

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED

MAR 02 2010

Tennessee Claims Commission
CLERK'S OFFICE

BARBARA HINES,)
)
 Claimant,)
)
 vs.)
)
 STATE OF TENNESSEE,)
)
 Defendant.)

Claim No. T20100368

COMPLAINT _____
DOCKETED _____
C/S-Clerk _____
DCA _____
AG _____
ALJ _____
FEE PAID _____
NOTICE _____
FILED _____

ORDER OF DISMISSAL

Claimant, Barbara Hines, has filed this *pro se* claim for damages arising from acts or omissions alleged to have been committed by "Tennessee security officers," who she contends falsely accused her of a misdemeanor charge and arrested her.

The State has moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted under Tenn.R.Civ.P. 12.02(1) and (6). The State argues that the Commission lacks jurisdiction over the claimant's allegations of willful, malicious, or criminal acts by state employees. In addition, the State submits that the State has not waived its immunity for claims based upon the acts of non-state employees. Ms. Hines has not addressed these arguments.

The Claims Commission's jurisdiction is limited to claims based on the acts or omissions of state employees, as defined in Tenn. Code Ann. § 8-42-101(3), which fall within certain categories. Tenn. Code. Ann. § 9-8-307(a)(1). The categories of claims over which the Claims Commission has jurisdiction are set forth in Tenn. Code Ann. § 9-8-307. If a claim falls outside of the categories specified in § 9-8-307(a), then the state retains its immunity from suit, and a claimant may not seek relief from the state. *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000).

Ms. Hines does not identify the security officers with whom she had the encounter by name, nor is it possible to tell from her complaint at which building the incident occurred. The claim for damages does not identify them as state employees.

To the extent that the officers were not persons "employed in the service of the state and whose compensation is payable by the state," the Commission lacks jurisdiction of her claim. The definition of "state employee" includes "any person who is employed in the service of the state and whose compensation is payable by the state." Tenn. Code Ann. § 8-42-101(3)(A). Persons employed on a contractual basis are specifically

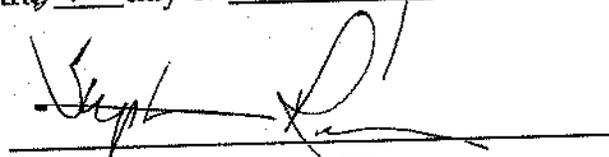
excluded from the definition of "state employee." *Id.* See *Younger v. State*, 205 S.W.3d 494 (Tenn. Ct. App. 2006).

Moreover even if the officers were employees of the State at the time of the events alleged, the State has not waived its immunity from suit for willful or malicious acts by its employees and such claims are barred by Tenn. Code Ann. § 9-8-307(d) ("The state will not be liable for willful, malicious, or criminal acts by state employees, or for acts of state employees done for personal gain." Tenn. Code Ann. § 9-8-307(d)). The Claims Commission does not have jurisdiction over claims for malicious prosecution, false arrest, assault and battery or any other claims alleging intentional torts. See *Shell v. State*, 893 S.W.2d 416, 421 (Tenn.1995); *Rogers v. State*, No. M2003-00215-COA-R3-CV, 2003 WL 22146120 (Tenn.Ct.App. Sept. 18, 2003).

Because the Commission concludes that Ms. Hines' complains that she was falsely accused of a misdemeanor charge by "state security officers" who reported that she had refused to leave and arrested her do not fall within its subject matter jurisdiction, the motion to dismiss is granted. Claimant's motion to amend the complaint is denied, as it is

incomprehensible and does not appear to implicate the State or its employees or matters within the Commission's subject matter jurisdiction.

It is so ORDERED this the 2nd day of February, 2010.



STEPHANIE R. REEVERS
Claims Commissioner

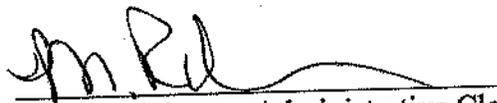
CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 3 day of March, 2010.


Marsha Richeson, Administrative Clerk
Tennessee Claims Commission