

STATE OF WISCONSIN

Senate Journal

One-Hundred and Second Regular Session

WEDNESDAY, May 4, 2016

The Chief Clerk makes the following entries under the above date.

PETITIONS AND COMMUNICATIONS

State of Wisconsin Claims Board

April 6, 2016

Enclosed is the report of the State Claims Board covering the claims heard on March 16, 2016. Those claims approved for payment pursuant to the provisions of s.16.007 and 775.05 Stats., have been paid directly by the Board.

This report is for the information of the Legislature, The Board would appreciate your acceptance and publication of it in the Journal to inform the members of the Legislature.

Sincerely,
GREGORY D. MURRAY
Secretary

STATE OF WISCONSIN CLAIMS BOARD
The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on March 16, 2016, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Clontech Laboratories	Financial Institutions	\$38,909.00
2. Craig S. Geiger	Revenue	\$3,407.96
3. Donna Cvetan	Revenue	\$6,487.12+

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
4. Susan Roloff	Transportation	\$673.31
5. Terry Miller	Milwaukee Co. District Attorney	\$5,982.00
6. Mekious D. Bullock, Sr.	Corrections	\$40.48
7. David W. Orr	Corrections	\$280.25
8. Cornelius R. Reed	Petition for Rehearing of Innocent Convict Compensation Claim Denied by Claims Board on December 15, 2015.	

The Board Finds:

1. Clontech Laboratories, Inc., of Mountain View, California claims \$38,909.00 for refund of an alleged

overpayment of fees due to an error on their 2011 Foreign Corporation Annual Report. The claimant states that the amount of capital representation in Wisconsin reported on the form was taken from its 2010 Wisconsin tax return, based on advice from its accountant. The claimant later realized that the amount reported on its tax return included other state assets and revenue, resulting in a significant over-reporting of capital on the 2011 Annual Report. The claimant alleges the correct capital representation should have been approximately \$850,000 but the incorrectly reported amount was in excess of \$12 million. The claimant was charged a fee of \$33,909 based on the incorrect capital representation. The claimant was also charged the maximum penalty of \$5,000 for transacting business without a Certificate of Authority because the size of the penalty is based on the amount of capital representation. The claimant understands this overpayment could be taken as a credit against fees for future annual reports, however, it does not anticipate sufficient annual growth in its Wisconsin capital to utilize the credit in a reasonable amount of time.

DFI recommends denial of this claim. DFI notes that it has no means by which to verify the accuracy of the information provided by the claimant, because the claimant has exclusive control over the information on which the Annual Report's calculations are based. DFI points to the fact that there was no error by DFI or any of its employees. DFI notes that the Claims Board has a history of denying similar claims and recommends that the board deny this claim as well.

The Board concludes the claim should be paid in the reduced amount of \$4,770.00 (the amount of the increased penalty caused by the incorrect capital representation) based on equitable principles. The Board further concludes, under authority of § 16.007(6m), Stats., payment should be made from the Department of Financial Institutions appropriation

§ 20.144(1)(g), Stats. [*Member Ignatowski not participating.*]

2. Craig S. Geiger of Oregon, Wisconsin claims \$3,407.96 for overpayments and refunds related to 2003, 2009, and 2010, late filed income tax returns. Claimant states that he was homeless during the years in question, surviving with the help of family and friends, and receiving EBT benefits. He incorrectly assumed that he did not have to file taxes for those years due to his lack of income. The claimant also states that he believed that his settlement with the IRS included any state tax obligations. The claimant states that he was unaware there was a statute of limitations to claim refund of any

overpayments. The claimant filed the missing returns in April and June of 2015 with the assistance of an accountant. He requests reimbursement for the amount overpaid for 2003 and the refunds denied for 2009 and 2010.

DOR recommends denial of this claim. DOR records indicate that multiple notices were issued to the Claimant regarding the missing returns, including Requests to File, Notices of Estimated Tax, Notices of Overdue Tax, and Notices of Intent to Offset federal refunds. DOR states that all of these notices warned of the consequences of not filing the missing returns. DOR issued estimated assessments for 2003 on October 9, 2007, and for 2009 and 2010 on June 26, 2013. DOR records indicate the claimant informed his DOR agent that he would pick up forms to file the returns on March 20, 2014, and was provided with forms and information about volunteer income tax assistance sites. The 2009 and 2010 returns were filed on April 27, 2015, and the 2003 return was filed on June 27, 2015. DOR states that § 71.75(5), Wis. Stats., prohibits DOR from refunding the overpayment for the 2003 assessment because no refund was claimed within four years of the assessment date. DOR also points to § 71.75(2), Wis. Stats., which prohibits DOR from allowing the refund claimed on the 2009 and 2010 returns because the returns were not filed within four years of the original unextended due dates.

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

3. Donna Cvetan of Sheboygan, Wisconsin claims \$6,487.12+ for return of amounts garnished from her wages for a tax liability for which the claimant believes she is not liable. The claimant and her husband entered into a Marital Property Agreement in 1994, which clearly states that D&M Plumbing & Heating, which claimant's husband owned for many years prior to the marriage, was his individual property. The claimant points to Section 4.1.b. of the Agreement, which provides that "without any obligation or liability on the part of the other" party, each party is responsible for "debts, obligations, taxes, assessments, and expenses at any time incurred...relating to the acquisition, holding, disposition, operation, management, or administration of his or her solely owned property." The claimant states that during a routine audit of D&M, it was discovered that some sales and use taxes had inadvertently not been paid. The claimant states that she has never had any involvement whatsoever in D&M and points to Section 4.4. of the Agreement, which states that "each party shall have full and exclusive powers of management and control over the property classified as his or her individual property...free from all rights, claims, or property interests of the other..." The claimant points to the fact that the Agreement also provides "that the classification of [her husband's] W-2 wages as marital shall not constitute a 'mixing' of marital and individual property" (Section 2.1.a.). D&M Plumbing & Heating closed in February 2015. DOR began garnishing 25% of the claimant's wages in June 2015 to recover the sales

and use taxes owed by D&M. The claimant believes that the Marital Property Agreement clearly states that she is not responsible for payment of these taxes. She requests reimbursement of all monies garnished by DOR and that DOR cease any further garnishment of her wages for payment of this debt. As of the date this claim was filed, October 28, 2015, the DOR garnishment totaled \$6,487.12.

DOR recommends denial of this claim. DOR points to section 4.6.b. of the Marital Property Agreement, which states that W-2 wages earned by both parties "shall be owned equally by both parties." DOR takes the position that since W-2 wages are not classified as individual property, they are considered marital property under § 766.31, Wis. Stats.

The Board defers decision of this claim at this time so that additional information may be obtained from DOR.

4. Susan Roloff of Stillwater, Minnesota claims \$673.31 for car damage allegedly caused by a road defect in St. Croix County. On October 4, 2015, the claimant was traveling on Hwy. 35/64 towards the Stillwater Bridge. The claimant states that the area was under construction and traffic was limited to one lane, moving about 48-53 mph., when her vehicle hit a large pothole. The claimant states that the vehicle's ABS and Trac Off warning lights came on shortly thereafter. The next day the claimant brought her vehicle to a mechanic, who had to replace the left front ball joints, replace a hub bearing, and do a front-end alignment. The claimant states that she contacted St. Croix County and DOT, but that each entity assumed the other was handling her claim. The claimant has a \$500 insurance deductible. She requests reimbursement for the damage to her vehicle.

DOT recommends denial of this claim. The area where this incident occurred was under construction as part of a project related to the St. Croix Crossing. As part of that project, traffic was shifted to STH 35/64. DOT states that it has a contract with St. Croix County for maintenance of state highways, including STH 34/64. DOT notes that when the county was notified about the pothole, they responded in a timely manner to fill it and continued to make repairs as needed. DOT states that because of the severity of the pothole, it was decided to use the project construction contractor to remove and repave the asphalt shoulder in the area where the incident occurred. This work was added to DOT's existing construction contract for the project, which contains a clause relieving the state of any responsibility for damages.

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

5. Terry Miller of Milwaukee, Wisconsin claims \$5,982.00 for lost wages due to an allegedly excessive and unlawful sentence. In 1985, the claimant was sentenced to 12 years imprisonment for Burglary, Party to a Crime. The claimant points to the fact that this charge was a Class C felony and that the penalty for a Class C felony is "imprisonment not to exceed 10 years" pursuant to § 939.50(3)(c), Wis. Stats. The

claimant believes his sentence exceeded the statutory maximum and requests reimbursement for lost wages during the two additional years he served in prison.

The Milwaukee County District Attorney's Office (DA) recommends denial of this claim. The DA points to the fact that the claimant was charged and convicted of burglary as a habitual criminal. The habitual criminality penalty enhancer allowed for a sentence up to 16 years, therefore, the 12 year sentence was not excessive. The DA notes that the claimant's original judgement of conviction did not reflect the habitual criminality enhancer, which was corrected in 2014 by the court.

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

6. Mekious D. Bullock, Sr. of Waupun, Wisconsin claims \$40.48 for the cost of a Norelco razor allegedly damaged by DOC staff. The claimant is an inmate at Waupun Correctional Institution (WCI). He alleges that WCI property staff routinely invent reasons for seizing property they either don't want inmates to have or that inmates can no longer purchase. He alleges that when staff inventoried and inspected his property in June 2015, his razor was in good working condition. However, WCI staff seized the razor as contraband, declaring it altered because the trimmer blades would not stay in the trimmer. The claimant contacted property staff to get more details regarding what was wrong with the razor and staff then responded that the trimmer blades were "missing." The claimant believes that the fact that WCI staff gave two different answers regarding the trimmer blades proves that staff was negligent in handling his property. The claimant filed an Inmate Complaint regarding the razor on June 19, 2015. The claimant states that DOC rules require a response within 20 working days, however, DOC did not respond to his complaint until November 3, 2015, almost four and a half months later. The claimant believes this shows that DOC does not follow its own rules and that WCI staff likely broke his razor and then lied about it. He requests reimbursement for the cost of the razor.

DOC recommends denial of this claim. DOC records indicate that during an inspection, WCI staff found that the razor's trimmer blade would not stay in the trimmer. DOC denies that staff mishandled the razor; when staff opened the trimmer, the trimmer blade simply popped out because it was not secure and would not stay in place. DOC notes that if staff had inadvertently damaged the razor, they would have written an incident report, which they did not. DOC policies state that altered or damaged property items are deemed to be contraband and must be either disposed of or sent out by the inmate. Finally DOC points out that the claimant did not appeal the institution's decision regarding his complaint and has therefore failed to exhaust his administrative remedies. DOC believes the claimant has submitted no evidence that WCI staff damaged his property and requests 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 which the state should assume and pay based on equitable principles.

7. David W. Orr of Waupun, Wisconsin claims \$280.25 for value of property allegedly lost due to DOC negligence. The claimant is an inmate at Waupun Correctional Institution. On February 19, 2015, the claimant was moved from the general population to temporary lock up (TLU). Upon transfer to TLU, DOC staff is responsible for inventorying and packing an inmate's property. The claimant alleges that his property was properly stored in his locked footlocker at the time of his transfer to TLU. He believes DOC staff did not take custody of his property in a timely fashion, thus allowing his cellmate to steal some of his property. The claimant states that it is common knowledge among inmates that there is often a delay of hours or days before staff packs up property when an inmate goes to TLU, therefore, those who wish to steal another inmate's property have ample opportunity to do so because of DOC's lax protocols. The claimant believes that DOC staff has a duty to compare the property in an inmate's cell with the Property Inventory Form when packing an inmate's property. This form would show what property the inmate possessed when he arrived at the institution, allowing staff to document any property subsequently received by the inmate. The claimant states that DOC staff failed to do this when they packed his property. Finally, the claimant refutes DOC's allegation that he has failed to exhaust his administrative remedies. The claimant filed an inmate complaint, however DOC took no action on his complaint until four or five months after he had filed this Claims Board claim. Rather than appeal DOC's decision, the claimant chose to simply continue with this claim. Because the Claims Board is not a court of law, the claimant does not believe he is required to exhaust his administrative remedies prior to filing a claim with the Claims Board. He requests reimbursement for items he believes were stolen by a third party due to DOC's negligence.

DOC recommends denial of this claim. When inmates are placed in TLU, their property is taken under staff control, packed, and sent to the institution's property department for inspection and inventory. DOC points to various property inventory forms which show what property was in the claimant's cell when he was transferred to TLU, what he was wearing when transferred, and the items in his cell at the time of his transfer that were designated contraband and destroyed. DOC states that any property not listed on those forms would not have been under staff control. DOC notes that the claimant admits that his own cellmate stole the property before it was under staff control. DOC believes it cannot be held liable for the actions of an inmate who steals another inmate's property. DOC notes that the claimant did not appeal the institution's decision of his inmate complaint, and therefore has not exhausted his administrative remedies. DOC believes the claimant has presented no evidence of negligence on the part of DOC staff and recommends the claim be denied.

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

8. Cornelius R. Reed of Stanley, Wisconsin petitions the board for a rehearing of his Innocent Convict Compensation claim, previously denied by the board on December 15, 2015.

The Board concludes that the petition for rehearing fails to meet the criteria for granting a rehearing under § 227.49(3)(a)-(c), Wis. Stats., and is therefore denied.

The Board concludes:

That the following identified claimants are denied:

Craig S. Greiger
Susan Roloff
Terry Miller
Mekioius D. Bullock, Sr.
David W. Orr
Cornelius R. Reed (Request for Rehearing)

That decision of the following claim is deferred to a later date:

Donna Cvetan

That payment of the amounts below to the identified claimants from the following statutory appropriations is justified under § 775.05, Stats:

Clontech Laboratories, Inc. \$4,770.00 § 20.144(1)(g),
Wis. Stats.

Dated at Madison, Wisconsin this 5th day of April, 2016.

COREY FINKELMEYER
Chair, Representative of the Attorney General
GREGORY D. MURRAY
Secretary, Representative of the Secretary of Administration
KATIE E. IGNATOWSKI
Representative of the Governor
LUTHER OLSEN
Senate Finance Committee

**State of Wisconsin
Claims Board**

April 12, 2016

Enclosed are three additional reports of the State Claims Board covering the claims heard on March 16, 2016. Those claims approved for payment pursuant to the provisions of s.16.007 and 775.05 Stats., have been paid directly by the Board.

This report is for the information of the Legislature, The Board would appreciate your acceptance and publication of it in the Journal to inform the members of the Legislature.

Sincerely,
GREGORY D. MURRAY
Secretary

**STATE OF WISCONSIN CLAIMS BOARD
CLAIM OF: MAURICE J. CORBINE
CLAIM NO. 2015-047-CONV**

Decision

The Claims Board considered this matter on March 16, 2016. Claimant, Maurice J. Corbine, did not request a hearing. The Claims Board reviewed the written materials submitted by Corbine. The Sawyer County District Attorney’s Office declined to submit a written response to this claim.

Background

This is a claim for Innocent Convict Compensation pursuant to § 775.05, Wis. Stats. The claim relates to Corbine’s 2011 conviction for Operating While Intoxicated (5th) and Operating While Revoked (2nd). Corbine states he is innocent of this crime. He requests \$90,000 for the three years he spent in prison.

Claimant’s Facts and Argument

Corbine states that on September 28, 2007, he was a passenger in a truck driven by his cousin, Rodney. He states that Sawyer County/Lac Courte Oreilles Tribal Police Officer, Twyla Dailey, pulled in behind the truck approximately 10-15 seconds after Rodney parked it in the parking lot of a local tavern. Officer Dailey arrested Corbine for OWI. Officer Dailey’s report stated that she followed the truck into the parking lot because she had observed it speeding and that she pulled in immediately after the truck. Officer Dailey also reported that she observed Corbine exit the driver’s side door, walk around the front of the truck and up to the passenger side door. Corbine alleges that he had already exited the vehicle and was approaching the tavern when Officer Daily arrived and that he had walked back to the passenger side of the truck because he did not have a driver’s license.

Corbine alleges that both he and Rodney told Officer Dailey that Rodney had been driving the truck, not Corbine, who admits that he was intoxicated at the time. Corbine states that Officer Dailey informed him that her in-car camera was recording the incident. Officer Dailey transported Corbine to the Sawyer County Jail, where he saw her insert a DVD into the booking room recording equipment. Corbine states that Dailey again told him the interview was being recorded. Corbine alleges that during the entirety of his interaction with Officer Dailey, both in the parking lot and at the jail, he repeatedly told her that he was not the driver of the vehicle but she persisted in arresting him. Corbine believes that Officer Dailey targeted him personally because she is corrupt.

Prior to his trial, Corbine’s attorney requested copies of the in-car and booking room videos from the night of the arrest, however, the Sawyer County District Attorney’s Office did not produce the videos, claiming that they could not find them. Corbine was convicted in 2011 and sentenced to 3 years in prison and 3 years supervision.

In 2013, Corbine appealed his conviction based on ineffective assistance of counsel because his trial attorney

(Hoffman) had failed to adequately investigate the failure of Sawyer County to produce the jailhouse video recording. The court of appeals remanded to the trial court for a Machner hearing. After the Machner hearing, the trial court ruled that Hoffman had adopted a reasonable strategy by not pursuing the video recording because it would have shown Corbine intoxicated and behaving aggressively and that the recording would likely not have changed the outcome of the trial. Corbine appealed the trial court's ruling.

On February 10, 2015, the court of appeals reversed his conviction. Corbine was released on that same day, having completed serving his sentence. The court pointed to Hoffman's testimony at the Machner hearing that he had relied on a description of what was on the jailhouse video based on a conversation he had with an unknown individual at Sawyer County. The court found: "Hoffman acknowledged he did not know the identity of the person who had allegedly viewed the video and therefore had no basis on which to determine whether that person was reliable...Further, Hoffman testified that his belief that the video portrayed Corbine in a poor light as based upon his review of the police report—not from something the unidentified person may have said. Finally, Hoffman testified he took no further steps to locate the DVD after he was told it was missing, and he never considered further action such as filing a motion." In addition, the court also found that Hoffman was deficient by failing to ask Corbine at trial whether he denied being the driver, which would have been "highly relevant to the credibility of the defense theory."

Corbine states that the DVD recording which Sawyer County failed to provide would have supported his defense that he was not the driver and that he had repeatedly denied being the driver during his interactions with Officer Dailey. Corbine believes the Sawyer County District Attorney intentionally withheld the DVD, which would have proven his innocence.

DA's Response and Argument

The Sawyer County District Attorney's Office (DA) declined to respond to this claim.

Discussion and Conclusion

Under the standards of Wis. Stat. § 775.05(3), the Claims Board must determine whether or not the evidence is clear and convincing that the petitioner was innocent of the crime for which he was imprisoned.

The Board concludes and finds that it is unable to determine whether the evidence is clear and convincing that Clements was innocent of the 2011 conviction for Operating While Intoxicated (5th) and Operating While Revoked (2nd) for which he was imprisoned. Accordingly, the Board further concludes that the Sawyer County District Attorney's Office shall file a written response to this claim and make itself available for appearance at a future hearing on this matter.
Vote: 4-0

Dated at Madison, Wisconsin this 11th day of April, 2016.

COREY FINKELMEYER
Chair, Representative of the Attorney General
GREGORY D. MURRAY
Secretary, Representative of the Secretary of Administration
KATIE E. IGNATOWSKI
Representative of the Governor
LUTHER OLSEN
Senate Finance Committee

**STATE OF WISCONSIN CLAIMS BOARD
CLAIM OF: RAYNARD R. JACKSON
CLAIM NO. 2014-080-CONV**

Decision

The Claims Board held a hearing on this matter on March 16, 2016. Claimant, Raynard R. Jackson, appeared by phone. The Milwaukee County District Attorney's Office appeared by phone in opposition to Jackson's claim.

Background

This is a claim for Innocent Convict Compensation pursuant to § 775.05, Wis. Stats. The claim relates to Jackson's 2004 conviction for Felon in Possession of a Firearm, Carrying a Concealed Weapon, and Obstruction of an Officer. Jackson states he is innocent of the weapons-related charges. He requests the maximum reimbursement of \$25,000 for the six years and three months he served in prison.

Claimant's Facts and Argument

Jackson states that on March 25, 2003, he and a companion, Morris Rash, saw a police car pass them as they entered a store. When they exited the store, the squad turned around and followed them as they walked down the sidewalk. Jackson states that he and Rash ran from the officers because they were both subject to outstanding warrants. Jackson states that Officer Lough chased him but that he was apprehended by Officer Dodd. Jackson states that he did not have a gun. Officer Awadallah apprehended Morris Rash.

Jackson alleges that this encounter involved a "rogue" group of District 3 officers: Awadallah, Lough, Dodd, and Dineen, who had a history of framing individuals for crimes and other misconduct. Jackson notes that the prior District 3 Captain had been relieved of command for sending a memo that encouraged officers to make "the thugs" lives "even more miserable than before" after an officer was transferred out of District 3 due to misconduct. Jackson alleges that these four officers planted a gun at the scene of his arrest and falsified reports in order to frame him.

Jackson states that the officers lied about many elements of the arrest. He specifically alleges: 1) there is no record of the "drug dealing complaint" to which the officers said they were responding; 2) the officers saw Jackson and Rash enter and leave the store; therefore, they were clearly not loitering; 3) Officer Lough wrote contradictory reports, one indicating that he picked up the gun while pursuing Jackson and one indicating that he went back for the gun after he apprehended

Jackson; 4) the gun the officers claim Jackson discarded was the exact same type and caliber issued to police officers, was not registered or reported stolen, and did not have Jackson's fingerprints on it; 5) Officer Lough testified at trial that he personally inventoried the gun into evidence, but police records show that it was Officer Awadallah who did so, more than five hours after Jackson's arrest; 6) Officer Lough reported that he was present for the arrests of both Jackson and Rice, even though the two men fled in different directions and were arrested in different locations; 7) contrary to Officer Lough's report, Jackson was arrested by Officer Dodd, and Lough had no contact with Jackson; 8) Officer Dodd struck Jackson while he was handcuffed, and took Jackson's watch and money, neither of which was ever inventoried.

In February 2005, Jackson was convicted of possession of a firearm by a felon, carrying a concealed weapon, and resisting an officer.

Jackson's initial post-conviction counsel, Attorney Lucius, filed an appeal in September 2005. In March 2005 Officer Awadallah was charged in federal court for threatening to plant evidence on a suspect in an unrelated case. Despite the fact that the charges against Officer Awadallah were prominently reported in multiple Milwaukee-area and statewide media sources while the post-conviction motion was still pending, Lucius failed to raise the issue in the motion.

In addition, in 2006 while Jackson's appeal was pending, the court of appeals released its decision in *State v. Missouri*. The court granted a new trial to Missouri due to the trial court's refusal to admit evidence of other acts of misconduct involving Officers Awadallah, Lough, Dodd, and Dineen. Despite the fact that these were the same four officers involved in Jackson's arrest, Lucius failed to amend his motion. Jackson's post-conviction motion was denied by the trial court.

In 2007, Jackson's new attorney, Mr. Gould, filed a motion for ineffective assistance of counsel based on Lucius's failure to raise issues related to the *Missouri* decision and newly discovered evidence—Officer Awadallah's conviction on federal civil rights charges. This motion was also denied by the trial court.

Attorney Gould appealed the denial and in December 2008 the court of appeals ordered a hearing on the issues. In July 2009, the court found that attorney Lucius's failure to bring up Officer Awadallah's prosecution and the *Missouri* decision constituted ineffective assistance of counsel. The court vacated both gun-related convictions and remanded those charges for a new trial. In August 2009 the State dismissed the gun-related charges.

Jackson believes that the officers involved in his arrest have no credibility, which was proven by Awadallah's conviction and the reversal of numerous other convictions based on the same type of misconduct by the same officers involved in Jackson's arrest.

Jackson points out that he would have only served 9 months for the conviction for obstruction and requests the

maximum reimbursement for the six years and three months he spent in prison.

DA's Response and Argument

The DA believes Jackson has failed to meet the standard of providing clear and convincing evidence that Jackson was innocent and recommends denial of this claim.

The DA states that neither the court proceedings nor Jackson's submissions establish that he was actually innocent of the crimes for which he was convicted, and that the State's decision to dismiss the gun-related charges was not based on a determination that he was innocent of those charges.

The DA notes that the court of appeals did not find that there was merit to Jackson's underlying claim, but only that his motion was sufficient to warrant a hearing. At the July 2009 hearing, Judge Martens found that Awadallah's conviction and the *Missouri* decision "at least as it relates to Awadallah" created a reasonable probability that the trial result would have been different due to Awadallah's role in the chain of custody of the recovered gun. Judge Martens vacated the gun-related charges and ordered a new trial on those counts; however, the obstruction charge was not overturned.

The DA points to the fact that Judge Martens' ruling was limited to Officer Awadallah and the chain of custody issue. Significantly, Judge Martens: 1) did not find that Jackson was innocent in fact; 2) did not find that any officer engaged in misconduct; 3) did not find that the evidence would be insufficient to establish guilt at retrial; and 4) did not determine that *Missouri* evidence was admissible to any officer other than Awadallah.

The DA states that it moved to dismiss the gun-related charges because the evidence would not have been as strong at retrial, since Awadallah was not available to establish chain of custody. That, and the possibility that *Missouri* evidence would be admitted, raised the question of whether the State could prove the charges beyond a reasonable doubt. In addition, Jackson had served most, if not all, of his maximum sentence. Therefore, the State moved to dismiss the outstanding charges.

When asked about the current status and credibility of Officer Lough, the DA reported that Officer Lough was still working as an officer with the Milwaukee Police Department. The DA also reported that Officer Lough's credibility had never been contested like Officer Awadallah nor had Officer Lough ever been charged with similar crimes.

Discussion and Conclusion

Under the standards of Wis. Stat. § 775.05(3), the Claims Board must determine whether or not the evidence is clear and convincing that the petitioner was innocent of the crime for which he was imprisoned.

The primary evidence provided by Jackson in support of his petition was that the court of appeals vacated the gun related charges due to ineffective assistance of counsel. However, based on long-standing precedent, the Claims Board does not automatically equate such a vacation with

innocence. A claimant like Jackson must prove his innocence by clear and convincing evidence, whereas in order to obtain a vacation based on ineffective assistance of counsel he only had to make a showing that there was a reasonable probability that the trial result would have been different if he had had more effective counsel. These are two very distinct standards with different burdens of proof and cannot be conflated. Therefore, the vacation, standing alone, does not mean that a claimant has proven his innocence by clear and convincing evidence.

Aside from the vacation noted above, Jackson cites the significant credibility problems and bad acts of Officer Awadallah, as evidence to substantiate that he was innocent of the charges and that essentially the gun charges were entirely fabricated. While it is true that Officer Awadallah has severe credibility problems and based on the record should not be believed, it was really Officer Lough who was the primary officer on the arrest. The DA stated that Officer Lough was still working as an officer with the Milwaukee Police Department, his credibility had never been contested like Officer Awadallah's, and Officer Lough had never been charged with similar crimes. As such, and based on the record before this Board, there is insufficient evidence to establish the conspiracy alleged by Jackson that all four officers engaged in a deliberate fabrication of his gun charges. In the absence of such evidence, the Board has no factual basis on which to find Jackson innocent of the charges to a clear and convincing standard.

Based on the above, and after hearing the evidence on the petition and reviewing all of the written submissions, the Board concludes and finds that the evidence is not clear and convincing that Jackson was innocent of the 2004 conviction for Felon in Possession of a Firearm and Carrying a Concealed Weapon for which he was imprisoned. Accordingly, the Board further concludes that no compensation shall be awarded. *Vote: 4-0.*

Dated at Madison, Wisconsin this 11th day of April, 2016.

COREY FINKELMEYER

Chair, Representative of the Attorney General

GREGORY D. MURRAY

Secretary, Representative of the Secretary of Administration

KATIE E. IGNATOWSKI

Representative of the Governor

LUTHER OLSEN

Senate Finance Committee

**STATE OF WISCONSIN CLAIMS BOARD
CLAIM OF: MARVIN D. CLEMENTS
CLAIM NO. 2015-039-CONV**

Decision

The Claims Board considered this matter on March 16, 2016. Claimant, Marvin D. Clements, did not request a hearing. The Claims Board reviewed the written materials submitted by Clements. The Milwaukee County District

Attorney's Office did not submit a written response to this claim.

Background

This is a claim for Innocent Convict Compensation pursuant to § 775.05, Wis. Stats. The claim relates to Clements' 2000 conviction for two counts of Knowingly Violating a Domestic Abuse Order and one count of Bail Jumping-Misdemeanor. Clements states he is innocent of this crime. He requests the maximum reimbursement of \$25,000 for the 9 months he spent in prison plus an additional \$15,000 for his three years of probation.

Claimant's Facts and Argument

In 1999, Clements was charged with two counts of Knowingly Violating a Domestic Abuse Order (KVDAO) and one count of Bail Jumping-Misdemeanor because of phone calls he made to the mother of his children, who had a restraining order against him. During the jury deliberation phase of Clements' trial, the jury sent two questions to the court, the second of which was "does the defendant's intention matter in this case?" The court called the jury back into the courtroom and stated, "With regard to Jury Instruction 2040, violating a temporary restraining order or an injunction, the answer to the question does the defendant's intention matter in this case, no, it does not." This statement by the court was incorrect. The court then reread a portion of the jury instructions, stating, "Again, the parties have stipulated that the defendant knew that the injunction had been issued. As to whether or not he knew that his act violated its terms, that's a question for the jury." This statement by the court was correct. The court gave correct instructions to the jury regarding the bail jumping charge.

Clements appealed his conviction, arguing that "the court's clearly erroneous oral instructions effectively relieved the State of its burden of proving the *mens rea* required by each offense beyond a reasonable doubt." Clements' sole defense at his trial was that, "he did not know he was violating the restraining order, injunction, or the terms of his bond because he had been trying to contact his children, not Valisha Walker, who was the mother of his four children," and who was the person with whom he had been ordered to have no contact. The court of appeals reversed Clements' convictions for violating the KVDAO, finding, "it is impossible to tell whether the jury followed the correct instruction on intent, or the incorrect one that allowed for conviction on the charges under Wis. Stat. § 813.12 even though 'intention' did not 'matter.'" The appeals court found that the trial court's instructions regarding the bail jumping charge were correct and upheld that conviction. The appeals court remanded the KVDAO violation charges for retrial.

Clements was released in September 2000, after serving his sentence. In September 2001, the State declined to retry Clements because he had already served his time.

DA's Response and Argument

The Milwaukee County District Attorney's Office (DA) did not respond to this claim.

Discussion and Conclusion

Under the standards of Wis. Stat. § 775.05(3), the Claims Board must determine whether or not the evidence is clear and convincing that the petitioner was innocent of the crime for which he was imprisoned.

The primary evidence provided by Clements in support of his petition was that the court of appeals remanded the KVDAO charges due to improper jury instructions. However, based on long-standing precedent, the Claims Board does not automatically equate such a remand with innocence. A claimant like Clements must prove his innocence by clear and convincing evidence. The remand, standing alone, does not automatically mean that a claimant has proven his innocence by clear and convincing evidence. The remand does not address actual innocence inasmuch as it demonstrates that there was an error at trial. These are two very different standards.

Moreover, the record also appears to show that Clements clearly had in fact been contacting Valisha Walker in actual violation of the domestic abuse order. While there appears to be some question as to whether Clements knew that such acts were illegal, it is Clements' burden in this forum to prove by clear and convincing evidence that he did not know such acts were illegal. Unfortunately, on this point Clements has not carried his burden and can point to no facts in the record to support his lack of knowledge. The only fact he points to is the erroneous jury instruction. This error, however, does not constitute actual facts supporting his lack of intent on the KVDAO crime.

Based on the above, and after hearing the evidence on the petition and reviewing all of the written submissions, the Board concludes and finds that the evidence is not clear and convincing that Clements was innocent of the 2000 conviction for Knowingly Violating a Domestic Abuse Order and Bail Jumping for which he was imprisoned. Accordingly, the Board further concludes that no compensation shall be awarded. *Vote: 4-0*

Dated at Madison, Wisconsin this 11th day of April, 2016.

COREY FINKELMEYER

Chair, Representative of the Attorney General

GREGORY D. MURRAY

Secretary, Representative of the Secretary of Administration

KATIE E. IGNATOWSKI

Representative of the Governor

LUTHER OLSEN

Senate Finance Committee

Pursuant to Wis. Stats. 13.172 (2) and (3), attached is the list of agency reports received from executive branch and legislative service agencies for the month of April, 2016.

Department of Administration

Temporary Reallocation of Balances

Pursuant to 20.002 (1)(f), Wis. Stats.

Received on April 4, 2016.

Referred to the joint committee on **Finance**.

State of Wisconsin Claims Board

Claims heard on March 16, 2016

Pursuant to 16.007 and 775.05, Wis. Stats.

Received on April 11, 2016.

State of Wisconsin Claims Board

Additional Claims heard on March 16, 2016

Pursuant to 16.007 and 775.05, Wis. Stats.

Received on April 13, 2016.

Department of Health Services

Reports by the Wisconsin Hospital Association Information Center (WHAIC)

Pursuant to 153.05 (2m)(c), Wis. Stats.

Received on April 13, 2016.

Government Accountability Board

Lobbyist Update

Pursuant to 13.685 (7), Wis. Stats.

Received on April 12, 2016.

Department of Children and Families

Summary Reports

Pursuant to 2009 Wisconsin Act 78.

Received on April 18, 2016.

Referred to the committee on **Health and Human Services**.

Government Accountability Board

Lobbyist Update

Pursuant to 13.685 (7), Wis. Stats.

Received on April 19, 2016.

Department of Transportation

Quarterly Report on Electronic Voter Registration System Implementation Progress

Pursuant to 2015 Wisconsin Act 261.

Received on April 20, 2016.

Referred to the committee on **Elections and Local Government**.

Government Accountability Board

Quarterly Report on Electronic Voter Registration System Implementation Progress

Pursuant to 2015 Wisconsin Act 261.

Received on April 20, 2016.

Referred to the committee on **Elections and Local Government**.

Department of Revenue

Wisconsin Lottery Quarterly Report

Pursuant to 565.37 (3), Wis. Stats.

Received on April 26, 2016.

Wisconsin Women's Council

2013-2015 Biennial Report

Received on April 25, 2016.

Department of Children and Families

Summary Reports

Pursuant to 2009 Wisconsin Act 78.

Received on April 27, 2016.

Referred to the committee on **Health and Human Services**.

Department of Children and Families

First Quarter Alleged Sexual Abuse Report

Pursuant to 48.981 (9)(b), Wis. Stats.

Received on April 29, 2016.

Referred to the committee on **Health and Human Services**.

**Motions Under Senate Rule 98 and Joint Rule 7
for the Month of April 2016**

A certificate of commendations by the Wisconsin Senate on the motion of Senator Bewley, for the American Tree Farm System, on the occasion of celebrating 75th anniversary on June 12, 2016.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Harsdorf, for Otmer “Andy” Anderson, on the occasion of celebrating his 90th Birthday shared with family and friends.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Molly Arbuckle on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Nass, for Ryan Baker on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Stroebel, for Nicholas Bath, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Risser, for Ellen Berz, on the occasion of her hard work and many achievements on the occasion of her 2016 Wisconsin Women in Government Legacy Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Nass, for Harry Bos on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Olsen, for Allen Buechel, on the occasion of his 40 years of dedicated public service.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Emma Kay Burlingame on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Nathalie Burmeister on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Lazich, for Dean Busalacchi on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Darling, for Wesley Carlson, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Stroebel, for Daniel Cook, Jr., on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Stroebel, for Frank Cook, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Taylor, for The Corridor, on the occasion of celebrating its 25 years of service, innovation, and leadership.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Darling, for Jacob Courtland Bons, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Vinehout, for Ronald Danielson, on the occasion of a lifetime of dedication to the City of Black River Falls and extend wishes for continued success in his future endeavors.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Syndey Faschingbauer on the occasion of the celebration of her academic achievements.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Stroebel, for Levi Feucht, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Stroebel, for John Flood, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Samantha Gardow on the occasion of the celebration of her academic achievements.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Stroebel, for Nicholas Haas, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Taylor, for the family and friends of James Harris Sr., on the occasion of expressing our deepest condolences, and commend his life, love and legacy, and for his faith, passion, and deeds he shared with our world.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Megan Hein on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Sara Heller on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Vinehout, for Samuel Higgins, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Sydney Hillert on the occasion of the celebration of her academic achievements.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Stroebel, for Jake Huebner, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Hansen, for the Jefferson Adopters, on the occasion of 25 years of outstanding service to the Green Bay community.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Vukmir, for Gary J. Jones, on the occasion of his service to the Elmbrook School Board and wish him the best in his retirement.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Nass, for Duane "Skip" Katzman, on the occasion of his many years of service to the Walworth County Fair.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Fitzgerald, for Garrett Kerl, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Erpenbach, for Judy Licht, on the occasion of her retirement as the Town of Freedom Treasurer and wish her well as she enjoys the next phase of her life.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Darling, for Anne Lutz, on the occasion of receiving the 2015 Citizen of the Year Award from the Village of Brown Deer and wish her continued success in all future endeavors.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Logan Lyberg, on the occasion of the celebration of his academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Vinehout, for Andrew Matthews on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Maggie Meinen, on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Emma Meyer on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Vukmir, for Milton Family Law, S.C., on the occasion of receiving the 2016 Trailblazer Special Recognition Award for Women in Business.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Risser, for John J. Moskwa, on the occasion of his retirement from the College of Engineering at the University of Wisconsin-Madison, and wish him a very happy and prosperous retirement.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Whitney Mottishaw on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Cheyenne Nardin on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Sara Oliver on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Allison Prill on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Madeleine Rietschel, on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Lasee, for Jonathan Rutten on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Brianna Schaller on the occasion of the celebration of her academic achievements.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Lazich, for Cheryl Schober, on the occasion of earning the New Berlin Chamber Commerce 2016 John Zino Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Nass, for Jacob Scholer on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Stroebel, for Nathan J. Schroeder, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Erpenbach, for Cheryl and Scott Simers, on the occasion of being honored with the 2016 Governor's Foster Care Award and wish them well as they continue their service.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Fitzgerald, for Austin Smith, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Lazich, for Stanek Tool, on the occasion of earning the New Berlin Chamber of Commerce 2016 Small Business of the Year Award and thanks and commends Stanek Tool for its generous contributions to New Berlin.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Izabel Steinmetz, on the occasion of the celebration of her academic achievements.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Nass, for Lowell Sweet, on the occasion of his many years of service to the Walworth County Fair.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Nass, for Rodolfo Trevino III on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Harris Dodd, for William Jeff Tucker, on the occasion of his musical acumen and years of service to God and to the Church.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Vukmir, for Wauwatosa Day Care and Learning Centers, Inc., on the occasion of receiving the 2016 Trailblazer Award for Women in Business.

A certificate of commendations by the Wisconsin Senate on the motion of Senator Stroebel, for James Weber, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Nass, for Samuel Westby on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Darling, for Howard Wolf, on the occasion of his nine years of public service to the Richfield Jt. School District and wish him a long and happy retirement.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Stroebel, for Howard Wolf, on the occasion of his years of service as a school board member.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moulton, for Derek Zumbrock, on the occasion of the celebration of his academic achievements.