

California Victim Compensation and Government Claims Board
Open Meeting Minutes
January 19, 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, January 19, 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 Kathy Cruz, Chief Deputy Executive Officer, and Wayne Strumpfer, Chief Counsel. Executive Officer Julie Nauman was not in attendance because she was serving on jury duty.

Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the December 15, 2011, Board Meeting

Chairperson Caballero stated that she was not in attendance at last month's Board meeting; however, she reviewed the minutes and had an opportunity to discuss them with Leslie Lopez who was the Acting Chairperson at the meeting.

The Board voted to approve the minutes of the December 15, 2011, 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

Chairperson Caballero announced that Executive Officer Julie Nauman was serving on jury duty; as a result, an Executive Officer's Statement would not be given. Executive Officer Nauman would provide a report at the next Board meeting.

Item 4. Government Claims Program
Consent Agenda (Nos. 1- 261)

The Board voted to adopt the staff recommendations for item numbers 1-261, with the following exceptions: item number 62 (G599775) was removed to allow the claimant an opportunity to address the Board; item number 99 (G600709) was removed and continued to the next meeting due to a clerical error; and item number 249 (G599990) was removed pending review of additional information received.

Consent Agenda Appearance

Item 62, G599775

Claim of Allain D. Barfield

Claimant Allain Barfield failed to appear. Jackie Tinetti, Manager, Government Claims Program (GCP), stated that Allain Barfield requested reimbursement from the California Highway Patrol (CHP) in the amount of \$2,100 for vehicle impound fees due to the alleged unlawful 30-day impound of his vehicle. Ms. Tinetti further stated that the CHP and GCP staff reviewed the claim and recommended that the Board reject the claim.

In lieu of the California Highway Patrol's attendance at the meeting, John R. McDonough, Senior Supervising Counsel, CHP, submitted written documentation for the Board's consideration supporting the CHP's recommendation to reject Mr. Barfield's claim. In his correspondence, Mr. McDonough explained that two CHP officers pulled over Mr. Barfield while he was driving because the vehicle had no front plates and displayed no current license tags, both of which are violations of the Vehicle Code. While the claimant was detained, it was determined that Mr. Barfield was driving on a suspended license, he did not have proof of insurance, and the vehicle was not properly registered, also violations of the Vehicle Code. Pursuant to department policy and statute, the claimant was issued a citation for the violations and, as required by statute, the vehicle was impounded for 30 days. Two days after the citation was issued, a sergeant reviewed the citation and found that it was within CHP guidelines and the officers appropriately impounded the vehicle. Further, the CHP requested that the Board adopt the GCP and CHP's recommendation to reject the claim.

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

Item 5. Claim of Bowe Bell & Howell
Claim Number G596312

Jim Gioia, Executive Director of Service Operations, Bowe Bell and Howell, appeared and addressed the Board. Mr. Gioia submitted a summary of invoices for the time period April 2010 to June 2010 for the Board's consideration. Kathleen Yates, Senior Staff Counsel, appeared on behalf of the Department of General Services.

Jackie Tinetti, Government Claims Program Manager, explained that the claim of Bowe Bell and Howell came before the Board last month; however, due to an internal error, the Department of General Services was not notified that the matter was on calendar for Board action. Consequently, the Board continued the claim to allow a representative from the Department of General Services the opportunity to participate in the discussion of the claim.

Ms. Tinetti stated that Bowe Bell and Howell requested payment in the amount of \$269,915.00 from the Department of General Services for outstanding invoices plus all interest and legal fees allowed by law. Government Claims Program (GCP) staff reviewed the claim and determined that it was complete and timely pursuant to Government Code sections 910 and 911.2. Conversely, based upon GCP's review of the claim and the recommendation provided by the Department of General Services (DGS), GCP staff recommended that 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. Gioia stated that Bowe Bell and Howell (BB&H) counsel received a letter from the GCP on January 6, 2012. He quoted the following excerpt from the letter "your claim is being accepted only to the extent it asserts allegations that arise from facts or events that occurred during the 12 months prior to the date it was presented." Mr. Gioia stated that BB&H submitted its claim on April 1, 2011. Twelve months prior to the date the claim was presented covered the period from April 2010 through March 2011, the period of time that BB&H incurred costs. BB&H's claim included invoices from April 2010 to June 2010 in the total amount of \$43,615.11, which was depicted in the summary of invoices chart submitted for the Board's consideration. The letter from the GCP also stated that BB&H had effectively exhausted its administrative remedies for the remainder of its claims. He stated that those claims related to invoices BB&H submitted prior to April 2010 and BB&H reserved the right to initiate litigation to pursue those remaining invoices. Lastly, Mr. Gioia asked the Board to explain how BB&H could collect \$43,615.11, the amount of their claim and the amount the Board agreed to pay BB&H.

Ms. Yates stated that she did not receive a copy of the letter that Mr. Gioia referenced and was unaware that the Board had already approved a claim against DGS in the amount of \$43,615.11. She stated that the only letter she received from the GCP was their recommendation to the Board to reject the claim and their request that DGS send a representative to the meeting to provide information to the Board.

Ms. Tinetti stated that there might be confusion on the part of Mr. Gioia with regard to the Board's action. She clarified that, with respect to the claim before the Board, the GCP staff recommendation to the Board was to reject the claim for complex issue reasons. There was no award recommended to the Board relative to the claim. She commented that Mr. Gioia's concerns regarding the 12-month qualify language included in the letter that he received from the GCP is used at the request of the Attorney General's Office when the GCP accepts claims due to the statute of limitations that govern tort and contract claims.

Chairperson Caballero stated that although she was not in attendance at last month's meeting, she was advised that there was a great deal of discussion regarding the claim that required input from DGS, which was the reason that the Board continued the claim. Ms. Caballero stated that it was her understanding that there were two contracts issued--one signed and one that was not. The contract that was never signed by DGS is the subject of the dispute. DGS claimed that the work performed was under the original contract and there was no new contract. Chairperson Caballero asked Ms. Yates to address the issues in dispute.

Ms. Yates explained that the dispute between the two parties arose from an unapproved attempted contract amendment to cover the costs of the T3 data line. As background, the Office of State Publishing (OSP) solicited bids for disaster recovery printing and mailing services for the California Child Support Automation System. OSP had the responsibility to print and mail. There was concern that there should be a backup program in the event that a disaster occurred and OSP could not perform that function. OSP went out to bid, three bidders responded, and BB&H was the winning bidder. One of the requirements included in the bid document was for the contractor to provide a secure line. The disaster recovery location in the BB&H bid was in Pennsylvania. Sometime after the contract was awarded in October 2007, the State Personnel Board informed BB&H that they needed to test the line, which, pursuant to the contract, the State Personnel Board had every right to do. It was discovered that no line had ever been installed. There were several months of discussions wherein BB&H contended that they were not required to provide a data line; however, the State alleged that they were required to install it. In approximately December 2008, BB&H finally installed the T3 data line. In June 2010, OSP terminated the line and discovered that the line never worked. There was never a successful test transfer of data, which is the issue before BB&H. Ms. Yates stated that BB&H was requesting payment for the installation of the line that they assert was not included in the bid document; however, the State of California contends that it was included in the bid document. She stated that it was BB&H's responsibility to install the line and DGS is not required to pay an additional amount for that line. DGS objected to paying for the data line because it never worked. Ms. Yates further stated that DGS recommended that the Board reject the claim so that the matter could be heard in the appropriate forum.

Mr. Gioia stated, with respect to the data line, BB&H submitted documentation that showed that OSP directed BB&H to secure the line in an expeditious manner outside of an agreement or amendment. BB&H responded that an amendment to the original statement of work would be required, which was drafted by DGS. BB&H executed the document and submitted it back to DGS. Thereafter BB&H was told that because there was no State budget, BB&H would need to bill DGS in arrears. There was an agreement that the work that BB&H was going to provide was outside the statement of work. BB&H provided the services pursuant to DGS' direction and presented the invoices for payment. With regard to Ms. Yates' statement that the line was never tested, he stated that there was never any data provided to test the line.

The Board voted to adopt the staff recommendation to reject the claim due to its complex nature, thereby exhausting the administrative remedies.

Item 6. Claim of the Estate of James E. Sutton
Claim Number G600230

Jackie Tinetti, Government Claims Program Manager, stated that the Estate of James E. Sutton requested reissuance of employee payroll warrants in the amount of \$380,955.54.

She stated that the State Controller's Office, the California State University – Office of the Chancellor, and the Government Claims Program staff recommended that the claim be allowed in the amount of \$380,955.54 under authority of Government Code section 905.2(b)(4) (legislative pay).

The Board voted to allow the claim in the amount of \$380,955.54, under authority of Government Code section 905.2(b)(4) (legislative pay).

Item 7. Applications for Discharge From Accountability for Collection

The item was removed from the agenda.

Item 8. Request for Approval to Submit the Rulemaking Record Regarding the Claims of Persons Erroneously Convicted of Felonies to the Office of Administrative Law (Title 2, § 640)

Chief Counsel Wayne Strumpfer presented the item to the Board. On October 7, 2011, the Victim Compensation and Government Claims Board (VCGCB) published a Notice of Proposed Rulemaking Action through the Office of Administrative Law (OAL). The Notice of Proposed Rulemaking Action proposed modifications to the current form used to file a claim against the State of California for being erroneously convicted of a felony. The Notice of Proposed Rulemaking Action was sent to all interested parties and placed on the VCGCB's website. No comments were received.

Mr. Strumpfer stated that the modifications made to the form were minor and included requiring a claimant to provide his or her date of birth and their California Department of Corrections and Rehabilitation inmate number. The proposed amended regulation would assist both the Board and the Attorney General's Office in identifying a claimant more accurately and efficiently.

Mr. Strumpfer recommended that the Board adopt the proposed amended regulation and authorize the Executive Officer to file the rulemaking record with OAL for its review and approval.

The Board voted to adopt the proposed amended regulation and authorize the Executive Officer to file the rulemaking record with OAL for its review and approval.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:18 a.m.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Chief Deputy Executive Officer and Chief Counsel at 10:18 a.m. to deliberate on the proposed decisions numbers 1-91.

Open Session

The Board reconvened into open session at 10:25 a.m. The Board voted to adopt the proposed decisions for numbers 1-91.

Adjournment

The Board meeting adjourned at 10:26 a.m.