

California Victim Compensation and Government Claims Board
Open Meeting Minutes
November 29, 2012, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Anna Caballero, Secretary, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, November 29, 2012, at 10:00 a.m. Also present were Board members Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller, and Michael Ramos, San Bernardino County District Attorney.

Board staff present included Executive Officer Julie Nauman and Chief Counsel Wayne Strumpfer. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the October 18, 2012, Board Meeting

The Board approved the minutes of the October 18, 2012, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment. No public comment was provided.

Item 3. Executive Officer's Statement

The Victim Compensation and Government Claims Board has been active in raising funds for the California State Employees Charitable Campaign in addition to the pledges that employees make to the Campaign. The VCGCB participated in the following events:

Second Annual Chili Cookoff

Approximately 100 people participated in the event. An Executive Chief and the Executive Officer judged the chili with participants winning categories for best vegetarian, spiciest, most unique, and overall best. The successful event raised nearly \$500.

Turkey Drive

Staff donated 23 frozen turkeys for families in the community amounting to 350 pounds of food.

Rice Donation Drive

There is an effort to collect money to purchase rice in bulk. A \$17 donation enables the purchase of a 50 pound bag of California grown rice. So far staff has donated \$165, the equivalent of 450 pounds of rice.

The Executive Officer stated that she would prepare an annual Accomplishments Report for the January 17, 2013, Board meeting.

Chairperson Caballero thanked the Executive Officer and CalVCP staff for their great work in raising funds for charities.

Item 4. Government Claims Program

Consent Agenda (Nos. 1- 636)

The Board adopted the staff recommendations for item numbers 1-636, with the following exceptions: item numbers 55, 154, and 363 were continued and item numbers 225 and 257 were removed to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance

Item 225, G606331

Claim of Tito Thomas

Tito Thomas, claimant, failed to appear.

Mindy Fox, Deputy Executive Officer, Government Claims Program, explained that Tito Thomas sought compensation from the California Department of Justice for an amount exceeding \$50,000.00 for lost earnings resulting from false information in an arrest warrant issued May 24, 2011. Ms. Fox GCP stated that staff reviewed the claim and determined that it was complete and timely pursuant to Government Code sections 910 and 911.2. Further, GCP staff recommended that the Board reject the claim because the issues presented were complex and outside the scope of analysis and interpretation typically undertaken by the Board.

The Board adopted the staff recommendation to reject the claim.

Consent Agenda Appearance

Item 257, G606790

Claim of Charles G. Johnson

Charles G. Johnson, claimant, appeared and addressed the Board. Michael Geller, attorney, appeared and addressed the Board on behalf of the Department of Industrial Relations. Jonathan Fil, attorney, appeared on behalf of the State Compensation Insurance Fund but joined the meeting while discussion on the claim was already in progress.

Mindy Fox, Deputy Executive Officer, Government Claims Program, explained that Charles G. Johnson sought compensation for an amount exceeding \$1,800,000.00 for ongoing financial and punitive harm caused by the State Compensation and Insurance Fund (SCIF), the Workers' Compensation Appeals Board (WCAB) of the Department of Industrial Relations (DIR), and the Department of Public Health (DPH).

Ms. Fox stated that GCP staff reviewed the claim and determined that it was complete and timely pursuant to Government Code sections 910 and 911.2; however, the claim was accepted only to the extent that it asserted allegations that arose from facts or events that occurred during the six months prior to the date it was presented. GCP staff recommended that, to the extent the Board has jurisdiction, the Board reject the claim because the issues raised were complex and outside the scope of analysis and interpretation typically undertaken by the Board.

Mr. Johnson stated that he was injured in 1992 and his case is still ongoing. He explained that he and Mr. Jackson, a WCAB representative, appeared before Judge Cleveland regarding his case which was settled in an agreed upon amount. Thereafter, Judge Cleveland instructed Mr. Jackson to complete the C&Rs that were necessary in order to resolve the case; however, sometime later Mr. Jackson retired before completing the C&Rs. He stated that since that time he had been appealing to the WCAB in an attempt to get his case resolved. He was informed that his case had been assigned to Ms. Doe whom he had communications with for six months; however, there still has not been a resolution. Lastly, Mr. Johnson asked the Board to allow his claim in the amount requested which included punitive damages and interest due to the long delay.

Mr. Geller explained that he was asked to attend the meeting to answer questions of the Board; however, he did not have a prepared statement. He stated that he could address the usual format for a workers' compensation claim and he could discuss how the WCAB would normally anticipate how a claim like Mr. Johnson's would proceed.

Chairperson Caballero asked Mr. Geller if he knew the details of Mr. Johnson's case.

Mr. Geller explained that he understood that there was a hearing in front of Judge Cleveland, but the parties did not complete the settlement documents. He stated that he believed that the reason the documents were not completed was because Mr. Johnson had to leave the hearing because he had to have surgery. There was a presumption that Mr. Johnson would file a settlement document; however, he did not. He explained that the WCAB judge is waiting for the filing of the settlement document, because the judge cannot take any action on the matter without Mr. Johnson or SCIF filing the documents in order to activate the case in front of the WCAB.

Mr. Johnson commented that Mr. Geller was referring to a 2005 case, not the 2010 case wherein he appeared before Judge Cleveland. He explained that Mr. Jackson retired in the beginning of 2011. After Mr. Jackson retired, he contacted the WCAB to inquire who was handling his case because it was documented in court by Judge Cleveland that his case was resolved. He added that Mr. Jackson was supposed to complete the C&R in order to present it to the court, but he did not do so before he retired.

Chairperson Caballero asked Mr. Johnson whether he was represented by an attorney.

Mr. Johnson stated that he was previously represented by attorneys; however, he relieved them of their duties because they were not accomplishing anything.

Mr. Geller commented that he believed Mr. Johnson had four attorneys on his case in sequential order. Normally the WCAB would expect that an attorney would bring Mr. Johnson's case forward to a judge, but it has not occurred. He stated that the WCAB is prepared to address Mr. Johnson's claim. He added that Mr. Johnson could seek penalties and interest, as provided in the Labor Code. The WCAB has inclusive jurisdiction regarding penalties and interest, and Mr. Johnson could seek those remedies if he could prove that he is entitled to receive them.

Chairperson Caballero stated that she was inclined to continue the claim to allow Mr. Geller or staff from the WCAB the opportunity to enter into discussions with Mr. Johnson to determine whether it could be resolved, because it appeared that negotiations were occurring in an attempt to resolve the matter. Ms. Caballero commented that it can be difficult for individuals going through the process with the State without the assistance of an attorney. If Mr. Johnson's case could be resolved with the WCAB, she would encourage the parties to engage in a discussion.

Mr. Geller explained that it is not his role to enter into discussions with claimants; however, he would be happy to refer Mr. Johnson to the Information and Assistance Office within the WCAB, the entity directed to deal with unrepresented parties appearing before the WCAB. That entity would explain how to get a case before a judge. He stated that Mr. Johnson had previously been given contact information for the Information and Assistance Office; however, he would reacquaint Mr. Johnson with the process. He added that he believed that the reason for the delay in the process is because there may not be anything that DIR can do to assist. SCIF wants to settle with Mr. Johnson by compromise and release; however, they are concerned about satisfying the requirements of Medicare regarding addressing their concerns when a person settles a claim addressing their medical care. Medicare is concerned that individuals pass their medical needs from a workers' compensation carrier to Medicare and that needs to be addressed. Lastly, he stated that, based on a brief review of the documents, he believed that the delay in Mr. Johnson's case involved getting Medicare approval of the settlement, which should be addressed by SCIF.

Ms. Fox announced that Jonathan Fil, a SCIF representative, had arrived at the meeting and should be able answer questions of the Board.

Chairperson Caballero explained that the Board was trying to determine a way to assist Mr. Johnson through the complicated process. Ms. Caballero added that the Board could not take up complicated issues that would require it to determine the facts of his case.

Mr. Johnson commented that the Medicare set aside was one of the things that Mr. Jackson was supposed to have handled. He stated that it has been resolved and the Medicare set aside was approved.

Mr. Fil explained that he was not making a general appearance at the meeting; rather, he was making a special appearance to assist the Board in its decision. He stated that Mr. Johnson's case is under the exclusive jurisdiction of the WCAB, the matter was being handled appropriately, and there are no complaints of impropriety regarding the WCAB hearings. Mr. Johnson's allegations were only made to Board, which does not have jurisdiction. The WCAB has its own jurisdiction to handle these types of complex issues. He stated that currently Mr. Johnson does not have an attorney; however, he has had plenty of legal advice. He added that SCIF is not subject to the Tort Claims Act; therefore, Mr. Johnson did not need to come before the Board to get a rejection first in order to go forward with any claims he may have outside of the WCAB.

Mr. Johnson explained that he has been in constant contact with Ms. Doe for the approximately six months; yet she only sent responses to his concerns on two occasions. He explained that the reason that he submitted a claim to the Board was because the WCAB has been dragging its feet with regard to his case. He clarified that he has only had two attorneys. The last attorney that he had was on his case for six months and she did not do anything. Rather than continue to enlist her services, he decided to speak with Mr. Jackson himself.

Mr. Fil stated that he spoke with Ms. Doe yesterday and she informed him that there is already a pending settlement agreement with an approved medical set aside ready to go based upon the negotiations with Mr. Johnson's former counsel. He stated that if Mr. Johnson does not want to accept the settlement, that is his right. The case can go forward and be litigated if he chooses to do so.

Mr. Johnson asked Chairperson Caballero whether the Board had authority to resolve a case if there is a delay in payment of an agreement.

Chairperson Caballero stated that it appeared that Mr. Johnson needed to have a conversation with Ms. Doe because she had all of the paperwork completed. She explained that the Board could not assist in the matter.

Mr. Fil explained that the WCAB has a provision for seeking penalties and interest. He stated that Mr. Johnson did not agree to the settlement nor did he come back with another proposal.

Mr. Johnson stated that he sent Ms. Doe a rebuttal via email over four months ago and she still has not responded.

Chairperson Caballero advised Mr. Johnson to keep records of his correspondence because it would be important to the WCAB; however, the Board could not assist him in the matter. She further advised him to continue to work with Ms. Doe. She added that if there is no agreement, then the negotiations would have to continue and Mr. Johnson may need to seek legal advice because Ms. Doe could not give him legal advice.

The Board adopted the staff recommendation to reject the claim.

Item 5. Applications for Discharge From Accountability for Collection

The Board approved the 147 requests by State agencies for discharge from accountability for collection of debt totaling \$1,005,315,986.18.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:24 a.m.

Request for Authority to Begin the Rulemaking Process for the California Victim Compensation Regulations (Title 2, § 649.56)

Wayne Strumpfer, VCGCB Chief Counsel, explained that the California Victim Compensation Program (CalVCP) proposed an amendment to Rule 649.56, Involvement in the Qualifying Crime of Prostitution. He stated that victims of human trafficking are often forced to commit acts of prostitution. Because prostitution is a specific intent crime, CalVCP strongly contends that human trafficking victims are not committing the crime of prostitution because they are forced to perform the acts against their will. Therefore, they do not possess the specific intent to commit the crime of prostitution.

Because human trafficking victims are not committing the crime of prostitution, Rule 649.56, the regulation regarding the denial of benefits due to involvement in the events leading up to the qualifying crime, is not applied in human trafficking cases. The purpose of amending Rule 649.56 is to include language of the CalVCPs policy in the regulation; therefore ensuring consistent processing decisions.

Mr. Strumpfer explained that although the change to the regulation is small, it is significant because it adds another subsection to the regulation that specifically states that the section shall not be applied to cases involving human trafficking. He stated that the change would make it clear for all claims processors, victim witness coordinators, and advocates. Further, Chief Counsel Strumpfer recommended that the Board authorize the Executive Officer to begin the formal rulemaking process to amend the proposed amendment to Rule 649.56.

Board member Ramos commented that the crime of human trafficking is also a priority for Attorney General Kamala Harris. AG Harris released The State of Human Trafficking in California 2012 report at the Human Trafficking Leadership Symposium last week at USC that he also attended. It was clear that there is an awareness of human trafficking, both sexual trafficking and forced labor cases, not only in Southern California but also across the state. He added that United States Attorney General Holder has made the crime of human trafficking a priority as well. Lastly, he commended the CalVCP for looking at the issue and the ability to help victims of human trafficking, especially young girls being trafficked sexually, so that the CalVCP can assist them as they try to get their lives turned around.

Executive Officer Nauman stated that she wanted to assure the Board that making the amendment to the regulation did not suggest that CalVCP was not helping victims of human trafficking. She explained that the way in which the CalVCP applies the current regulations clearly allows the CalVCP the ability to successfully assist a number of victims of human trafficking. However, since the issue was brought to CalVCPs attention as a possible impediment to CalVCP providing services to those victims, CalVCP wanted to make it abundantly clear that it is the CalVCPs policy to do everything it can to assist victims of human trafficking.

The Board adopted the staff recommendation to authorize the Executive Officer to begin the formal rulemaking process for the proposed amendment to Rule 649.56.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer and Chief Counsel at 10:27 a.m. to deliberate on the proposed decisions numbers 1-184.

Open Session

The Board reconvened into open session at 10:33 a.m. The Board adopted the proposed decisions for numbers 1-184.

The Board meeting adjourned at 10:33 a.m.