

NOTICE OF AGENCY'S FINAL DECISION

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Case Name: _____

ALJ: Anderson

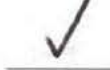
Decision Date: 1/12/23

Case No.: DPSC-IG0-002-22-30075

Agency Case No. (if applicable): _____

Document Name (CRS): _____

Please check one:



AFFIRMED



AFFIRMED w/ comment



MODIFIED



REVERSED



OTHER _____

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[REDACTED] # [REDACTED]

GRIEVANT

v.

THE MARYLAND DIVISION

OF CORRECTION

* BEFORE SUSAN H. ANDERSON
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DPSC-IGO-002-22-30075
* IGO No.: [REDACTED]

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
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FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
ORDER

STATEMENT OF THE CASE

On July 25, 2022, [REDACTED] (Grievant) filed a grievance¹ with the Inmate Grievance Office (IGO).² In referring the matter to the OAH, the IGO prepared a summary of the grievance. At the hearing, I read the IGO's prepared summary to the Grievant and he advised that he agreed with the summary, which I summarize as follows:

On March 30, 2022, at [REDACTED] p.m., while on his way to dinner, the Grievant noticed four inmates heading towards the building where he was housed. He immediately notified the lieutenant and captain on duty that he feared for his life and wanted to "check in" meaning he wanted to go into protective custody. In response to the request, the captain sent word to the tier officer to deadlock the Grievant's cell so nothing would be taken, and the Grievant was taken to Administrative Segregation in accordance with his request.

¹ A "grievance" is "the complaint of any individual in the custody of the Commissioner [of the Division of Correction] 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. 2022). 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).

The Grievant's property was packed and delivered to him in segregation six hours later. He noticed that his television and remote control were missing and mentioned this fact to the correctional officers who delivered his property. He was asked by the officers to provide the paperwork indicating he owned the missing television and remote, which he did.³ The officers told him in order to get the remainder of his property, he would have to sign the Personal Property Inventory Sheet. By signing that sheet, the Grievant acknowledged that all of his personal property was present and accounted for. He seeks the return of his television and remote.

On December 22, 2022, I held a hearing via videoconference.⁴ I was located at the OAH, and the parties were at the [REDACTED] ([REDACTED]), a facility of the Division of Correction (DOC). The Grievant represented himself. Lieutenant [REDACTED] IGO Coordinator at the [REDACTED] represented the DOC.⁵

The contested case provisions of the Administrative Procedure Act, the IGO's General Regulations, and the OAH's Rules of Procedure govern procedure.⁶

ISSUES

1. Were the Grievant's television and television remote lost or stolen as a result of the negligence of the officers who packed up his belongings when he voluntarily went to Administrative Segregation on March 30, 2022?
2. If so, is the Grievant entitled to relief?

³ The original Grievance summary indicated that the Grievant told the officers that his paperwork was in the box with the rest of his possessions. However, at the hearing, it was disclosed that he showed them the paperwork when they asked to see it.

⁴ Md. Code Ann., Corr. Servs. § 10-207(c)(2) (2017); Md. Code Ann., State Gov't § 10-211 (2021); and COMAR 28.02.01.20B(1)(b).

⁵ The Grievant was housed at the [REDACTED] ([REDACTED]) at the time the incidents complained of occurred. He has since been moved to the [REDACTED]. An IGO coordinator from the [REDACTED] was supposed to attend the hearing on behalf of the DOC. However, when Lt. [REDACTED] checked, he was advised that the IGO coordinator from [REDACTED] was out of the facility for a funeral. Lt. [REDACTED] requested a postponement, which I denied. I found there was no good cause to postpone the matter as it has been scheduled since September 19, 2022, and no one at [REDACTED] filed a request for a postponement. COMAR 28.02.01.16.

⁶ Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 12.07.01; and COMAR 28.02.01.

SUMMARY OF THE EVIDENCE

Exhibits

I incorporated the entire IGO file into the record, which contained the following documents:

- IGO Ex. 1 - Invoice from [REDACTED] for Hiteker 15'6" Clear TV/Touch Buttons and Hiteker Clear Remote for HK Series TV, ordered April 7, 2021
- IGO Ex. 2 - [REDACTED] Inmate Response Form, dated May 13, 2022
- IGO Ex. 3 - To Whom It May Concern Letter from the Grievant to the Administrative Remedy Procedures (ARP)/IGP⁷ Unit, dated April 15, 2022, received April 19, 2022
- IGO Ex. 4 - Grievant's Request for Administrative Remedy to the Warden, dated April 5, 2022
- IGO Ex. 5 - Appeal to Commissioner of Corrections, dated May 16, 2022, with Part-C Receipt attached, dated May 24, 2022
- IGO Ex. 6 - To Whom It May Concern Letter from the Grievant to the ARP Unit, dated May 17, 2022
- IGO Ex. 7 - ARP Extension Form from the Commission of Corrections, dated May 24, 2022
- IGO Ex. 8 - Request for Administrative Remedy, Part B – Warden's Response, dated June 13, 2022
- IGO Ex. 9 - ARP Appeal, Part B – Commissioner's Response, dated June 27, 2022
- IGO Ex. 10 - Grievance to the IGO, received July 25, 2022
- IGO Ex. 11 - Letter from the IGO to the Grievant requesting copies of inventory sheets, dated July 28, 2022
- IGO Ex. 12 - [REDACTED] ([REDACTED]) Inmate Package Receipt, dated April 27, 2021
- IGO Ex. 13 - [REDACTED] Receipt of Registration, dated April 27, 2021
- IGO Ex. 14 - [REDACTED] Invoice # [REDACTED] for \$25.75, dated March 21, 2022
- IGO Ex. 15 - [REDACTED] Personal Property Inventory, dated March 30, 2022

⁷ The abbreviation "IGP" is not explained in the record.

IGO Ex. 16 - Memorandum to the IGO from [REDACTED], CCMS II,⁸ dated August 19, 2022

IGO Ex. 17 - Cover Letter to Grievant's Response, received August 25, 2022

IGO Ex. 18 - Rules of Procedure for Grievance Hearings, undated

IGO Ex. 19 - Preliminary Review, dated September 14, 2022

IGO Ex. 20 - Notice of Hearing for December 22, 2022, dated September 19, 2022

IGO Ex. 21 - Email to Coordinators advising of upcoming hearing date, dated September 19, 2022

The DOC did not offer any exhibits into evidence.

The Grievant did not offer any exhibits into evidence.

Testimony

The Grievant testified and did not present other witnesses.

The DOC did not present any witnesses.

FINDINGS OF FACT

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

1. On March 30, 2022, the Grievant was housed at the [REDACTED] a DOC facility.
2. On March 30, 2022, and at all relevant times, the Grievant owned a 15.6-inch Hiteker television (TV) and a Hiteker television remote controller (remote). The Grievant had purchased the items from [REDACTED] on April 7, 2021, while he was housed at the [REDACTED].⁹
3. The Grievant paid \$185.90 for the TV and \$12.50 for the remote.¹⁰
4. On March 30, 2022, while he was on his way to dinner, the Grievant spotted four inmates by whom he felt threatened; he had been involved in an earlier altercation with them.

⁸ This abbreviation is not explained in the record.

⁹ IGO Ex. 1.

¹⁰ *Id.*

5. The Grievant immediately told the lieutenant and captain on duty that he was afraid for his life, and he requested to be placed in protective custody. He also advised the captain that he had appliances in his cell.

6. The captain then called the tier officer and told the officer to “deadlock” the Grievant’s cell so that no one could go in or out until the Grievant’s property had been packed up.

7. The Grievant was placed in Administrative Segregation as he requested.

8. Approximately six hours later, officers brought the Grievant’s property to him in Administrative Segregation. The Grievant told the officers that his TV and remote were missing.

9. The officers asked the Grievant to produce paperwork to prove ownership of the TV and remote, which he did.

10. The officers then advised the Grievant that they would not release any of his property unless he signed the Personal Property Inventory (Inventory) completed by the officers who had packed up his belongings.

11. At the bottom of the Inventory, inmates are asked to sign a statement that says, “I, inmate [NAME], ID# [], have checked the above list of personal property and agree that all the items are herein are mine and consist of all my personal property.”

12. The Grievant protested because his TV and remote were not listed on the Inventory and he did not want to sign the Inventory agreeing that it was a complete list of all of his personal property. However, he eventually signed the Inventory after the officers told him it was the only way to have the rest of his property released to him.¹¹

¹¹ IGO Ex. 15.

13. On April 5, 2022, the Grievant filed an ARP requesting that either his TV and remote be replaced or that he be reimbursed for the cost of the items.¹²

DISCUSSION

THE BURDEN OF PROOF AND THE LEGAL STANDARD

In an inmate grievance proceeding concerning inmate property that has been alleged to have been lost, damaged, stolen, or destroyed, the burden of proof rests with the Grievant, who must prove his case by a preponderance of the evidence.¹³ To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered.¹⁴

The Grievant must prove the following:

- (1) That the property was lost, damaged, stolen, or destroyed through the negligence or other wrongful act or omission of an employee or official of the Division or the Patuxent Institution;
- (2) That the grievant was the owner of the property at the time of the alleged loss, damage, theft, or destruction;
- (3) That the grievant was authorized to possess the property under the rules of the correctional facility in which the grievant was confined at the time of the alleged loss, damage, theft, or destruction; and
- (4) The fair value of the property at the time of the alleged loss, damage, theft, or destruction.¹⁵

For the reasons that follow, I find the Grievant has met his burden.

ANALYSIS

The Grievant's TV and Remote Were Lost or Destroyed Through the Negligence of the DOC

The Grievant presented persuasive, un rebutted testimony and evidence showing that his TV and its accompanying remote were lost or stolen sometime between when he left his cell for dinner on March 30, 2022, and the time officers brought him the property from his cell

¹² IGO Ex. 4.

¹³ COMAR 12.07.01.09B.

¹⁴ *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

¹⁵ COMAR 12.07.01.09B.

approximately six hours later. He explained in detail and with sincerity the events of March 30, 2022: his request to be placed in protective custody; his advisement to the captain that he had appliances in his cell; and his advisement to the officers who later delivered his property that the TV and remote were missing.

The Warden and the Commissioner of Correction both denied the Grievance on the basis that the Grievant signed the Inventory, which did not list the TV and remote, agreeing that it was a complete list of his personal property.¹⁶ However, the Grievant offered compelling testimony that he was essentially coerced into signing the Inventory because the officers who delivered his property told him they would only release his property to him if he signed the sheet. The DOC did not present any evidence to refute this compelling testimony.

The DOC did not dispute that the Grievant was the owner of the personal property at issue on March 30, 2022, or that he was authorized to possess such personal property.¹⁷ In addition, the DOC did not challenge the Grievant's assertion that the TV and remote were in his cell at the time he entered protective custody. The testimony established that there was only a short window of time between the time the Grievant left his cell to go to dinner and when the captain radioed the tier officer to order that the Grievant's cell be "deadlocked." Based on this short timeframe and the credibility of the Grievant's testimony, I find it more likely than not the TV and remote were in his cell at the time it was "deadlocked," and he entered protective custody.

Moreover, there was no evidence tending to show that the Grievant sold or gave away his TV and remote. The DOC did not rebut the Grievant's credible testimony that his TV and remote were missing from his property when officers brought it to him on the night of March 30, 2022, after packing up his belongings in his cell. Nor did it rebut his testimony that he only

¹⁶ IGO Ex. 19.

¹⁷ See IGO Ex. 1, invoice from [REDACTED] for TV and remote; IGO Ex. 12, [REDACTED] Inmate Package Receipt; and IGO Ex. 13, [REDACTED] Receipt of Registration for TV.

signed the Inventory form without the TV and remote listed so that he could gain access to his other property.

Further, the DOC did not successfully rebut the Grievant's credible evidence that his TV and remote were placed under its care, custody, and control on March 30, 2022, but were not packed up or ever delivered to him. Since the Grievant's TV and remote were in the possession and control of the DOC and should have been safely packed away, I find that absent negligence or some other wrongful act or omission of DOC employees, the TV and remote would have been located and returned to the Grievant.

There is no other credible explanation for the loss of the TV and remote. Therefore, I conclude that the DOC, through its negligence or wrongful act or omission, lost or destroyed the Grievant's TV and remote.

The Grievant is Entitled to the Fair Value of the TV and Remote

Having found the grievance meritorious, I must now decide what type of relief is due. The Grievant is entitled to the "fair value" of his property, meaning the value "at the time of the loss, damage, or theft" that is the lesser of the "[a]ctual cost of the property at the time of acquisition, less any amounts attributable to depreciation, wear, use, and other factors which decrease the value of the property" ¹⁸ The value of lost or damaged inmate property is governed by DOC Directive (DCD) 220-008, issued November 1, 2001. ¹⁹ Under DCD 220-008, inmates are compensated for lost or damaged property on a straight line depreciation basis. ²⁰ The rate of depreciation of various kinds of property is found in a table included with the DCD. ²¹

The life expectancy of a TV is listed as ten years. Therefore, the Grievant's TV depreciated at 10% per year. There is no specific category for remotes, so I will use the life

¹⁸ COMAR 12.07.01.01B(6)(a), (b)(i).

¹⁹ Although not presented during the hearing, I presume this DCD applies.

²⁰ DCD 220-008 VI.F.4.

²¹ See DCD 220-008, Appendix 3.

expectancy of a TV (ten years) to calculate the depreciation for the remote. The Grievant's property losses occurred on or about March 30, 2022. The Grievant purchased the TV and remote on April 7, 2021, so they were approximately one year old when they were lost or stolen, resulting in a depreciation of 10%.

The actual cost to replace the Greivant's TV and remote is determined as follows:

Item	Actual Cost on April 7, 2021	Life Expectancy/Years	Actual Age/Years	Less Depreciation Value Each Year	Fair Value
Hiteker 15.6" television	\$185.90	10	1	\$18.59 (185.90 divided by 10 = 18.59)	\$167.31
Hiteker Clear Remote for HK Series TV	\$12.50	10	1	\$1.25 (12.50 divided by 10 = 1.25)	\$11.25
Total	\$198.40	10	1	\$19.84	\$178.56

Therefore, I find that the Grievant should be reimbursed a total of \$178.56 for his TV and remote that were lost or destroyed through the negligence or other wrongful act or omission of the DOC. Finally, there was no evidence presented that the Grievant has filed a claim under the Maryland Tort Claims Act.²²

CONCLUSION OF LAW

I conclude as a matter of law that the Grievant did establish all the elements set forth in COMAR 12.07.01.09B in order to substantiate his claim.

²² If a grievance is meritorious in whole or part, the Administrative Law Judge shall notify the Secretary of Public Safety and Correctional Services whether the Grievant has also filed a claim under the Maryland Tort Claims Act. COMAR 12.07.01.09E(2), (3).

PROPOSED ORDER

Having concluded that the grievance is meritorious, I **PROPOSE** that it be **GRANTED** and **RECOMMEND** that the Grievant be reimbursed a total of \$178.56 for his Hiteker 15'6" Clear TV/Touch Buttons and Hiteker Clear Remote for HK Series TV.

January 12, 2023
Date Decision Issued

SHA/ja
#202603

Signature Appears on Original

Susan H. Anderson
Administrative Law Judge

[REDACTED], # [REDACTED]

GRIEVANT

v.

THE MARYLAND DIVISION

OF CORRECTION

* BEFORE SUSAN H. ANDERSON,
* AN ADMINISTRATIVE LAW JUDGE
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* * * * *

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