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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4106-15T2

ALONZO JENKINS,

Appellant,

v.

NEW JERSEY DEPARTMENT OF
CORRECTIONS,

Respondent.

Submitted May 1, 2018 – Decided May 31, 2018

Before Judges Sumners and Moynihan.

On appeal from the New Jersey Department of
Corrections.

Alonzo Jenkins, appellant pro se.

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa Dutton Schaffer,
Assistant Attorney General, of counsel;
Christopher C. Josephson, Deputy Attorney
General, on the brief).

PER CURIAM

Alonzo Jenkins appeals from the New Jersey Department of
Correction's (DOC) final decision denying his claim for property
lost or stolen while an inmate at Bayside State Prison. He argues

the DOC: failed to inventory his personal property after he was placed in the Bayside temporary closed custody (TCC) unit and subsequently transferred to another correctional facility; failed to investigate his claim for lost and damaged personal property; and provided him and this court with a record unrelated to his appeal. He also argues the Bayside administrator failed to issue a decision on his claim. We are constrained to remand this matter to the DOC because it did not comply with regulatory procedures.

The parties' merits briefs agree that in 2015 Jenkins was: an inmate in Bayside where he was placed in the TCC unit on July 30; transferred to Southern State Correctional Facility on August 3; and transferred to Northern State Prison on August 12, where he received his personal property on August 25.

In an inmate claim form for lost, damaged or destroyed personal property (943-I form) dated November 21, 2015,¹ Jenkins alleged that numerous items were missing from the received property and a word processor was damaged. In a narrative attached to the one-page 943-I form he detailed that on July 30, a senior housing unit officer at Bayside – with whom Jenkins had a prior incident relating to complaint-letters he wrote to elected officials in May

¹ We also note a 943-I form dated May 18, 2016 with attached nine-page narrative in Jenkins's appendix pertinent to a November 7, 2015 incident. The connection of that document to this appeal has not been explained.

and July – "authorized [Jenkins's] ex-cell mate[,] a known blood gang member by the name of Maurice Richardson, to take possession/handle and inventory [his] personal property[; Richardson] eventually stole [Jenkin's] personal property and . . . distribute[d it] to his fellow gang members, that was left under the control, supervision and care" of the officer. Jenkins listed the missing and damaged items in the narrative, referencing four inmate inventory sheets, which are noted as attached to the 943-I form, as proof that he possessed the items before he was transferred to Northern.²

The numerous errors committed in the handling of this matter begins with the DOC's candid admission that, during the preparation of its merits brief it was discovered that the statement of items comprising the record it filed "mistakenly listed documents related to a different property claim" Jenkins filed. An amended statement of items was filed on December 18, 2017 – almost eleven months after Jenkins filed his merits brief – and "simultaneously served" on Jenkins.

² Copies of the inventory sheets were not provided in Jenkins's appendix. Although four inventory sheets were appended to the 943-I form provided by the DOC, the dates of same do not match those referenced in the narrative Jenkins attached to the 943-I form.

Although Jenkins contended in his merits brief that the DOC did not provide related documents, it was not until almost eleven months passed that the record was corrected. The amended record included, among other documents not appended by Jenkins, the aforementioned inventory sheets, two receipts, a claims processing and corrective action form (claims form), and a certification of inmate claim (943-II form). The latter two forms – the only two items included in the amended record that are in the amended statement of items – are pertinent to Jenkins's claims that his loss was not investigated and that a final decision was not rendered by the administrator.

The claims form was signed by a lieutenant on January 2, 2016. The DOC contends the lieutenant was assigned to investigate Jenkins's claim. The lieutenant recommended that the claim be denied because: the "[i]nvestigation revealed no negligence on the part of Bayside"; "[s]ufficient information was not supplied by the inmate (receipts, witnesses, investigative reports . . .)"; and the "[c]laim was not submitted in a timely manner[] ([fifteen] calendar days of the incident or discovery of the incident . . .)." His explanation of the denial acknowledged that Jenkins submitted his claim on November 21, 2015; "however, he did not fill out his claim form correctly and did not even advise on which date he alleges the incident to have occurred. He is requesting

an extremely large amount of \$921.05 in damages of which he can only provide \$57.63 in receipts."

The 943-II form referenced the claims form as the reason supporting the business manager's disapproval of the claim. The administrator's disapproval of the claim is noted at the bottom of that form.

Our review of the record reveals numerous additional deficiencies in the DOC's handling of this matter.

Although an itemized inventory of all personal property in an inmate's possession, utilizing a "IIS-1M Inmate Inventory Sheet [(IIS-1M)]," must be completed — preferably in the inmate's presence — upon the inmate's transfer, N.J.A.C. 10A:1-11.6, we see none in the record, notwithstanding that the IIS-1M — signed by the inventory officer and the inmate — must be maintained on file, N.J.A.C. 10A:1-11.6(c), -(e). As we previously noted in Barnes v. Sherrer, 401 N.J. Super. 172, 178 (App. Div. 2008), the IIS-1M provides a record of "who conducted the initial inventory, when it took place, what the inventory disclosed, whether [the inmate] contemporaneously agreed with the inventory's content, and whether inventoried items were subsequently removed or lost."

The investigation, or at least that much of the investigation we can perceive from the scant recount on the claims form, was severely flawed. Contrary to the lieutenant's assertion that

Jenkins did not provide the date of the incident, it plainly appears on the top of the 943-I form appended by Jenkins: July 30, 2015; that date is also set forth in the narrative as the date on which the DOC officer is alleged to have authorized Jenkins's cellmate to "take possession/handle and inventory" his property, although the date on which Jenkins claims his cellmate "eventually stole [his] personal property" is not clear, perhaps because Jenkins was in the TCC unit.³

Jenkins listed Maurice Richardson as a witness and also provided the name of the officer he contends authorized Richardson to handle his property. Yet we see no evidence that statements were obtained from them, or anyone else, despite the mandate that "[o]btaining statements from the inmate, witnesses and correctional facility staff" be part of the investigation. N.J.A.C. 10A:2-6.1(b)(1). Likewise, we see no evidence the investigation, as required by N.J.A.C. 10A:2-6.1(b)(2), verified that Jenkins "was authorized to have and did in fact, possess the personal property named in the claim," through the use of the IIS-

³ That date is not set forth in the 943-I form appended by the DOC. Furthermore, the narrative attached to Jenkins's appendix differs from that appended by the DOC; Jenkins's version contains two narratives. In light of the confusion generated by the DOC's submission of the incorrect statement of items, we leave this issue to be resolved on remand.

1M forms provided by Jenkins or those maintained by the DOC, N.J.A.C. 10A:2-6.1(b)(3).

We also take issue with the bald-faced conclusions that the investigation revealed no negligence by Bayside and that Jenkins's claim was not timely submitted. There is no basis for the negligence negation, an omission made more pronounced by the seeming failure to investigate Jenkins's claim regarding the officer's authorization of his cellmate to inventory his property. Furthermore, we see no evidence that Jenkins's averred reasons for submitting a late claim, as set forth in his narrative, were investigated. Though a 943-I form must be submitted within fifteen days of the incident or discovery thereof, N.J.A.C. 10A:2-6.3(a), an inmate's transfer may present exceptional circumstances to excuse an untimely filing. Barnes, 401 N.J. Super. at 175 n.4. The investigation should have, at least, verified Jenkins's housing from the date of the alleged loss to the 943-I filing date.

The record is also bereft of any evidence that the business manager reviewed the investigative report that was required to be submitted to the manager with the 943-I. N.J.A.C. 10A:2-6.1(c) to (d). And, in light of the deficiencies we noted in the investigation, the business manager's citation to the claims form cannot be viewed as the "substantiating reasons" which the manager

is required to provide with his denial. N.J.A.C. 10A:2-6.1(d). Nor do we see that the administrator supplied the "substantiating reasons" that must accompany a denial. N.J.A.C. 10A:2-6.1(f).

N.J.A.C. 10A:2-6.2(a) lists the factors that must be considered before a claim is recommended for approval or disapproval:

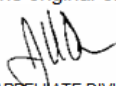
1. Whether the investigation revealed any neglect by the correctional facility;
2. Whether care was exercised by facility staff preventing property loss, damage or destruction;
3. Whether the inmate exercised care in preventing property loss, damage or destruction;
4. Whether it has been proven that the inmate was authorized to have and did, in fact, possess the item(s) named in the claim;
5. Whether sufficient information has been supplied by the inmate, including proper receipts, witnesses and investigative reports;
6. Whether the inmate submitted the claim in a timely manner;
7. Whether the loss or damage exceeds authorized amounts of correctional facility personal property limits;
8. Whether the personal property is considered contraband; and
9. Whether other reviewers recommended denial of the claim and the reasons therefor.

We would expect the "substantiating reasons" by both the business manager and the administrator to address those factors. Barnes, 401 N.J. Super. at 179.

The DOC's failure to comply with its own regulations constrains us to remand this matter to them to start, within thirty days, the review procedure of Jenkins's claim anew, including a complete investigation and a thorough review by the business manager and the administrator; all compliant with the pertinent regulations. The Office of the Attorney General, as counsel for the DOC, shall provide Jenkins with a complete record prior to the commencement of the DOC review, after verifying the accuracy of same.

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION