

**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of:

J.L.O.

**Precedent Decision No. 01 – 07**

A hearing on this application was held on July 31, 2001, at 1:30 p.m. in Sacramento, California, by Christina M. Aceituno, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the California Victim Compensation and Government Claims Board (Board).

The applicant, J.L.O., attended the hearing. J.L.O. is not represented in her application and brought no additional witnesses.

**Claim History**

The application for Victims Compensation Program (program) assistance was received July 29, 1998. The applicant requested assistance with medical bills, mental health counseling, income loss and rehabilitation. As of this time, bills totaling approximately \$68,079 have been submitted for medical expenses, including hospitalization. The application was recommended for denial on the February 9, 1999, consent agenda and was appealed.

**Summary of Issues**

Staff recommended the application be denied because it was determined that J.L.O. was involved in the events leading to the crime by accepting a ride on a motorcycle driven by a driver whom she knew or should have reasonably known was drunk or under the influence of drugs.

**Findings of Fact**

According to the traffic collision report, on May 30, 1998, J.L.O. was involved in a motorcycle accident as the passenger. J.A.F. was the driver of the motorcycle. J.G. owned the motorcycle. The traffic report noted the victim suffered abrasions to both legs and back and was transported to John Muir Hospital. The driver, J.A.F. complained of pain to his shoulder. The officer noted that when he arrived, the driver was sitting on the curb and J.L.O. was lying on the ground next to him. The report noted that the motorcycle sustained major damage and was towed away.

The traffic report also noted that J.A.F. was arrested at the scene for driving under the influence of alcohol. The report concluded with the finding that J.A.F. was traveling at a high rate of speed when he lost control of the motorcycle and collided with the curb. Both the driver and passenger were thrown from the motorcycle.

In the criminal proceedings verification form, Sergeant Robert Duffield verified that the victim was not involved in the events leading to her injury.

An unsigned document from the Municipal Court of Contra Costa County received December 29, 1998, charged J.A.F. with violations of Vehicle Code sections 23153(a) [Driving Under the Influence Causing Injury], and 23153(b) [Driving with .08% Blood Alcohol Causing Injury].

According to J.L.O.'s testimony, she was visiting a friend who lived in a marina/golf course complex in Martinez, California. They pulled into the parking lot in J.L.O.'s car near the clubhouse. The victim and her friend spotted two friends of her companion who were both driving motorcycles. One of these individuals was J.F. whom J.L.O. had never met. They talked for a few minutes in the parking lot and decided to go into the clubhouse to have drinks. While they were talking and walking in, they talked about the fact that J.L.O. had never ridden a motorcycle. Her companion mentioned that he would take her for a ride. However, J.A.F. stated that he did not own the motorcycle but was borrowing it from the owner because he was thinking of buying it. It was decided that instead J.A.F. would take J.L.O. for a ride. J.L.O. said that they had walked into the bar area of the clubhouse and she had ordered a drink. She does not recall whether J.A.F. ordered a drink. She specifically remembered that she had not begun to drink her beverage before they went outside; in fact, she was not certain if the drink order had even been served. She clearly remembered that J.A.F. did not drink in her presence before the accident. She left her belongings with her friend and went out to the parking lot. J.L.O. stated that she expected they would go for a short ride on the streets around the golf course and marina and would quickly return to their other friends.

J.L.O. testified that she was very confident in her answers to questions about the possible use of alcohol by J.A.F. because she was asked to testify in the court proceedings involving charges of DUI against J.A.F. She stated that in that testimony, she was asked similar questions.

J.L.O. noted that the elapsed time from when she was introduced to J.A.F. and the time they got on the motorcycle was about 20 minutes. J.L.O. testified that both she and the driver wore helmets. She borrowed a helmet from the second motorcycle driver. She felt nervous, but because J.A.F. and her friend had ridden together previously, she had the impression that J.A.F. was an experienced motorcycle rider and driver.

J.L.O. testified that she did not smell alcohol on J.A.F.'s breath. She also testified that she was not aware of, and did not observe, J.A.F. using any other drugs. She stated he did not slur his speech nor did he have any other mannerisms or behaviors that made her suspect that he was under the influence of drugs or alcohol. J.L.O. and J.A.F. rode around the parking lot for a few minutes so that she could feel more comfortable as a passenger. They then came to a stop sign and proceeded to make a left turn out of the

parking lot. J.L.O. could not identify the name of the street they turned onto because she does not live in the area and had never been to the complex before the day of the accident. J.L.O. had no recollection of what happened after that until she found herself lying on the pavement after the accident. J.L.O. testified that she did not move while she waited for help to arrive because she sensed that she had been seriously injured.

J.L.O. estimated that the distance between where they got on the bike to where the accident occurred was less than a mile. She stated she heard her friend's footsteps running toward her from the clubhouse after the accident.

J.L.O. testified that she remembered telling J.A.F. that he couldn't leave her after the accident. She believed he wanted to leave but could not specifically remember what he said that made her believe this. She stated that he did stay with her until help arrived.

J.L.O. testified that she suffered "road rash" from her ankle to her buttocks on both legs, abrasions to her arms and hands, a laceration to her scalp, and a torn earlobe. She testified that she also suffered a broken neck. She spent several days hospitalized at John Muir Hospital in the Bay Area, before being transported by ambulance to UC Davis Medical Center (UCDMC) in Sacramento where she was hospitalized for several more days. She later returned to UCDMC for surgery and another period of hospitalization as a result of this accident.

#### **Determination of Issues**

The Board shall approve an application for assistance if a preponderance of the evidence shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss. (Gov. Code, § 13964(a).)

Unless specifically authorized, no act involving the operation of a vehicle constitutes a qualifying crime. (Gov. Code, § 13960(c).) A crime involving a vehicle in which injury is caused by a person under the influence of alcohol or drugs is a qualifying crime. (Gov. Code, 13960(c)(4); Cal. Code Regs., tit. 2, § 654.1(b)(3).)<sup>12</sup>

There is sufficient evidence that the driver of the motorcycle, J.A.F., was driving under the influence of alcohol or drugs when this accident occurred on May 30, 1998, and that J.L.O.'s injuries resulted. Thus this incident is a qualifying crime. There is also sufficient evidence that J.L.O. was physically injured as a result of this crime and incurred a pecuniary loss as a result of those injuries.

An application may be denied, in whole or in part, if the Board finds that denial is appropriate because of the nature of the victim's involvement in the events leading to the crime. (Gov. Code, § 13964(b).)

The Board may consider the following factors, among others, when determining whether a victim was involved in the events leading to the qualifying crime: (1) the victim's conduct reasonably could have led to the crime; (2) the victim intentionally created or stayed in a situation in which it was reasonably foreseeable she would be victimized; (3) the victim's level of responsibility for the qualifying crime; (4) the

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<sup>12</sup> All citations to regulations are to California Code of Regulations, title 2.

reasonable ability of the victim to avoid the involvement in the events leading to the crime; and (5) the extent of harm resulting from the crime. (Reg., § 656.1(c).)

The Board may find the passenger of a vehicle driven by a person under the influence of alcohol or drugs involved in the events leading to the vehicle-related qualifying crime if the victim knew or reasonably should have known that the driver was under the influence of alcohol or drugs. (Reg., § 656.6(c)(1).)

Based on the traffic report and the credible testimony of J.L.O., there is not significant evidence that J.L.O. knew or should have reasonably known that J.A.F. was under the influence of drugs or alcohol when this accident occurred. There is not a preponderance of evidence that J.L.O. was involved in the events leading to her injuries.

### Order

The application is allowed. The applicant is eligible for program assistance. All eligible expenses shall be reimbursed subject to complete verification.

Date: July 31, 2001

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CHRISTINA M. ACEITUNO  
Hearing Officer  
California Victim Compensation  
and Government Claims Board

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On October 19, 2001, the California Victim Compensation and Government Claims Board adopted the attached Decision as a Precedent Decision in the above-referenced matter. The Decision became effective on October 19, 2001.

Date: October 30, 2001  
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and

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JANICE HILL  
Acting Chief Counsel  
California Victim Compensation  
Government Claims Board