

**California Victim Compensation and Government Claims Board  
Open Meeting Minutes  
April 16, 2015, Board Meeting**

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Marybel Batjer, Secretary, California Government Operations Agency, at 400 R Street, Sacramento, California, on Thursday, April 16, 2015, at 10:10 a.m. Also present was Board member Richard Chivaro, Deputy State Controller and Chief Counsel, acting for and in the absence of Betty T. Yee, Controller. Board member Michael Ramos, San Bernardino County District Attorney, was absent.

Executive Officer Julie Nauman and Chief Counsel Wayne Strumpfer were in attendance. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

**Item 1. Approval of Minutes of the March 19, 2015, Board Meeting**

The Board unanimously approved the minutes of the March 19, 2015, Board Meeting.

**Item 2. Public Comment**

No public comment was provided.

**Item 3. Executive Officer Statement**

**2015 Digital Town Hall**

On April 14, CalVCP hosted a Digital Town Hall on military sexual assault. Panelists included Lindsey Sin, Deputy Secretary, CalVET; Ann McCarty, Associate Director, North County Rape Crisis and Child Protection Center; and Mica Mione, CalVCP Training and Policy Section Manager. Executive Officer Nauman moderated the discussion that focused on barriers, legislative changes, and better collaboration, among others.

Chairperson Batjer asked the approximate number of viewers who participated in the Digital Town Hall. Executive Officer Nauman estimated 35-40 individuals were online; viewers submitted questions and comments to the panelists through live chat, Twitter, Facebook, and email. Ms. Nauman stated the recorded meeting could be viewed on the VCGCB website and on CalVCP's YouTube channel: <http://youtube.com/californiavcp>.

**Alameda County Family Justice Center Tour**

On April 17 Chairperson Batjer and Executive Officer Nauman will visit the Alameda County Family Justice Center, a division of the District Attorney's Office envisioned by Alameda County District Attorney Nancy E. O'Malley. The Center provides visitors with legal, health, and support services and the opportunity for physical and psychological safety, recovery, and well-being. It is a one-stop Center with 30 onsite and over 50 offsite agencies and programs for individuals and families experiencing domestic violence, stalking, sexual assault and exploitation, and child abuse, among others.

**San Bernardino County DA's Office to Host National Crime Victims' Rights Week Memorial**

On April 20, Executive Officer Nauman will join Michael Ramos, San Bernardino County District Attorney and Board member, in hosting its Second Annual National Crime Victims' Rights Week Memorial at the San Bernardino County Government Center Rotunda. The special memorial honoring crime victims will feature the Redlands East Valley Choir. Speakers will include the Honorable James Ramos, San Bernardino County Board of Supervisors, and Jimmy Gonzalez, Camp Good Grief Junior Counselor, among others.

### **“The Hunting Ground” Film Screening**

On April 22, CalVCP will present a screening of the documentary “The Hunting Ground” at the Performing Arts Center at Sacramento City College. The documentary examines and investigates how universities across the country have handled crimes of sexual assault on their campuses. A question and answer session with representatives from campus law enforcement, victims’ advocates, and students will follow the screening. The discussion will be moderated by Deena Fulton, Training and Technical Assistance Coordinator, California Coalition Against Sexual Assault.

### **Denim Day California**

On April 29, Executive Officer Nauman will join CALCASA, legislators, advocates, agency staff, and community members on the West Steps of the State Capitol in recognition of Sexual Assault Awareness Month and Denim Day California. Everyone is encouraged to wear denim to raise awareness about sexual assault and stand in solidarity with survivors of sexual assault to demonstrate our commitment to delivering resources to victims. Denim Day was originally triggered by a ruling by the Italian Supreme Court where a rape conviction was overturned because the justices felt that since the victim was wearing tight jeans, she must have helped her rapist remove her jeans, thereby implying consent. The following day, the women in the Italian Parliament came to work wearing jeans in solidarity with the victim.

### **Item 4. Contract Report**

No contracts were reported.

### **Item 5. Legislative Update**

#### **AB 1140 (Bonta) — Victim Compensation Program Modernization**

The bill modernizes Victim Compensation Program statutes by making a number of changes to eligibility and benefits. It will be heard in the Assembly Public Safety Committee on April 28<sup>th</sup>.

#### **SB 518 (Leno) — Trauma Recovery Centers**

The bill would require the Board to use the evidence-based Integrated Trauma Recovery Services model developed by the Trauma Recovery Center at San Francisco General Hospital University of California, San Francisco as a criterion when it provides grants to trauma recovery centers. The bill is scheduled to be heard in the Senate Public Safety Committee on April 21<sup>st</sup>.

#### **SB 519 (Hancock) — Victim Compensation Program**

The bill would require all correspondence by the Victim Compensation Program to an applicant to be written in English, Spanish, and Chinese. It would also prohibit the Board from requiring an applicant to submit documentation from the Internal Revenue Service, the Franchise Tax Board, the State Board of Equalization, the Social Security Administration, or the Employment Development Department in order to determine eligibility for compensation. It contains other changes to eligibility for compensation. Mr. Strumpfer reported that he contacted Senator Hancock’s staff to schedule a meeting to discuss CalVCPs processes and procedures.

#### **SB 635 (Nielsen) — Erroneous Conviction: Compensation**

The bill would increase the amount of the recommended appropriation for compensation for an erroneous conviction from \$100 to \$136.98 per day of incarceration served after the claimant was convicted, but not to exceed \$50,000 per year for each full year of incarceration served. The bill is scheduled to be heard in the Senate Public Safety Committee on April 21<sup>st</sup>.

### **SB 694 (Leno) — Erroneous Conviction: New Evidence**

The bill would require the Board to recommend an appropriation to the Legislature for compensation of an erroneous conviction if a court finds that new evidence raises a reasonable probability of a different outcome if a new trial were granted. The bill is scheduled to be heard in the Senate Public Safety Committee on April 21<sup>st</sup>.

### **Item 6. Government Claims Program Consent Agenda (Nos. 1-423)**

Nicholas Wagner, Government Claims Program Manager, reported that item numbers 17, 58, and 75 were continued and item numbers 56, 65, and 291 were removed from the consent agenda to allow the claimants an opportunity to address the Board.

The Board unanimously approved the consent agenda for numbers 1-423, as amended.

### **Consent Agenda Appearance**

#### **Item 56, 619030**

#### **Claim of Kent Vest**

Kent Vest and Heather Vest were in attendance. Mr. Vest submitted written information in support of his claim. Nova Horton appeared on behalf of the California Public Employees' Retirement System (CalPERS). CalPERS submitted a Hearing Brief in support of their position.

Nicholas Wagner, Government Claims Program Manager, explained that Kent Vest sought relief from CalPERS in the amount of \$8,972.44 for over-calculated interest. He stated that Government Claims Program staff recommended that the Board reject the claim because it raised complex issues of fact and law beyond the scope of analysis and interpretation typically undertaken by the Board.

Mr. Vest stated that he asked CalPERS to properly recalculate his service credit account due to an error in the amount of \$8,972.44. He explained that on May 16, 2006, he signed an agreement to pay back \$62,907.58 for a Community Property Redeposit Service Credit loan. While he was still working, he repaid \$12,798.90, \$5,765.13 was the principal and \$7,033.76 was interest. When he retired on July 16, 2008, he owed \$57,142.42. He called CalPERS to make them aware that the deduction was not being taken from his paycheck.

Chairperson Batjer asked Mr. Vest the date he notified CalPERS that the deductions were not being taken out of his paycheck.

Mr. Vest stated he called CalPERS on several occasions. He explained that on September 24, 2008, he received a letter from CalPERS regarding a beneficiary issue. On October 8, 2008, he made an appointment at the Glendale CalPERS office and met with CalPERS staff Steve Cohen to discuss the issue. Mr. Cohen faxed a beneficiary designation form to the Sacramento CalPERS office and the issue was resolved. At the same time, Mr. Vest stated he inquired about his retirement pay. He explained that Mr. Cohen called CalPERS and asked them to recalculate his benefits because the retirement pay he received was incorrect. Mr. Cohen also informed CalPERS that no deduction was being taken for repayment of the Community Property Redeposit Service Credit loan.

Mr. Vest referenced a November 20, 2008, letter from CalPERS Benefit Services Division notifying him that they were adjusting his allowance. The letter specified that the adjustment would result in an increase of \$270.50 to his current allowance and a retroactive adjustment from the date of retirement through November 30, 2008 of \$1,212.89. The new allowance was \$9,726.68, the

retroactive adjustment was \$1,212.89, and the gross allowance was \$10,939.57. His February 1, 2009, and future warrants would be in the amount of \$9,726.68 less any authorized deductions. In a letter dated September 1, 2009, CalPERS Benefit Services Division informed him of yet another retirement calculation adjustment; however, that letter notified him that the adjustment resulted in a decrease of \$1.83 to his current allowance and a retroactive adjustment from the date of retirement through August 31, 2009, which was reflected as a one-time deduction of \$-24.68. The correction took place and was deducted in October 2009.

Mr. Vest explained that 14 months after his retirement, the first Community Property Redeposit Service Credit payment of \$253.65 was finally deducted from his pay. He stated that CalPERS did not accept responsibility for the error; instead, they expected him to pay an additional \$8,972.44 more in interest. He explained that he was not asking for a refund; he was only asking CalPERS to calculate the correct amount of interest on the original amount. He stated he received CalPERS' Hearing Brief, which also contained errors. He directed the Board to page two of the Hearing Brief that stated "CalPERS acknowledges errors were made from both parties. CalPERS set up monthly deductions for the incorrect amount. Mr. Vest did not notify CalPERS that the deduction amount was half the monthly amount he was previously paying." Mr. Vest stated the last statement was incorrect because he notified CalPERS. He commented that he did not have the expertise to determine and calculate the amount that should have been deducted from his pay. Lastly, he stated he had email notes from contacts with CalPERS representative Steve Cohen that verified he had contact with CalPERS.

Ms. Norton stated that CalPERS did not have the statutory authority to waive the interest requested by Mr. Vest. CalPERS acknowledged that the deduction amount at retirement was not set up timely and it was set up for the incorrect amount, as explained in their Hearing Brief.

Chairperson Batjer stated she had issues with CalPERS' admitted error and the fact that they were asking the retiree to pay for that error. She commented that CalPERS had a fiduciary responsibility for participants in the plan that they carried out well; however, some of the comments made in CalPERS' Hearing Brief were troubling. Chairperson Batjer stated she was concerned about the errors that appeared to have been made and that were recognized and pointed out by Mr. Vest yet had not been recalculated. She asked Ms. Norton whether it was typical that retirees were responsible for errors that were not made in CalPERS favor.

Ms. Norton explained that once errors are brought to their attention, they are corrected. She stated that when Mr. Vest notified CalPERS that the deductions had not started, CalPERS began the deductions; unfortunately, they were in the wrong dollar amount. After the deductions started for the incorrect amount, CalPERS had no records that indicated that Mr. Vest ever notified them. Instead, it was in CalPERS audits and reviews of their accounts that they discovered the wrong amount was paid.

Chairperson asked Ms. Norton whether, generally, a retiree would understand the amount the calculation should be.

Ms. Norton explained that the payment amount made prior to retirement was a biweekly amount. When the member switched into retirement, the deduction should have doubled, becoming the monthly equivalent.

Chairperson commented that knowing the dollar amount would be difficult for a retiree.

Ms. Norton stated that, pursuant to CalPERS Regulation 575.1, the interest rate provided should be applied from the effective date of the service credit election or contribution adjustment through the

completion of payments. She explained that there is no authority to waive the interest because it creates an unfunded liability that would be transferred to his employer.

Chairperson Batjer stated she understood the statute. Additionally, the fact that CalPERS needed to collect interest was not in dispute; however, she was concerned that the error was made on the interest that CalPERS was to collect.

The Board ruled in claimant's favor and directed the California Public Employees' Retirement System to remove \$8,972.44 in interest charges from claimant's Community Property Redeposit Service Credit account.

### **Consent Agenda Appearance**

#### **Item 65, 621210**

#### **Claim of Pamela Williams**

Pamela Williams was in attendance and submitted documents to the Board in support of her claim. Selena Wong, Regional Administrator, and David Cullen, Staff Counsel, attended on behalf of the Department of Fair Employment and Housing.

Nicholas Wagner, Government Claims Program Manager, explained that Pamela Williams claimed damages against the Department of Fair Employment and Housing in an amount exceeding \$25,000. Mr. Wagner stated that Government Claims Program 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.

Ms. Williams stated she was terminated from her employment in November 2011. She filed a complaint with DFEH and was issued a right to sue letter against her prior company, not the company that she was employed. The legal name on the right to sue letter should have been Olympus Surgical Technologies of America. Instead, she was given a right to sue letter against a company that no longer existed and DFEH filed a lawsuit against a company that no longer existed. During a deposition with DFEH, her former supervisor informed the department that the old company ceased to exist as of April 2012. She stated the right to sue letter was issued in December 2013, within the 365 days.

Ms. Williams explained that she brought the error to the attention of numerous DFEH employees, including Selena Wong and attorneys to no avail. After her case was filed in court, it was dismissed; thereafter, she filed an objection to the dismissal. She stated that since her loss of employment, she has only worked part time. She explained that in good faith, she thought DFEH attorneys would represent her to resolve her claim; instead, it was dismissed with prejudice. She explained that the defendant in the lawsuit has filed numerous papers attempting to dismiss Olympus because DFEH did not name them. She stated that Olympus cited they were unaware of the complaint even though they were her employer, she had a 401k with Olympus, and her COBRA benefits were with Olympus.

Ms. Wong stated that at the time Ms. Williams filed her complaint, it was filed against Gyrus ACMI Corporation. DFEH verified with the Secretary of State that it was the legal corporation name which also matched the W-2 issued to Ms. Williams. The parent corporation was Olympus, but the actual employer was Gyrus ACMI.

Chairperson Batjer commented that it appeared to be an administrative error that could have been resolved. She asked Ms. Wong whether research showed that Olympus was the parent company.

Ms. Wong stated that their research showed that Ms. Williams' employer was Gyrus ACMI.

Chairperson Batjer asked Ms. Wong to confirm whether when it became known to Ms. Williams that there was an error on the right to sue letter, it was beyond the 365 days; therefore the right to sue letter could not be changed to represent the right company.

Ms. Wong explained that, at the request of Ms. Williams, the complaint was amended to include Olympus Corporation. The right to sue letter always refers back to the complaint that is filed or amended. Neither the date nor the name on the right to sue letter is changed. Once it was amended, it then referenced the amended complaint.

Ms. Williams stated that although DFEH amended the right to sue letter, the judge in the private lawsuit would not accept it because it was beyond the 365 days. It could have been corrected based on the form that the company provided which stated Olympus Corporation. It should have been corrected in February 2012, prior to the April conclusion of Gyrus no longer existing, which would have been within the 365 days.

Ms. Wong explained that without the benefit of having the form before her, she could not be certain; however, the document may have stated LLC, a subsidiary of Olympus Corporation. It did not state it was Olympus Corporation. When DFEH verified with the Secretary of State, that LLC did not exist.

Mr. Wagner cited a letter from Nelson Chan, Associate Chief Counsel, DFEH, advising that, pursuant to California Code of Regulations, title 2, section 10022 (d), "the department shall amend closed employment discrimination complaints as requested by complainants or their counsel." In response to Ms. Williams' request to amend her closed employment discrimination complaint, DFEH followed its procedural regulation to identify the respondent as "Gyrus ACMI/dba Olympus."

The Board rejected the claim because of its complexity.

### **Consent Agenda Appearance**

#### **Item 291, 623033**

#### **Claim of Barbara Tseng**

Barbara Tseng was in attendance. Lynda Williams was scheduled to appear on behalf of the Department of Public Health; however, she was not in attendance.

Because there was no representation provided from the Department of Public Health, the Board continued the claim to the May 21, 2015, meeting.

### **Item 7. Applications for Discharge From Accountability for Collection**

The Board approved the 32 requests by State agencies for discharge from accountability for collection of debt, totaling \$154,542,644.71.

### **Victim Compensation Program**

The Board commenced the Victim Compensation Program portion of the meeting at 10:52 a.m.

### **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 10:53 a.m. to deliberate on proposed decision numbers 1-80.

### **Open Session**

The Board reconvened into Open Session pursuant to Government Code section 11126 (c)(3) at 10:59 a.m. The Board adopted the hearing officer's recommendations for proposed decision numbers 1-80.

### **Adjournment**

The Board meeting adjourned at 11:00 a.m.