

California Victim Compensation and Government Claims Board
Open Meeting Minutes
February 21, 2013, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Leslie Lopez, Deputy Secretary and General Counsel, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, February 21, 2013, at 10:04 a.m. Also present was Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller. Board member Michael Ramos, San Bernardino County District Attorney, was absent.

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 January 17, 2013, Board Meeting

The Board approved the minutes of the January 17, 2013, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment. Linda Siegel and Amar Shergill gave the following comments:

Ms. Siegel commented that the VCGCB's annual reports and county-by-county statistics were not on the VCGCB website. Executive Officer Nauman stated that she was aware that the information was not on the VCGCB's website. Ms. Nauman explained that staff was in the process of working on the statistics and would contact Ms. Siegel to make the information available to her.

Ms. Siegel commented that one of the VCGCB's Strategic Goals is to maintain a \$30 million reserve. She commented that because the reserve in the Governor's Proposed Budget is \$70 million, there may be legislative proposals on how to spend the reserve. She commented that the Board decided not to restore the rates because the reserve would be in a deficit position; however, there is now a surplus. She commented that if the cuts were not restored, CalVCP would lose a portion of the minority population in Southern California because providers advised her that there had been a severe decline in services. Ms. Siegel then asked the following: whether the VCGCB would hold public hearings to discuss how the reserve should be spent; if surveys of agencies affected by the rate reductions had been conducted; and whether agency representatives would testify at the hearings to determine the consequences for those agencies due to the cutbacks. Lastly, Ms. Siegel stated that she would conduct a survey and share her findings with the Board.

Chairperson Lopez explained that if the legislature decided how the reserve would be appropriated, it would follow the legislative process. Otherwise, if regulatory changes were needed, there would be a public process before the Board.

Executive Officer Nauman stated that she had been in contact with providers and it was her understanding that they were continuing to provide services to victims. She stated that she was unaware of providers ceasing to provide services to victims due to the Board's action. Lastly, Ms. Nauman stated that she welcomed the results of Ms. Siegel's survey.

Ms. Siegel distributed a legislative proposal regarding the reduction of attorney's fees to the Board for their review and comment. She recommended that the Board remove the 10 percent cap for attorney's fees for legal services provided to applicants and requested that the Board establish a different calculation for payment of those attorney's fees. She commented that the Law Offices of Michael Siegel has operated with the CalVCP for 30 years and his office never billed the entire amount; rather, Mr. Siegel billed in increments of 10 minutes, not 30 minutes, and he does not submit subsequent bills due to the cap.

Executive Officer Nauman commented that the legislative proposal submitted by Ms. Siegel had not been agendaized for the Board's discussion. Chairperson Lopez stated that the Board could not comment on the proposal because it was not on the Board meeting agenda.

Mr. Shergill stated that he represents victims of violent crimes and hate crimes on a pro bono basis, one of which was currently on appeal and involved compensation for wage loss. He commented that if an applicant misses work due to an injury and applies for wage loss, CalVCP appropriately requests a disability statement from their treating physician; however, CalVCP's definition of "treating physician" is at issue.

Mr. Shergill provided the following scenario, which he commented was similar to one of his cases: an indigent applicant receives an initial disability statement from his or her treating physician, which often can be an ER doctor, stating that the applicant should be off work for one week. After being off a week, the applicant believes that they need additional time off and subsequently take another week off. In order to be certified to return to work, the applicant must obtain a doctor's note; however, rather than returning to his or her initial treating physician because the applicant is uninsured, the applicant sees a volunteer doctor who then becomes the treating physician. The volunteer doctor reviews the applicant's medical records, takes the applicant's medical history, performs an examination, and then certifies when the applicant can return to work.

He commented that when the records of the volunteer doctor are submitted to CalVCP, it appeared that staff routinely denies the claim due to the retention of the volunteer doctor at the end of the disability period. He stated that a volunteer doctor is not given the same status as a treating physician. He commented that the determination by staff to deny the claim does not appear to be based on statute or regulation; rather, it appeared to be an ad hoc recommendation that is adverse to claimants.

Executive Officer Nauman stated that she and Chief Counsel Wayne Strumpfer would look into the matter.

Chairperson Lopez stated that the Board would follow up on the matter.

Item 3. Executive Officer's Statement

2012 Executive Officer Award Programs

Last week the Second Annual Executive Officer Awards were held at the VCGCB. Secretary Caballero joined in the presentation of the awards to recognize rank and file staff for their outstanding service and performance. Executive Officer Nauman explained that their peers nominate staff, the selection committee reviews and evaluates the nominations then make recommendations to the Executive Officer who makes the final selection of the award recipients. Recipients of the 2012 Executive Officer Awards included Evelyn Durette, Kyle Hedum, Kirsten Yeates, and Sonia Aguilar.

The First Annual Leadership Award recognizing excellence in leadership among managers was presented to Beth Townsend, manager of the Human Resources Section.

Victim Compensation Advisory Committee

The Victim Compensation Advisory Committee will meet on March 4. The committee, comprised of key stakeholders, advises CalVCP on policy issues that affect the CalVCP and the delivery of its services. The Committee will initially focus its efforts on realignment issues and will also hear from a researcher conducting a study, in conjunction with Stanford University, on the impact of realignment on victim's rights and services. CalVCP will continue to monitor the realignment collection issues very closely because of the potential impact the new approach may have on the Restitution Fund, which is used to assist victims of crime.

Item 4. Contract Report

The Board approved the following contracts:

CompuCom Systems

Three-year Enterprise Agreement for Microsoft Licensing used by the VCGCB in support of its daily business processes. The total amount of the agreement is \$637,001.77, which will be divided into three annual payments.

Image Access West

Equipment maintenance and operations for two Kodak i620 scanners used by the VCGCB's Document Receiving Section. The total amount of the contract is \$6,846.00.

Shandam Consulting, Inc.

Amendment in the amount of \$20,250.00 to VCGCB's existing contract with Shandam Consulting, Inc. for IT Infrastructure consulting services for the CaRES Modification Project. The amendment adds additional hours and time to complete necessary work on the VCGCB's end-to-end test environment. The total amount of the contract, including Amendment 1, is \$140,250.00.

Western Integrated Systems

Third amendment in the amount of \$30,000 to the VCGCB's existing contract for ongoing technical support for the Kofax document capture and management system for CaRES. Additional hours are needed due to the vendor providing critical pre- and post-implementation consulting and support of the Kofax system for the CaRES Modification Project. The total amount of the contract, including Amendment 3, is \$89,200.00.

Item 6. Government Claims Program

Consent Agenda (Nos. 1- 542)

The Board adopted the staff recommendations for item numbers 1-542, with the following exceptions: item number 47 was removed because the item was also on the discuss agenda; item numbers 50,105, 135, 256, 338, and 523, were continued in order to provide the involved parties more time to review additional information; item numbers 158, 534, and 537 were continued to the March 21, 2013 meeting; and item number 478 was removed to allow the claimant an opportunity to address the Board.

Consent Agenda Appearance

Item 478, G603750

Claim of Ken Ruiz

Ken Ruiz, claimant, appeared and addressed the Board. Mr. Ruiz submitted documentation that included a timeline from May 18, 2011 to November 18, 2011 and medical documentation, among others, for the Board's review and consideration. Mellonie Yang appeared and addressed the Board on behalf of the California Department of Corrections and Rehabilitation.

Nicholas Wagner, Manager, Government Claims Program, explained that Ken Ruiz requested leave to present a late claim for compensation from the California Department of Corrections and Rehabilitation (CDCR) in the amount of \$328,575.00 for incarceration beyond his discharge date. Mr. Wagner stated that Government Claims Program staff recommended that the Board deny the late application for failure to meet the criteria required in Government Code section 911.6.

Mr. Ruiz stated that the documentation he submitted to the Board showed what occurred during the six months that prevented him from timely filing his government claim. He stated that, based on the information submitted, he should get relief from the six-month filing requirement.

Chairperson Lopez stated that she reviewed the materials submitted by Mr. Ruiz. She asked Mr. Ruiz whether he understood that there was the six-month time limit.

Mr. Ruiz explained that he was unaware of the filing limit until February, which was when he received the paperwork wherein it asked if the injury occurred in the first six months and he stated that he checked "no." He stated that he did not understand what the six-month filing requirement meant because he was trying to get everything filed. When he realized that the six months had passed, he stated that he submitted the filing fee.

Ms. Yang stated that CDCR requested that the Board deny Mr. Ruiz's late application because the six-month requirements should be complied with. She stated that she reviewed the documents submitted with the claim, in addition to the excuse provided by Mr. Ruiz that was based upon his medical visits. Lastly, she stated that there was sufficient time for Mr. Ruiz to have complied with the requirements of the Government Code.

Chairperson Lopez asked Wayne Strumpf, VCGCB Chief Counsel, to advise the Board on the criteria that must be met in order to satisfy the requirements for leave to present a late claim.

Chief Counsel Strumpf explained that, pursuant to Government Code section 911.6, the Board may grant an application if one or more of the following are applicable (1) the failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the state was not prejudiced in its defense of the claim; (2) the person who sustained the alleged injury, damage or loss was a minor during the entire six months; (3) the person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during the entire six months; or (4) the person who sustained the alleged injury, damage or loss died within six months.

Chairperson Lopez asked Mr. Ruiz whether it was his position that he did not know about the six-month filing deadline. Mr. Ruiz stated that he was unaware of the six-month requirement.

Chairperson Lopez stated that, based on the reason provided by Mr. Ruiz, there was no mistake, inadvertence, or excusable neglect.

The Board denied the late claim application.

Item 6. Claim of Turning Point of Central California

Brian Soto, claimant, appeared and addressed the Board. Tamiya Davis appeared on behalf of the California Department of Corrections and Rehabilitation.

Nicholas Wagner, Manager, Government Claims Program, explained that Turning Point of Central California requested compensation from the California Department of Corrections and Rehabilitation (CDCR) in the amount of \$43,510.89 for late payment penalties. He stated that Government Claims Program staff recommended that the Board partially allow the claim in the amount of \$42,997.96 under authority of Government Code section 965 (agency pay).

Chairperson Lopez asked Mr. Soto whether he was in agreement with the staff recommendation partially allowing the claim. Mr. Soto stated that he concurred with the recommended amount by staff.

The Board partially allowed the claim in the amount of \$42,997.96.

Item 7. Claim of James M. Forte

James Forte, claimant, was not in attendance. Ray Asbell appeared and addressed the Board on behalf of the California Department of Human Resources. Tamiya Davis appeared on behalf of the California Department of Corrections and Rehabilitation.

Nicholas Wagner, Government Claims Program Manager, explained that James M. Forte sought compensation from the California Department of Corrections and Rehabilitation (CDCR) in the amount of \$195.00 for reimbursement of van pool expenses. CDCR recommended that the claim be rejected; however, the California Department of Human Resources recommended that the claim be allowed. Mr. Wagner stated that Government Claims Program staff recommended that the Board reject the claim.

Mr. Asbell stated that, according to the information he reviewed, Mr. Forte was entitled to reimbursement because he had the actual receipts as required for reimbursement. He explained that even though Mr. Forte did not submit the claims until after a period of time, the Government Code does not specify a certain time period for reimbursement; rather, it states that claims should be submitted within a reasonable time. He further stated that he understood that the reason that CDCR could not reimburse Mr. Forte was because the system being used could only go back so many years; consequently, because three fiscal years had gone by, the funds reverted back to the State.

Chairperson Lopez asked Mr. Asbell to clarify whether the Government Code only states that claims should be submitted within reasonable period of time because she was concerned that there was a dispute over \$195.00.

Mr. Asbell-stated that he was unaware of any Government Code section that talked about a period of time for reimbursement. He stated that employee contracts do specify a period of time, but he was unaware of anything in the Government Code that specifies a period of time. He further stated that in looking at Mr. Forte's contract, there is a provision that does allow for reimbursement for van pool expenses. He stated that reimbursement is \$75 or the total cost up to a maximum of \$65, which is the amount Mr. Forte was claiming over a period of time. He further stated that if Mr. Forte was not reimbursed for those expenses, it would be in violation of his employee contract.

The Board approved the claim in the amount of \$195.00.

Item 8. Claim of Manning and Kass, Ellrod, Ramirez, Trester LLP

Nicholas Wagner, Government Claims Program Manager, explained that Manning and Kass, Ellrod, Ramirez, Trester LLP requested payment in the amount of \$59,033.05 from the California Department of Corrections and Rehabilitation (CDCR) for legal services provided between May 1, 2012, and June 30, 2012. Mr. Wagner stated that Government Claims Program staff recommended that the Board allow the claim in the amount of \$59,033.05, under authority of Government Code section 965 (agency pay).

The Board allowed the claim in the amount of \$59,033.05.

Item 9. Claim of Prudential Overall Supply

Nicholas Wagner, Government Claims Program Manager, explained that Prudential Overall Supply requested payment in the amount of \$140,925.35 from the Department of General Services for uniform rentals. Mr. Wagner stated that Government Claims Program staff recommended that the Board partially allow the claim in the amount of \$87,053.71 under authority of Government Code section 965 (agency pay).

The Board partially allowed the claim in the amount of \$87,053.71.

Item 10. Applications for Discharge From Accountability for Collection

Nicholas Wagner, Government Claims Program Manager, stated that the Government Claims Program staff recommended that the Board approve two requests by state agencies for discharge from accountability for collection of debt totaling \$17,937,778.28.

The Board approved the two requests to discharge from accountability for collection of debt totaling \$17,937,778.28.

Item 11. Bid Protest of CMark, Inc.

Request for Quotation No. 12YS0020-RMDS

Wayne Strumpf, VCGCB Chief Counsel, explained that the proposed decision to deny the protest was before the Board to determine the protest by bidder CMark, Inc. (CMark) of Request for Quotation (RFQ) number 12YS0020-RMDS for the procurement of a rethermalization meal delivery system for the California Department of Veterans Affairs. Mr. Strumpf stated that the hearing officer recommended that the Board deny the protest because CMark, Inc. could not show by a preponderance of the evidence that its submission conformed to the specifications of the RFQ.

Mr. Strumpf further stated that shortly before the Board meeting began, CMark, Inc. asked via email to submit additional information to the Board; however, the request was denied by the Board because the record was already closed and no further facts could be introduced.

The Board denied the protest.

Item 12. Bid Protest of Burlodge USA, Inc.

Request for Quotation No. 12YS0020-RMDS

Wayne Strumpf, VCGCB Chief Counsel, explained that the proposed decision to deny the protest was before the Board to determine the protest by bidder Burlodge USA, Inc. of Request for Quotation (RFQ) number 12YS0020-RMDS for the procurement of a rethermalization meal delivery system for the California Department of Veterans Affairs. He stated that the hearing officer recommended that the Board deny the protest because Burlodge USA, Inc. could not show by a preponderance of the evidence that its submission conformed to the specifications of the RFQ.

The Board denied the protest.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:35 a.m.

Closed Session

Pursuant to Government Code section 11126(c)(3), Chairperson Lopez and Board member Chivaro adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel at 10:35 a.m. to deliberate on the proposed decisions numbers 1-134.

Open Session

The Board reconvened into open session at 10:46 a.m. The Board adopted the proposed decisions for numbers 1-134.

The Board meeting adjourned at 10:46 a.m.