.07.01.08C(2) dictates that an Administrative Law Judge may determine that an administrative decision is arbitrary and capricious, or inconsistent with the law, if:

- (a) The decision maker or makers did not follow applicable laws, regulations, policy or procedures;
- (b) The applicable laws, regulations, policy or procedures were intended to provide the grievant a procedural benefit; and
- (c) The failure to follow applicable laws, regulations, policy or procedures prejudiced the grievant.

The Grievant’s claim is more similar to an allegation of negligence than it is to an allegation the DOC made an administrative decision that denied the Grievant a procedural benefit resulting in prejudice to the Grievant. Accordingly, I have analyzed this Grievance under the negligence standards.

The Maryland Court of Appeals has outlined what a plaintiff, or in this case the Grievant, must prove to successfully recover for a claim for negligence:

In order to state a cause of action in negligence, the plaintiff must show the following: (1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.

Rosenblatt v. Exxon Co., U.S.A., 335 Md. 58, 76 (1994).

The DOC was under a duty to protect the Grievant from injury.

The DOC had a duty to protect the Grievant. Ordinarily, courts will not impose an affirmative duty to protect the interests of another, absent a special relationship between the parties. That special relationship existed here: the Grievant was entirely dependent on the State, which has exclusive control over the care and confinement of prison inmates. *State v. Johnson*, 108 Md. App. 54, 65 (1996) (citing *Prosser and Keeton on the Law of Torts* § 56, at 376 (5th ed. 1984) for the proposition that the special relationship between jailer and prisoner justifies imposing a duty to protect prisoners). Indeed the *Johnson* Court held that a correctional institution has a duty to provide reasonable medical care for inmates. *Id.* Accordingly, the Grievant proved the first prong of his negligence claim.

The Grievant failed to prove that the DOC breached its duty to protect the Grievant from injury.

The Grievant testified at the hearing that the cell doors at [REDACTED] open and close at different speeds. He testified that CO [REDACTED] closed the cell door too quickly causing the injury. The Grievant testified that he entered the cell sideways and his right thumb got smashed in the door because the door closed too quickly. The Grievant denied grabbing the sheet or curtain during the incident.

The Grievant's testimony is inconsistent with the statement he provided to the DOC on the date of the incident. In his contemporaneous statement the Grievant noted that as the door was closing, he noticed the sheet was blowing out the door. He tried to pull the sheet back and his thumb got caught in the door.

The Grievant provided a nurse in the [REDACTED] Office of Health Services a statement on [REDACTED] 2018 at 9:00 p.m. in the course of receiving treatment for his injured thumb. Describing the incident to [REDACTED] R.N., the Grievant stated "My thumb got caught in the cell door. I knew the door was closing, I had a sheet hanging up and I saw the sheet blowing and went to grab the sheet." (DOC Ex. 1)

The Grievant's witness, inmate Mr. [REDACTED] testified that he saw the Grievant enter the cell sideways. Once the Grievant's hand was caught in the closed door Mr. [REDACTED] called out for the correctional officer to open the cell door. He acknowledged that he didn't see how the Grievant's hand was closed in the door.

CO [REDACTED] testified that he pushed the switch to close the Grievant's cell door once the Grievant stepped inside the cell. CO [REDACTED] could not see the Grievant once he entered his cell. He heard screaming so he opened the cell door. His testimony is consistent with the Information Report he filed on [REDACTED] 2018. (DOC Ex. 1)

Lt. [REDACTED] testified that the cell doors are closed by means of a toggle switch in a cabinet on the tier. When the switch is up the door is open; when it is down the door is closed. The mechanism that opens and closes cell doors only runs at one speed. Lt. [REDACTED] displayed a video of the cell door taken after this incident. It depicts the process of closing the cell door. The process takes approximately five seconds for a cell door to go from completely open to completely closed.

Capt. [REDACTED] conducted an investigation of the incident. He interviewed inmate [REDACTED] DOC# [REDACTED] who stated that the Grievant told him his hand got caught in the door as he was trying to grab the sheet hanging inside the door so it would not get caught in the door.

I conclude based on a consideration of all the credible evidence that the Grievant's injury was not the result of the any negligence by CO [REDACTED] or any dangerous characteristic of the door closing mechanism. The Grievant told the nurse immediately after the incident that he grabbed the sheet as the door was closing and that was how his finger got caught in the door. The Grievant gave inmate [REDACTED] the same account of the incident. Neither Mr. [REDACTED] nor CO [REDACTED] saw the incident. The only evidence in support of his claim is the Grievant's testimony. As that testimony is inconsistent with other consistent credible evidence, I conclude that the Grievant did not testify truthfully.

For the same reason I reject the Grievant's testimony that the door speed on the tier at [REDACTED] was somehow deficient or dangerous. The security video displayed by Lt. [REDACTED] showed the cell door closing at a level speed, accomplishing full closure of the door in approximately five seconds. That is a sufficient amount of time to allow an individual to step through the doorway into the cell. It may not be enough time to attempt to grab and pull back a sheet affixed over the door frame. Based on all the credible evidence I conclude that the Grievant entered the cell safely but reached out to grab the sheet, causing his thumb to be caught between the door and doorjamb. The injury to the Grievant's thumb was the result of his own carelessness, not negligence on the part of the DOC.

CONCLUSION OF LAW

I conclude as a matter of law that the Grievant did not establish that his injury was the result of negligence on the part of DOC staff. *State v. Johnson*, 108 Md. App. 54, 65 (1996); *Rosenblatt v. Exxon Co., U.S.A.*, 335 Md. 58, 76 (1994).

ORDER

Having concluded that the grievance is without merit, I **ORDER** that it is **DENIED** and **DISMISSED**.

Signature Appears on Original

December 17, 2020

Date Decision Issued

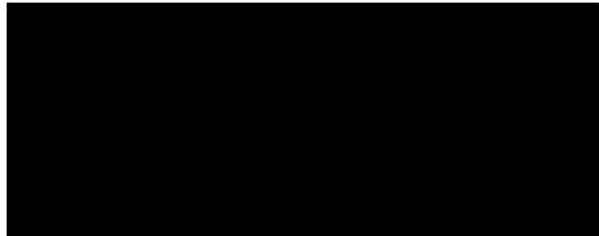
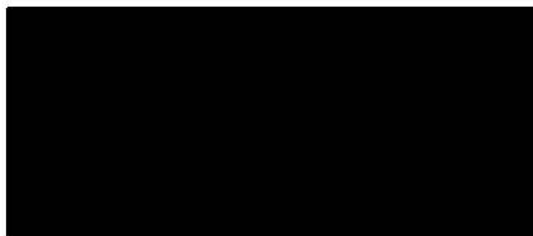
Mary R. Craig
Administrative Law Judge

MRC/sw
#189551

REVIEW RIGHTS

You are entitled to file a petition for judicial review with the circuit court for the county in which the institution you are confined is located within thirty (30) days of the mailing of the decision. Md. Code Ann., Corr. Servs. § 10-210(b) (2017); Md. Rules 7-201 through 7-210. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. This decision may only be reversed or modified on appeal if any substantial right may have been prejudiced because a finding, conclusion, or decision of the final decision maker: (1) is unconstitutional; (2) exceeds the statutory authority or jurisdiction of the final decision maker; (3) results from an unlawful procedure; (4) is affected by any other error of law; (5) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or (6) is arbitrary or capricious. Md. Code Ann., State Gov't § 10-222(h)(3) (Supp. 2020). Judicial review of disputed issues of fact shall be confined to the record for judicial review supplemented by additional evidence taken. Md. Code Ann., State Gov't § 10-222(f)(1) (Supp. 2020). The Office of Administrative Hearings is not a party to any review process.

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CONCLUSION OF LAW

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ORDER

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