

California Victim Compensation and Government Claims Board
Open Meeting Minutes
October 21, 2010, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Bill Leonard, Secretary, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, October 21, 2010, at 10:02 a.m. Also present were Board members Les Kleinberg, Deputy Controller, acting for and in the absence of John Chiang, Controller, and Board member Michael Ramos, San Bernardino County District Attorney.

Board staff present included Julie Nauman, Executive Officer; Patty Harris, 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.

Announcement of the VCGCB's Participation in the Great California ShakOut

Chairperson Leonard stated at 10:21 a.m. the Board, along with millions of Californians, would participate in the Great California ShakeOut, an earthquake preparedness drill.

Item 1. Approval of Minutes of the September 16, 2010, Board Meeting

The Board voted to approve the minutes of the September 16, 2010, Board meeting.

Item 2. Public Comment

The meeting was opened to public comment. No public comment was offered.

Item 3. Executive Officer's Statement

Executive Officer Julie Nauman reported the following:

- October is Domestic Violence Awareness Month, an observance that brings awareness to domestic violence in California and the nation. To commemorate the occasion, CalVCP began a month of outreach, education, and activities, both internally and externally, to help bring awareness to the devastating crime, as well as share information about the resources CalVCP provides to victims of domestic violence. During the week of the 18th, CalVCP participated in the "Suited for Success" clothing drive supporting Women Escaping a Violent Environment (WEAVE). Because domestic violence can shatter a victim's life, often forcing them to quit their jobs, move out of their homes or change cities, WEAVE's "Suited for Success" program gives domestic violence survivors a new look and a fresh start by providing them with professional clothing and accessories as they re-enter the work force. Staff donated wearable used women and men's clothing suitable for job interviews and business work environments.
- On October 25th, CalVCP will wrap up the month by wearing purple and coming together to "Break the Silence on Domestic Violence." Staff will show their support by participating in the national "Paint It Purple" campaign. On this day staff is encouraged to join other State agencies and private businesses by wearing purple clothing. Staff will donate 10 minutes of their time for a walk around the block to promote awareness and help break the silence on domestic violence.
- The California State Employees Charitable Campaign (CSECC) is underway. To kick off the campaign, CalVCP held several events including the popular and highly successful cake auction. Staff donated and auctioned 33 cakes, which raised \$777 for CSECC. The final event that will be held is the Great Bowls of Fire Chili Cook-off taking place on November 4. Proceeds from all events will benefit CSECC.

- CalVCP's first quarter statistics show an increase in demand for program services. From July to September, CalVCP received 14,835 applications, an increase over last year by nearly 800. In addition, there has been an increase in payments. Over \$25.6 million was made in payments compared to \$22.7 million last year. The CalVCP anticipates increases will continue and will do everything possible internally to respond to the increased demand.

Item 4. Legislative Update

Jon Myers, Deputy Executive Officer, Legislation and Public Affairs Division, presented the Legislative Update, an information item, to the Board. Mr. Myers reported the following:

- AB 1715 (Fuentes) and SB 910 (Kehoe), the VCGCB's Government Claims bills, were both chaptered.
- SB 662 (Yee), relating to funding domestic violence shelter-based programs with increased fees for issuing marriage licenses, was vetoed by the Governor.
- SB 733 (Leno), relating to the VCP administering a program to award up to \$2 million in grants annually from the Restitution Fund, upon appropriation from the Legislature, was vetoed by the Governor.
- SB1046 (Cogdill), relating to claims that are against the California State University be presented to the Trustees of the California State University to adjust and pay those claims, rather than the VCGCB's Government Claims Program, was chaptered and takes effect January 1, 2011.
- SB 856 (Committee on Budget and Fiscal Review), the Budget Trailer Bill, deletes the code section that established a 10-year statute of limitations on redeeming matured bonds. Effective October 19, 2010, bonds are redeemable regardless of maturity date without a Government Claim being filed.

Government Claims Program

Item 5. Consent Agenda (Nos. 1- 307)

The Board voted to adopt the staff recommendations for item numbers 1-307, with the following exceptions: item numbers 85 and 88 were removed pending review of additional information received; item numbers 104 and 105 were withdrawn by the claimants; and item numbers 81, 87, and 109 were removed to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance

Item No. 87, G589861

Claimant Anita Lafollette appeared and addressed the Board. Nova Horton appeared on behalf of the Public Employees Retirement System (CalPERS). Ms. Lafollette requested payment in the amount of \$4,468.55 as a refund for her Alternative Retirement Plan (ARP) contributions that she alleged were erroneously withheld from her payroll check.

California ShakeOut Drill

Chairperson Leonard interrupted the meeting to inform staff that it was time to begin the earthquake drill. Chairperson Leonard also provided informational tips on how to protect oneself in the event of an actual earthquake.

Continuation of Consent Agenda Appearance Item No. 87, G589861

Following the earthquake drill, the meeting continued with the claim of Anita Lofollette, G589861.

Ms. Horton stated Ms. Lafollette has an appeal request with CalPERS' Legal Department. She stated the administrative hearing is scheduled to take place on December 21, 2010.

Chief Counsel Wayne Strumpfer stated Ms. Lafollette must first exhaust the administrative process with CalPERS before presenting a claim to the Board. He further stated if Ms. Lafollette does not prevail at her CalPERS administrative hearing, she will be afforded an opportunity to come before the Board.

Board voted to put the claim over, without prejudice, pending the outcome of claimant's CalPERS administrative hearing.

**Consent Agenda Appearance
Item No. 109, G591227**

Claimant Mark Schleicher requested \$100 for a levy charge issued by his financial institution that he alleged was the result of an incorrectly issued levy by the Department of Child Support Services.

Claimant Mark Schleicher failed to appear. The Board voted to adopt the staff recommendation to reject the claim.

**Consent Agenda Appearance
Item No. 81, G589166**

Claimant Mekal Faruki appeared and addressed the Board. Rick Stewart and Nancy Rounds appeared on behalf of the Employment Development Department.

Mr. Faruki requested payment in the amount of \$173,063.10 for damages he alleged were caused by the Employment Development Department's (EDD) failure to pay for his unemployment benefits. In addition, Mr. Faruki requested payment for penalties and punitive damages.

Chairperson Leonard asked Chief Counsel Wayne Strumpfer if the Board had authority to consider punitive damages. Mr. Strumpfer stated the Board cannot consider punitive damages. He further stated that the damages the claimant seeks involve issues that are too complex and, therefore, the Board should reject the claim.

Chairperson Leonard explained to Mr. Faruki that the Board occasionally rejects claims due to issues of complexity, without prejudice to either party, and not necessarily because the claim lacks merit.

Mr. Faruki stated that he brought several checks with him totaling nearly \$4,000 that he received in the mail yesterday from EDD.

Chairperson Leonard asked Mr. Stewart if EDD made Mr. Faruki whole or can Mr. Faruki expect to receive additional checks.

Mr. Stewart stated EDD performed an audit to ensure that benefits were not withheld in error. He further stated that Mr. Faruki received all money that he is eligible to receive; however, he did not review all checks that were mailed to Mr. Faruki.

Chairperson Leonard requested that Mr. Stewart and Ms. Rounds review and verify all of the checks in Mr. Faruki's possession to ensure that he received all money that is owed to him.

The Board voted to adopt the staff recommendation to reject the claim due to complex legal issues.

Item 6. Claim of Miller Environmental, Inc.
Claim Number G589649

The claim was pulled off calendar to allow the department the ability to perform a further investigation of the claim.

Item 7. Claim of Anne J. Mallonee
Claim Number G590943

Anne J. Mallonee requested payment in the amount of \$62,399.16 to replace a stale-dated tax refund warrant issued by the Franchise Tax Board (FTB).

Board member Kleinberg asked Jackie Tinetti, Government Claims Program Manager, if the claim had to go through the legislative pay process because more than likely the check would not be issued because it would be used to reduce the claimant's tax liability.

Ms. Tinetti stated the claim still needs to go through the legislative pay process for the appropriation; however, the payee will be the FTB. Ms. Tinetti further stated FTB would then offset the allowed amount of \$62,339.16 in partial payment of the claimant's outstanding tax liability.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$62,399.16 under authority of Government Code section 905.2(b)(4), legislative pay.

Item 8. Bid Protest of Fairfax Imaging, Inc.
Request for Quotation No. 50147

Steve Chahal, William Merritts, and Rich Miller appeared on behalf of Fairfax Imaging, Inc. Kathleen Yates appeared on behalf of the Department of General Services and the Employment Development Department. Representatives from Fairfax Imaging, Inc., distributed handouts and prepared a visual display for the Board's consideration.

Fairfax Imaging, Inc. (Fairfax) alleged that it should have been awarded the contract to provide four Imaging Business Machines, LLC (IBML) scanners and scanner software, and all required hardware and software, in response to the Request for Quotation (RFQ) Number 50147 released by the Employment Development Department. Fairfax alleged that the proposed awardee, Impression Technology, Inc. (Impression), was noncompliant with the RFQ because Impression's bid failed to include specific scanner components necessary to meet the RFQ requirements.

Chairperson Leonard asked Mr. Miller if the word "scanner" always entails hardware. Mr. Miller stated the word "scanner" means a combination of hardware and software.

Chairperson Leonard stated the Board's jurisdiction is limited to whether the bid process was honored. He stated the Board does not engage in discussions regarding the language of the RFQ. Chairperson Leonard further stated he understood how two bidders might interpret the word "scanner" differently; however, it is not within the Board's jurisdiction to rewrite RFQ's, which appeared to be the issue of the protest.

The Board voted to adopt the staff recommendation to deny the protest.

Item 9. Grant Self (Pen. Code, § 4900 et seq.)
Claim Number G584611

David Feldman, attorney, appeared on behalf of claimant Grant Self. Maggie Krell appeared on behalf of the Attorney General's Office.

Board member Ramos stated although some of the victims recanted their story, there is still a remaining victim who has not recanted. He stated sexual assault victims often suppress their memories and oftentimes it remains suppressed until later in life. Board member Ramos stated although experts could be presented on both sides, the Board does not have the ability to hear expert testimony. He further stated there is not enough evidence to persuade him to change the hearing officer's recommendation to deny the claim.

Board member Kleinberg stated the question of whether Mr. Self is guilty beyond a reasonable doubt is clearly in doubt. He further stated that Mr. Self has not proven by a preponderance of the evidence that he is innocent.

The Board voted to adopt the hearing officer's proposed decision to reject the claim.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 11:49 a.m.

Adoption of Service Limitations for Alternative Treatments and Authorization to File an Informational Copy with the Secretary of State

The CalVCP requested the Board adopt rates and service limitations for a combined total of five sessions for alternative treatments including acupuncture, biofeedback, holistic medicine, massage therapy and other natural health methods when a victim suffers physical injury as a direct result of a qualifying crime. CalVCP also requested that sessions in excess of the initial five combined sessions would require a medical physician's recommendation for up to a maximum of 20 sessions for any combination of the alternative treatment modalities. The requested payment rate for the sessions is the Board's current medical services payment rate of Medicare coverage plus 20 percent.

Chairperson Leonard requested staff review the Board's current medical services payment rate of Medicare coverage plus 20 percent.

The Board voted to adopt the staff recommendation to (1) adopt the service limitations for alternative treatment modalities and (2) file an informational copy of the service limitations with the Secretary of State.

Requests for Reconsideration

Recommendation: Allow and Refer to Program Staff for Verification
(Nos. 1A & 2)

The Board voted to adopt the staff recommendations, as amended, to include numbers 1A-1D, 2, and 14.

Requests for Reconsideration

Recommendation: Deny

(Nos. 3-31)

The Board voted to adopt the staff recommendations, as amended, to include numbers 3-13, and 15-31.

Request for Reconsideration Following Board Action on a Proposed Decision

Recommendation: Allow

(No. 32)

The Board voted to adopt the proposed decision.

Request for Reconsideration Following Board Action on a Proposed Decision

Recommendation: Deny

(No. 33)

The Board voted to adopt the proposed decision.

Proposed Decisions on the Written Record

(Nos. 34-63)

The Board voted to adopt the proposed decisions.

Proposed Decisions Following Failure to Appear

(Nos. 64-87)

The Board voted to adopt the proposed decisions.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel at 11:54 a.m. to deliberate on the proposed decisions, numbers 88A through 107.

The Board reconvened into open session at 12:00 p.m.

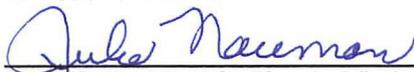
Open Session

The Board voted to adopt the proposed decisions for numbers 88A through 107.

Adjournment

The Board meeting adjourned at 12:00 p.m.

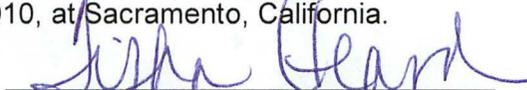
Julie Nauman
Executive Officer



I certify that the California Victim Compensation and Government Claims Board adopted these minutes at its meeting of November 18, 2010, at Sacramento, California.

Date: November 18, 2010

By:



Board Liaison (Affix Seal here)