

California Victim Compensation and Government Claims Board
Open Meeting Minutes
March 15, 2012, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Ana M. Caballero, Secretary, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, March 15, 2012, at 10:00 a.m. Also present was Board member Michael Ramos, San Bernardino County District Attorney. Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller, joined the meeting while it was in progress.

Board staff present included Julie Nauman, Executive Officer; Kathy Cruz, Chief Deputy Executive Officer; and Wayne Strumpfer, Chief Counsel.

Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the February 16, 2012, Board Meeting

Chairperson Caballero and Board member Michael Ramos voted to approve the minutes of the February 16, 2012, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment. Michael Siegel, attorney and victim advocate, provided the following comments and three scenarios regarding filing late applications on behalf of his clients:

1. Applications Filed One Year After a Loss

Victims do not consider filing a claim until after the first loss, which losses are typically for mental health counseling. When victims need counseling and discover that they cannot afford to pay for the sessions, they are informed that the CalVCP may be able to assist with those costs. A claim is filed, but thereafter the CalVCP sends a denial letter stating that the CalVCP can consider the late reason given but that is not the only factor that is considered.

Mr. Siegel commented that CalVCP staff find that there is no good cause but do not provide an explanation of what constitutes good cause.

2. Notification by CalVCP that the Victim Knew About the Program

CalVCP staff sends the applicant notification that it will consider the reason given; however, the reason for filing late is not sufficient because the CalVCP believed that the victim knew about the Program because a crime report was submitted. There is a presumption that law enforcement, which has a duty to inform victims of the Program, made the applicant aware of the Program.

Mr. Siegel commented that law enforcement does not always inform applicants of the Program. Even if the victim was aware of the Program, no loss was incurred until a year later.

3. Notification by CalVCP that an Expense was Incurred

The CalVCP can consider when the applicant learned about the loss, but staff noticed in the crime report that the applicant went to the hospital when they were first injured therefore an expense was incurred at that time.

Mr. Siegel commented that in some instances, the victim is covered by another source such as medi-cal and the hospital bill may have been paid; consequently, there was nothing for the victim to claim because there were no expenses to be reimbursed.

He commented that Regulation section 649.15(c) provides that if CalVCP staff finds no good cause for the late filing and recommends that the application be denied, the applicant may request a hearing. Applicants are under the assumption that they will receive a hearing, but section 649.15 states that an applicant may request a hearing, however it may not be granted.

Mr. Siegel commented that hearings are typically not granted and, in those instances, CalVCP sends a No Hearing Letter informing the applicant that although they appealed the denial, they failed to state a basis upon which relief may be granted. The applicant is given 30 days to submit written information to refute the reason for denial or show that there is a basis upon which the Board may grant relief. A response is submitted within the timeframe provided citing the law and the claim is placed on the Board's VCP agenda as a "Proposed Decision on the Written Record, Response Received." Subsequently, the Board adopts the proposed decision denying the claim. As a result, a number claims are denied by the Board with no recourse.

Item 3. Executive Officer's Statement

California Crime Victim Assistance Association (CCVAA) Victim Compensation Committee
CCVAA, a professional association of county victim assistance centers, held its Committee meeting at headquarters on March 6th. Heading the list of important topics regarding victim compensation included presentations by CalVCP on the state of the Restitution Fund, budget projections for Joint Power (JP) contracts, the claim assignment process, legislation affecting the CalVCP, and upcoming events in recognition of National Crime Victims' Rights Week in April.

The Committee also discussed its upcoming conference cosponsored with the California District Attorneys Association "Real Justice: Victims' Rights Delivered" that will be held on May 14-15 in Sacramento. The focus of the conference will be understanding the needs and legal rights of crime victims.

Verification of Attorney's Fees Automation Within CaRES

Today began the implementation of the verification of attorney's fees automation within CaRES, the CalVCP's automated compensation and restitution tracking system. Over the past nine months, CalVCP's Information Technology Section staff worked to program and implement additional functionality within CaRES to support the verification of attorney's fees that became effective November 7, 2011. The regulation implements the attorney fee statute by providing for verification of attorney's fees through fee statements documenting that attorney services were actually rendered to the applicant. Due to the complex nature of processing documents and bills within CaRES, it has been a collaborative effort with all CaRES stakeholders.

California Crime Victims' Rights Month

CalVCP will participate in California Crime Victims' Rights Month. CalVCP will coordinate its observance with the National Crime Victims' Rights Week that will be observed April 22-28. This year's national theme is "Extending the Vision: Reaching Every Victim." CalVCP will once again host its Victims' Rights Rally at headquarters on April 24th followed by a march to the Capitol to participate in other victims' rights events and observances.

Item 4. Contract Report

Evolve Technology

Two network switches for the CaRES modification infrastructure are needed to ensure security and improve the performance of the network. The purchase order in the amount of \$52,612.69 includes the purchase, installation, and three-year maintenance agreement.

Joint Powers (JP) Contracts

The Board has historically entered into JP agreements with various counties within the State to provide fully verified victims of crime claims to the Board as required by Government Code sections 13954, 13962, and 13963. The 20 JP contracts in the amount of \$11,062,834.00 reflect a 5 percent reduction that became effective FY 2011-12. The one-year contracts for each county are the same as the previous year.

The Board voted to approve the JP contracts.

Criminal Restitution Compact (CRC) Contracts

The Board works with the various counties' criminal justice systems to ensure restitution fines and orders are properly administered in accordance with applicable statutes and to promote the appropriate assessment and collection of restitution fines, parole restitution fines, restitution orders, and diversion restitution fees. The 25 CRC contracts in the amount of \$2,944,916.00 reflect a 5 percent reduction that became effective FY 2011-12. The one-year contracts for each county are the same as the previous year.

The Board voted to approve the CRC contracts.

Item 5. Legislative Update

Jon Myers, Deputy Executive Officer, Legislation and Public Affairs Division, reported the following:

- AB 1531 (Fuentes) — Government Claims Bill
The VCGCB's first Government Claims Bill of 2012 will cover claims approved by the Board from June 2011 through December 2011.
- SB 1299 (Wright) — Victims of Crime: Compensation
The bill makes numerous changes to eligibility requirements, benefit levels, and processing mandates for CalVCP.
- SB 1479 (Pavley) — Crime Victims: Restitution
The bill increases the minimum amount for restitution fines on felony convictions, which is currently set at \$240 with scheduled increases to \$280 in 2013 and \$300 in 2014. This bill instead increases the minimum to \$350 in 2013 and \$400 in 2014. It also increases the maximum restitution fine from \$10,000 to \$15,000 in 2013. The author's office stated that the bill was intended to be a spot bill. The author will amend it to address restitution for the recording industry in cases of piracy and does not intend to address minimum restitution fines or victims of violent crime.
- SB 1210 (Lieu) — Restitution: Collection of Fines
The bill addresses two areas of concern with restitution collection after the implementation of public safety realignment, which moves certain classifications of offenders from CDCR to local jurisdictions. The bill gives counties the authority to collect up to 50 percent of the wages and trust account deposits of prisoners in county jails and assesses a 10 percent administrative fee. It also requires an individual who violates post-release community supervision or mandatory supervision and is remanded back to jail to pay a revocation fine, as is currently assessed against individuals who violate parole and are remanded back to prison.
- AB 1945 (Morrell) — Restitution: County Jails
Similar to SB 1210, AB 1945 gives counties the authority to collect up to 50 percent of the wages and trust account deposits of prisoners in county jails and assesses a 10 percent administrative fee.
- SB 1371 (Anderson) — Victim Restitution: Private Debt Collector
The bill allows the VCGCB, with the victims' consent, to contract with a private debt collector for direct restitution orders.

- AB 1157 (Nielsen) — Public Entity Liability: Payment of Claims
The bill restores a provision that was briefly implemented and later repealed in 2011 through budget trailer bill language. The provision requires the VCGCB to notify the Legislature prior to allowing a government claim of \$500,000 or more to be paid from a current year appropriation for prior year costs. It also applies to multiple claims totaling \$500,000 or more in one year by a single vendor against a single department.

Chairperson Caballero commented that she was concerned about the possibility of inmates being in violation of their probation if the money taken out of their trust account is used to pay restitution rather than their obligation to pay child support. She requested more information regarding AB 1945, the bill that gives counties the authority to collect up to 50 percent of the wages and trust account deposits of prisoners in county jails and assesses a 10 percent administrative fee.

Item 6. Government Claims Program Consent Agenda (Nos. 1- 260)

The Board adopted the staff recommendations for item numbers 1-260, with the following exceptions: items numbers 73 (598547), 81 (599775), 85 (600217), 253 (597056), and 256 (601692) were removed to allow the claimants an opportunity to address the Board and item number 172 (601981) was removed pending review of additional information received.

Consent Agenda Appearance

Item 85, G600217

Claim of Naresh Balani

Naresh Balani participated in the meeting via conference call. Prior to the Board meeting, Mr. Balani submitted written information for Board consideration in support of his claim. Reese Griffith, Griffith Company, appeared on behalf of Mr. Balani. Peter Ackeret, attorney, appeared on behalf of the California Department of Transportation.

Jackie Tinetti explained that Naresh Balani requested compensation in the amount of \$30,486.00 from the California Department of Transportation for loss of business and merchandise. The Department of Transportation recommended that the claim be rejected. The Government Claims Program staff recommended that the claim be rejected because the issues involved were complex and outside the scope of analysis typically undertaken by the Board.

Mr. Ackeret explained that in May 2011, a contractor performing repair on a highway closed a rest area due to a safety issue. The Department of Transportation (Caltrans) did not receive prior notice of the closure until the day before the rest area was due to close. Caltrans became aware of Mr. Balani's concern after they began receiving telephone calls and emails from an assembly member. Upon finding out that the rest area was going to be closed, Caltrans sent Mr. Balani an email notifying him of the closure; unfortunately, it was the night before the closure. Caltrans provided Mr. Balani with the telephone number of an individual to contact if he needed special arrangements to receive his product.

He stated that Mr. Balani was seeking lost product and lost future earnings. Caltrans believed the amount sought and the claim itself involved complex issues of law and fact. Based on the information regarding the claim and the documents Caltrans had in their possession, they could not determine whether Mr. Balani had a contract, who the contract was with, whether the contract expired, the terms of the contract, whether the contract had specific provisions as to damages such as the damages claimed, or whether there was a damage cap. In absence of all of those unknown answers, as well as Mr. Balani's calculation as to the damages which would typically require a trial

or an economist to forecast future losses, Mr. Ackeret stated that Caltrans recommended that the Board reject the claim so that the matter could be pursued in the appropriate forum.

Mr. Balani explained that he is a blind licensed vendor with the State of California with the Department of Rehabilitation. Under the Randolph-Sheppard Act of 1936, priority is given to blind persons to operate vending facilities on federal property. He was appointed a vendor in February 2000 and operated the brand new facility site. When the location was closed down, he was given less than eight hours' notice. He was subsequently told that the closure was not due to a safety issue rather the contractor was only performing road maintenance. The construction was supposed to last two months but it took six months for the construction to conclude. A contract was signed prior to the construction so the closure was not due to a safety issue as Caltrans stated. Further, all of the income that he earned from the prior year is documented with a profit and loss statement and the Department of Rehabilitation could verify his income.

Chairperson Caballero asked Mr. Balani with whom he had a contract.

Mr. Balani stated that he had a contract with the Department of Rehabilitation which had a contract with Caltrans, which is how the Business Enterprises Program worked. He stated that he was claiming loss of inventory as a result of the closure. He contacted the Griffith Company, Caltrans' contractor, and was told that it was Caltrans' responsibility to notify him of the closure.

Reese Griffith stated that he is a vendor who worked with Caltrans. He explained that typically an agency has an agreement with the Department of Rehabilitation and the Business Enterprises Program for the blind selects a vendor and they have an agreement. According to Naresh, he did not receive proper notice of the closure; therefore, he had to dispose of his supplies. The construction was supposed to last one to two months, but it lasted six months. He stated that he carries a products liability insurance that protects the department and consumers, but it is handled by the Department of General Services. He commented that Mr. Balani has a young family and was a good vendor and hard worker. He stated that he thought that the Department of Rehabilitation normally dealt with Naresh, but the present manager of the Department of Rehabilitation, Deb Myers, took the position that the Department of Rehabilitation does not go against its sister agencies, which is the reason that the Department of Rehabilitation was not in attendance at the meeting. He commented further that the Department of Rehabilitation is supposed to look out for its clients interests.

Chairperson Caballero stated that she appreciated Mr. Griffith's participation in the meeting; however, without input from the Department of Rehabilitation, the Board was missing important information. Further, Mr. Balani's claim is the type of claim that the Board does not generally consider because it requires a court of law to go through disputed facts.

Jackie Tinetti, Manager, Government Claims Program, stated that Deb Myers of the Department of Rehabilitation was contacted and the claim was discussed with her at length, but internal discussions at the Department of Rehabilitation resulted in the decision not attend the meeting. The Department of Rehabilitation is not a party to the claim therefore they did not attend.

Chairperson Caballero stated that it was unfortunate that a representative from the Department of Rehabilitation decided not to attend; they should have attended and given advice. She stated that the Board's only alternative was to reject the claim because the Board was not in a position to make a finding of fact in the case. She further stated that she was uncomfortable making the decision to reject the claim; however, there was no other choice.

Board member Ramos stated that he agreed with Chairperson Caballero's apprehension to reject the claim, but the Board had no other option. He moved the staff recommendation to reject the claim.

Chairperson Caballero apologized for the outcome, but the Board had no other option because the Board does not have the ability to conduct the fact finding that is required. She explained that Mr. Balani now had the opportunity to pursue the matter in court. Chairperson Caballero also thanked Mr. Griffith for taking the time to appear at the meeting.

The Board voted to adopt the staff recommendation to reject the claim.

After voting on the item, Board member Ramos excused himself from the meeting.

Consent Agenda Appearance

Item 73, G598547

Claim of Daniel J. Stadtler

Daniel J. Stadtler appeared and addressed the Board. In lieu of the California Department of Food and Agriculture's appearance, Greg Lawley, Chief, Bureau of Livestock Identification, submitted a written communication to the Board that included a recommendation to reject the claim.

Jackie Tinetti, Manager, Government Claims Program, explained that Daniel J. Stadtler requested compensation from the California Department of Food and Agriculture in the amount of \$1,484.51 which represented the difference between the amount he stated he paid for his cattle and the amount he received after the cattle were sold at auction without his permission.

Ms. Tinetti stated that based on the facts of the claim and the recommendation provided by the California Department of Food and Agriculture, the Government Claims Program staff recommended that the Board reject the claim.

Mr. Stadtler stated that he had a brand on the cattle that were sold and he had receipts to substantiate the purchase of the cattle. He alleged negligence on the part of the Department of Food and Agriculture because the brand inspector should have known that he was the only one who had Mexican cattle. He stated that he saw five steers and four had his tag. The inspector looked at them and one had the brand but the others had hair that had grown over the brand. The cattle were subsequently shipped to the Escalon Livestock Market and sold. The cattle were required to be held 30 days before being sold so that a brand inspector could inspect the steer for brands. The cattle were not clipped to see if there were any brands until the day of the sale. On the day of the sale, three cattle were clipped on the right side however his brand was on the left side and none of the steers were clipped on that side.

Chairperson Caballero explained that there was no dispute that the cattle belonged to Mr. Stadtler. The issue before the Board was the difference between the purchase price and the price that they were sold. She asked Mr. Stadtler if he had a receipt for the amount that he paid for the cattle.

Mr. Stadtler stated that he did and produced two receipts and an invoice.

Chairperson Caballero stated that now the issue before the Board was not whether Mr. Stadtler should be paid; rather, it was the amount that he should be reimbursed. Chairperson Caballero requested Government Claims Program staff review the receipt submitted by Mr. Stadtler. She stated that the Board would put the claim over to allow Mr. Stadtler an opportunity to meet with staff to try to resolve his claim.

Executive Officer Nauman stated that staff would review the receipts and contact the California Department of Food and Agriculture to make them aware of the new information submitted.

Ms. Tinetti stated that staff would compare the existing information in the file to the new information submitted and share the information with the Department of Food and Agriculture.

Consent Agenda Appearance

Item 81, G599775

Claim of Allain D. Barfield

Allain Barfield appeared and addressed the Board. John McDonough, Senior Supervisor Counsel, appeared on behalf of the California Highway Patrol.

Jackie Tinetti, Manager, Government Claims Program, explained that Allain Barfield requested reimbursement from the California Highway Patrol in the amount of \$2,100.00 for vehicle impound fees. She stated that the Board previously rejected Mr. Barfield's claim at its meeting on January 19, 2012. Mr. Barfield was scheduled to address the Board at that time, but he did not appear due to a misunderstanding regarding the meeting.

Chief Counsel Wayne Strumpfer stated that in order to reconsider the claim, the Board member who made the motion to reject the claim would need to make a motion to rehear the claim. Mr. Strumpfer stated that Board member Chivaro made the motion to reject the claim; therefore, he would need to make a motion to reconsider it.

Board member Chivaro made a motion to reconsider the claim and Chairperson Caballero seconded the motion.

Mr. Stadtler stated that while he was driving his new car that had dealer plates and a sticker displayed in the window, a CHP officer pulled him over for no apparent reason. He stated that the officer had something against him, which was the reason that the officer pulled him over. The CHP officer was two cars behind him and could not tell that he had dealer plates. He stated that he made a left hand turn and the CHP followed him and pulled him over. The officer asked him who the car belong to and asked for his identification. He told the officer that the car belonged to him and he gave the officer his identification. After checking his information, the officer informed Mr. Barfield that he had outstanding tickets. He stated that he told the officer that the tickets were dismissed. The officer told Mr. Barfield that according to information in his computer, the tickets remained unpaid.

Chairperson Caballero asked Mr. Barfield if he took care of the outstanding tickets before the incident occurred.

Mr. Barfield stated that he had a DUI in 1992 and a house fire in September 2010 and did not know that his license was suspended until after the house fire. He stated that he went to DMV when he found out that the DUI was still on his record. He took a class required by DMV and completed it in March. He was supposed to receive a certificate of completion, which he has not yet received, but his driving record with DMV is all cleared up.

Chairperson Caballero asked Mr. McDonough to clarify whether the impoundment occurred in August and if Mr. Barfield took the class in March.

John McDonough stated that at the time of the stop by the CHP officer in August, Mr. Barfield's car did not display front plates, license tags, and it was determined that he was driving on a suspended license for a failure to appear. It was possible that he cleared his records with DMV in March, but it

appeared as a suspended a license in the officer's computer therefore the vehicle was impounded for 30 days. Mr. Barfield could have requested an impound hearing but he did not. He cleared up the matter with DMV before the trial which was the reason that the judge ruled in his favor.

Mr. Barfield stated that the stop by the officer was unwarranted. The car had new dealer stickers which is what he was supposed to have on a new car and which was the reason that the judge ruled in his favor.

Chairperson Caballero stated that the Board was not to determine whether the CHP officer had reason to stop Mr. Barfield. The Board would determine whether the CHP officer was acting within the law and policy. The fact that Mr. Barfield had a suspended license, according to the DMV, meant that he could not drive until it was cleared up. The challenge for the Board was whether the officer followed the law, which it is clear that he did.

Mr. Barfield asked the Board if they had an opportunity to read the CHP report that noted that he did not see anything displayed on the vehicle, which the CHP alleged was the reason for the stop. The officer could not see the front or back of his car because a car was in between his vehicle and the CHP officer. Mr. Barfield stated that he was in a Hispanic area at the time, which was tragically where young children were killed by a young black male. He stated that when the officer looked through the window of his car, he only wanted to see who he was and find out what he was doing in that area of town. He told the officer that he had a friend who lived in the area.

Chairperson Caballero and Board member Chivaro voted to reject the claim. Chairperson Caballero explained that the Board's decision to reject the claim had nothing to do with the stop or the cause of the stop. The Board's role was to determine if there was sufficient information that the CHP used to impound the vehicle. She also stated that there was a process that Mr. Barfield could have followed to try to get his car out of impound but he chose not to pursue it.

Consent Agenda Appearance

Item 253, G597056

Claim of Cathleen Glazzy

Cathleen Glazzy appeared. Lisa Roberts appeared and addressed the Board on behalf of Ms. Glazzy. John McDonough, Senior Supervising Counsel, appeared on behalf of the California Highway Patrol.

Jackie Tinetti, Manager, Government Claims Program, explained that Cathleen Glazzy requested reimbursement from the California Highway Patrol in an unspecified amount for personal injury and medical bills as a result of a vehicle accident. Government Claims Program staff determined that the claim was not timely pursuant to Government Code sections 910 and 911.2. Ms. Glazzy subsequently submitted an application for leave to present a late claim. The Attorney General's Office reviewed the facts and recommended that the late application be denied for failure to meet the criteria required in Government Code section 911.6. Based on the review of the facts and the recommendation of the Attorney General's Office, Government Claims Program staff recommended that the late application be denied pursuant to Government Code section 911.6.

Mr. McDonough stated that the California Highway Patrol concurred with the Government Claims Program staff recommendation to deny the claim as untimely.

Ms. Roberts stated that the staff recommendation to deny the late application is based upon Government Code section 911.6 which clearly provides that the Board could set aside the denial of the late claim if there is a mistake, inadvertence, surprise or excusable neglect, which applies to

Ms. Glazzy. She stated that Ms. Glazzy mailed her claim timely on April 28, 2011, approximately 4-5 days before the 6-month expiration. The claim was unfortunately returned due to insufficient postage and came back to her home on May 4, 2011. She mailed the claim back with appropriate postage and it was received by the Government Claims Program a few days later. She stated that the claim involved Ms. Glazzy who, through her insurance company, submitted the property damage claim. The State was fully aware of the claim based upon the submittal of the property damage through the insurance company and there is no prejudice to the State. It seemed appropriate that Ms. Glazzy should be allowed to proceed with her claim given that there was notice to the State in addition to the fact that the mail mishap was insignificant in terms of time, because it was only a matter of a week or so late.

Chairperson Caballero asked Ms. Roberts if Ms. Glazzy enclosed the returned envelope in another envelope and re-mailed both envelopes to the Government Claims Program.

Ms. Roberts stated that Government Claims Program would have received the envelope with a stamp indicating insufficient postage plus the envelope with the additional postage.

Chairperson Caballero asked Ms. Tinetti whether staff had any information regarding the double mailing.

Ms. Tinetti stated that staff always retains envelopes. If Ms. Glazzy mailed both envelopes, it would be reflected in the file.

Board member Chivaro asked Ms. Tinetti if staff looked at that information when making the determination regarding whether the claim was late.

Ms. Tinetti stated that all information submitted is reviewed. Determining timeliness of a claim is a legal decision, which was the reason that the Attorney General's Office and CalVCP Legal staff were consulted. Both reviews occurred and both concluded the same.

Ms. Roberts stated that the question of whether the claim was late is not in dispute; however, Government Code section 911.6 should apply regarding failure to present the claim through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced. The public entity was clearly on notice and has accepted liability for the accident at issue; therefore, it is appropriate for the department to accept the balance of Ms. Glazzy's personal injury claim.

Chairperson Caballero stated that the challenge for the Board was that the Board did not have any information regarding the details presented by Ms. Roberts on behalf of Ms. Glazzy. The Board only had a conclusion and needed to determine whether the conclusion was adequate given that there were instances where Ms. Roberts could make a finding that good cause existed.

Executive Officer Nauman stated that staff had Ms. Glazzy's claim file and could present it to the Board for their review to determine if the envelope in question was contained in the file.

Chairperson Caballero and Board member Chivaro, with assistance from Chief Counsel Wayne Strumpfer, reviewed the claimant's file and determined that the envelope stamped insufficient postage was not contained in the file as previously asserted by Ms. Roberts.

Chairperson Caballero stated that she listened carefully to the information provided by Ms. Roberts regarding the double mailing; however, the envelope in the file did not indicate that it was returned or that it was re-mailed. The file contained an envelope that only had a stamp dated May 6, 2011, which was the date the stamp was purchased and a check dated April 29, 2011. The envelope did not indicate that it was mailed twice. There was nothing in the file to indicate that the package was

returned and re-mailed. Given that information, the Board was convinced that was the reason staff made the recommendation to deny the claim for a late filing.

Chairperson Caballero and Board member Chivaro voted to adopt the staff recommendation to deny the late application.

Consent Agenda Appearance

Item 256, G601692

Claim of Louie Zauner

Louie Zauner appeared and addressed the Board. Vasilios Spyridakis, Staff Counsel, appeared and addressed the Board on behalf of the California Department of Veterans Affairs.

Jackie Tinetti, Manager, Government Claims Program, explained that Mr. Zauner requested compensation in the amount of \$7,500.00 for defamation allegedly caused by the California Department of Veterans Affairs on May 2, 2011. Mr. Zauner also submitted an application for leave to present a late claim because he presented his claim more than six months beyond the accrual of the cause of action. Government Claims Program staff determined that the claim was not timely pursuant to Government Code sections 910 and 911.2. Further, based upon the facts of the claim and the California Department of Veterans Affairs recommendation to deny the late claim application, Government Claims Program staff recommended that the Board deny the late application.

Mr. Zauner stated that his claim involved defamation and a late filing. He explained that he appeared in small claims court with his attorney, but the judge who heard the case told him that he had to file a government tort claim before he could hear his case. He and his attorney were told that he had six months to file a claim. He immediately filed a government claim and provided a reason for the late claim filing; however, the claim was denied. Thereafter, he double-checked the information provided on the government claim form and believed that a claim for defamation could be filed within one year from the accrual of the cause of action. His attorney submitted a letter explaining that the claim was not late. Subsequently, he was made aware that his claim was still being denied because it was filed late.

Chairperson Caballero asked Ms. Tinetti whether the filing period was six months after the accrual of the cause of action. Ms. Tinetti stated that defamation is a form of personal injury under the law and therefore the claim must have been presented within six months.

Mr. Zauner stated that immediately after the defamation incident with the California Department of Veterans Affairs, his attorney filed a demand with the department. The demand was rejected so his attorney advised him to file the claim as an individual in small claims court, which he did. After three hearings, the judge told him that he had to file a government tort claim. All of the time spent in court caused a delay in filing within the six-month filing period. He stated that after reading the information on the government claim form, he believed that he could file within one year because it did not appear that defamation claims had to be filed within a six-month period.

Mr. Spyridakis stated that the issue of Mr. Zauner's claim involved timeliness. Government Code section 911.2(a) differentiates between causes of action for death or for injury to person or to personal property or growing crops, which shall be presented not later than six months after the accrual of the cause of action, and claims relating to any other causes of action shall be presented not later than one year after the accrual of the cause of action. He stated that Mr. Zauner's claim of defamation falls under the six-month filing period. He explained that shortly after the alleged injuries took place in May 2001, Mr. Zauner sought an attorney. His attorney sent a demand letter for compensation to the Department of Veteran's Affairs Legal Office and the demand was rejected.

Later the relationship with Mr. Zauner and his attorney was terminated. Mr. Zauner submitted as evidence in his subsequent small claims action in Superior Court a letter sent back to him from his attorney upon terminating the representation. The letter cautioned Mr. Zauner "please keep in mind that the law imposes strict time limits within which you must act to protect your rights in this matter. You should act immediately if you wish to pursue this matter. Failure to comply with the statutory time limits in a lawsuit could bar you from pursuing the matter." Mr. Spyridakis stated that, based on the advice letter from Mr. Zauner's attorney, he was put on notice that there was an issue regarding the statute of limitation and he should pursue legal remedies and advice. Subsequently Mr. Zauner retained another attorney and served the California Department of Veterans Affairs with a civil claim for defamation in small claims court, bypassing the government claims process. The California Department of Veterans Affairs responded with the defense of failure to file a government tort claim and the statute of limitations, putting him on notice a second time. He stated that Mr. Zauner's attorney responded and both parties went to court. The judge raised the issue regarding the six-month statute of limitations and suggested that Mr. Zauner pursue filing a government claim. Mr. Zauner elected not to pursue the government claims process and the hearing was continued. On December 9, the judge dismissed the action for failure to file the government tort claim. Further, Mr. Spyridakis stated that Mr. Zauner had been given adequate notice regarding the filing of his claim. He added that Mr. Zauner may have a legal remedy against his attorney for legal malpractice.

Mr. Zauner stated that his first attorney advised him in writing that he had a right to file a claim as an individual against Marcella McCormack, Administrator, California Department of Veterans Affairs. He took his attorneys advice, which may have been a poor advice, and pursued the matter in small claims court. The evening before the 8:00 a.m. hearing, he received the first brief from the defendant outlining all of the details that he did not comply. He stated that the judge recognized that he did not have sufficient time to review the brief and postponed the trial to give him an opportunity to review the documentation. Subsequently, he filed a brief in response and at the second hearing the judge advised him to file a government tort claim.

Chairperson Caballero stated that Mr. Zauner's attorney did not serve him well. A qualified and experienced attorney who would have ensured that Mr. Zauner satisfied all of the time limits imposed by the court system. She added that Mr. Spyridakis may be correct that Mr. Zauner may have a cause of action against his attorney for not making it very clear that he needed to come before the Board before pursuing the matter in small claims court. Nevertheless, according to the letter to Mr. Zauner from his attorney, adequate notice was given regarding how he should pursue his claim.

Board member Chivaro stated that it was an unfortunate set of circumstances for Mr. Zauner, but he would adopt the staff recommendation to deny the late claim application.

Chairperson Caballero and Board member Chivaro voted to adopt the staff recommendation to deny the late claim application.

Item 7. Claim of Joshua M. Hellon **Claim Number G599246**

Stephanie Wheatley appeared and addressed the Board on behalf of California Department of Corrections and Rehabilitation.

Jackie Tinetti, Manager, Government Claims Program (GCP), explained that Joshua Hellon requested payment from the California Department of Corrections and Rehabilitation (CDCR) in the amount of \$380.00 for the value of glasses that were misplaced and lost by CDCR staff.

Ms. Tinetti stated that GCP staff reviewed the claim and determined that it was complete and timely. Based upon the consideration of the facts of the claim and the recommendation to allow the claim provided by the ombudsman at the correctional staff facility where Mr. Hellon is currently housed, GCP staff recommended that the Board allow the claim.

Ms. Tinetti explained that GCP staff sent two recommendation requests to CDCR in September 2011 and January 2012, respectively; however, to date CDCR has not responded to either requests. A Pleasant Valley State Prison Ombudsman became involved and sent correspondence to CDCR on January 27, 2012, requesting a recommendation and providing information to help facilitate the recommendation process; however, CDCR did not respond to the ombudsman's request either.

Ms. Wheatley explained that although CDCR did not submit a recommendation to the GCP in time for the Board meeting, they subsequently submitted a recommendation to reject the claim because it was determined that Mr. Hellon did not purchase the glasses. Receipts in the claim indicated that a friend or family member named Michelle Morris purchased the prescription glasses for Mr. Hellon. She explained that when the glasses arrived at the prison, it was determined the materials that the glasses were made posed a safety and security concern and must be returned to the vendor. Further, because Mr. Hellon did not purchase the glasses, he was not entitled to compensation.

Chairperson Caballero asked Ms. Wheatley if the person who purchased the glasses came forward and requested compensation could potentially receive reimbursement.

Ms. Wheatley stated that Michelle Morris is the person who CDCR believed purchased the glasses for Mr. Hellon.

Chairperson Caballero and Board member Chivaro voted to overturn the staff recommendation and rejected the claim.

Item 8. Claim of Marvin Daniels
Claim Number G601695

Marvin Daniels appeared and addressed the Board. Stephanie Wheatley appeared and addressed the Board on behalf of the California Department of Corrections and Rehabilitation.

Jackie Tinetti, Manager, Government Claims Program, explained that Marvin Daniels requested compensation from the California Department of Corrections and Rehabilitation (CDCR) in the amount of \$29,478.00 for lost benefits resulting from an incorrect calculation of his sentence.

Ms. Tinetti stated that Government Claims Program (GCP) staff recommended that the Board reject the claim because the issues raised were complex and outside the scope of analysis and interpretation undertaken by the Board. Due to the complexity of the claim, GCP staff did not request a recommendation from CDCR.

Mr. Daniels stated that he was sentenced to a three-year term along with another term. When CDCR received his documents, they miscalculated his term causing him to spend 18 months longer in prison than he should have.

Ms. Wheatley stated that CDCR made their calculations based on the information provided by the court. It appeared that CDCR staff contacted the court in an attempt to gain more information about Mr. Daniels claim; however, the court would not look into the matter any further. She stated that she was unsure whether CDCR or the court was the correct party to the action; however, CDCR concurred with the staff recommendation to reject the claim.

Chairperson Caballero and Board member Chivaro voted to reject the claim.

Chairperson Caballero explained that the Board could only make a decision based on the information before them. She stated that there was a lot of information that would require review in order to determine whether the sentence was appropriately calculated and the Board is not the appropriate forum for that determination.

Ms. Tinetti explained that by using the government claims process, Mr. Daniels preserved his right to pursue the matter in court and he would have available to him certified copies of Government Claims Program correspondence and documents from CDCR to support that remedy.

**Item 9. Request for Delegation of Authority
Under Government Code Section 935.6
By the California State Teachers' Retirement System**

Jackie Tinetti, Manager, Government Claims Program, explained that the California State Teachers' Retirement System (CalSTRS) requested that the Board grant it delegated authority to settle and pay or reject claims that do not exceed \$1,000.00 each from May 1, 2012, through April 30, 2013.

Ms. Tinetti stated that the Government Claims Program staff recommended that the Board approve the request by CalSTRS.

Chairperson Caballero and Board member Chivaro voted to adopt the staff recommendation to approve the request by CalSTRS.

Item 10. Applications for Discharge From Accountability for Collection

Jackie Tinetti, Manager, Government Claims Program, explained that there were 84 requests by state agencies for discharge from accountability for collection of debt totaling \$381,894,668.96.

According to the Office of the State Controller and, if applicable, the Office of the Attorney General, the applicants satisfied the criteria for discharge from further accountability for collection and the criteria for authorization to close the books. The Office of the State Controller and the Office of the Attorney General recommended that the requests be approved by the Board pursuant to Government Code section 13940, et seq.

Ms. Tinetti stated that Government Claims Program staff recommended that the Board allow the requests.

Chairperson Caballero and Board member Chivaro voted to approve the requests by the State agencies.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 11:29 a.m.

Request for Approval to Submit the CalVCP Regulations Rulemaking Record to the Office of Administrative Law (tit. 2, § 649.32)

Wayne Strumpfer, Chief Counsel, explained that in March 2011, the Board authorized the California Victim Compensation Program (CalVCP) to proceed with regulatory action to implement Program changes adopted by the Board in February. At its May 2011 meeting, the Board authorized the

CalVCP to file regulatory actions modifying the income and support loss regulation, Rule 649.32, with the Office of Administrative Law (OAL). The modifications included the following:

- Specifying forms of acceptable evidence of income or support loss to provide a more accurate assessment of financial need;
- Clarification of CalVCP verification of acceptable evidence of income or support loss; and
- Clear language detailing what type of practitioner can provide a medical disability statement, how CalVCP verifies the disability statement, and what resources are used to do so.

The Board continued consideration of the proposed verification of income or support loss regulation so that staff could perform additional research. CalVCP now requested authorization to file the rulemaking record with OAL for the proposed verification of income or support loss regulation. The specific purpose of the regulatory action was to prevent payment on fraudulent income and support loss claims under CalVCP.

After receiving Board approval to proceed with the proposed regulatory action, CalVCP filed all of the proposed regulations and the Initial Statement of Reasons with OAL. Notice of the rulemaking action was published on March 18, 2011. The Notice was sent to all interested parties and placed on the VCGCB website. CalVCP held a public hearing on the proposed regulations on May 5, 2011. CalVCP carefully considered the written and oral comments on the proposed regulations and prepared a response to those comments. After submitting the rulemaking record to OAL, CalVCP was notified that the verification of income or support loss regulation, as it was then written, lacked specificity and clarity in its language. Upon OAL's recommendation, the regulation was withdrawn from the rulemaking record so that further consideration of the regulation could be considered. CalVCP modified the language to make it more specific in identifying acceptable evidence of income or support loss. In addition, CalVCP better clarified its own verification process when reviewing the evidence provided. CalVCP then conducted a follow up 15-day public comment period. No comments were received during the follow up comment period. Based on this consideration, CalVCP recommended that the Board proceed with the proposed regulatory action as currently drafted.

Chairperson Caballero and Board member Chivaro voted to adopt the proposed regulation and authorized the Executive Officer to file the rulemaking record with OAL for its review and approval.

Designation of Board Decision as Precedent

Judith D.

Chief Counsel Wayne Strumpfer explained that the Board designates select decisions in the Victim Compensation Program (VCP) as precedent decisions. Those decisions serve as legal authority to interpret and implement VCP laws.

The Board may designate a decision in whole or in part as a precedent decision if it: (1) addresses a legal or factual issue of general interest; (2) resolves a conflict of law; (3) provides an overview of existing law or policy; (4) clarifies existing law or policy; (5) establishes a new rule of law or policy; or (6) contains a significant legal or policy determination of general application.

At issue is VCP staff's application of California Code of Regulations, title 2, section 649.40.

Interpretation of this regulation continues to be a significant source of confusion with VCP staff, particularly with those engaged in eligibility determination.

California Government Code section 13955(f)(2) provides that a victim is eligible for compensation if the victim sustained emotional injury and a threat of physical injury as a direct result of the crime.

Regulation 640.39 provides that a victim may be compensated for emotional injury if the victim also sustained one of the following: (a) physical injury; or (b) threat of physical injury.

Regulation 649.40 defines what may constitute a physical injury and a threat of physical injury and provides examples to include, but not limited to, the following situations:

- (a) the victim was directly threatened with a weapon;
- (b) the victim was within sight of a person brandishing a weapon and reasonably felt threatened for his or her own safety;
- (c) the victim was directly threatened verbally with serious bodily injury and there was a reasonable probability that:
 - (1) the threat would be carried out; and
 - (2) physical injury would result if the threat were carried out.

One of the VCP decisions adopted by the Board at its February 16, 2012, meeting clarifies Regulation 649.40 and would be useful to the Board, its staff, and the public if it were adopted as a precedent decision.

The application for compensation was based on injuries suffered by Judith D. as a result of a residential burglary on May 23, 2010. The application was received on August 2, 2010. VCP staff recommended that the application be denied because there was not a preponderance of the evidence that a qualifying crime occurred. Specifically, VCP staff determined that although Judith D. observed the suspect and heard him trying to break into her residence, she did not qualify for compensation under Regulation 649.40 because she was not directly threatened with a weapon, within sight of a person brandishing a weapon, or directly threatened with serious bodily injury.

A telephonic hearing on this application was held on November 9, 2011. Judith D. participated in this hearing and testified under oath. The hearing officer determined that Regulation 640.40 is permissive and only provides examples of what may constitute a physical injury or a threat of physical injury. It is not limited to those examples. Thus, the fact that Judith D. both observed and heard the suspect attempting to break into her residence was sufficient to find that she sustained both a threat of physical injury as well as emotional injury. Therefore, it was determined that Judith D. was a victim of a qualifying crime under Regulation 649.40 and that her application should be granted.

Mr. Strumpfner stated that staff recommended that the Board designate as precedent its decision In the Matter of the Application of Judith D. In doing so, it would allow the Board to cite the decision as its authority in similar claims.

The Board voted to adopt the staff recommendation to designate as precedent its decision In the matter of the Application of Judith D.

Closed Session

Pursuant to Government Code section 11126(c)(3), Chairperson Caballero and Board member Chivaro adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel at 11:32.m. to deliberate on the proposed decisions numbers 1-143.

Open Session

The Board reconvened into open session at 11:47 a.m. The Board voted to adopt the proposed decisions for numbers 1-143, with the following exceptions: number 24 (A09-2116226) was referred back to staff; numbers 129 (A09-1992932) and 134 (A10-2360980) were overturned and allowed; and numbers 136A-C (A10-2405587, A10-2405595, and A10-2405629) were referred back to staff.

Adjournment

The Board meeting adjourned at 11:47 a.m.