

California Victim Compensation and Government Claims Board
Open Meeting Minutes
September 18, 2014, 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, September 18, 2014, at 10:00 a.m. Also present were Board members Richard Chivaro, acting for and in the absence of John Chiang, Controller, and Board member Michael Ramos, San Bernardino County District Attorney. Board member John Chiang, State Controller, joined the Board meeting while it was in progress.

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 August 21, 2014, Board Meeting

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously approved the minutes of the August 21, 2014, Board meeting.

Item 2. Public Comment

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

Item 3. Executive Officer Statement

2014 VOCA National Training Conference

Executive Officer Nauman attended the VOCA National Training Conference of Compensation and Assistance Programs in Boston. Ms. Nauman gave a presentation on the study conducted on behalf of the Department of Justice, Office for Victims of Crime (OVC). Joye Frost, Director of OVC, was in attendance and complimented Ms. Nauman on the CalVCPs successes so far with the needs assessment and gap analysis. The well-attended conference provided a great opportunity to interact with other states.

Office for Victims of Crime (OVC) Grant Updates

CalVCP applied for more grants from OVC and was awarded two additional grants. The first grant was for \$400,000 for year two of the study currently underway that is focused on reaching underserved populations and creating opportunities for more access and awareness about CalVCP.

CalVCP also received a Technology Capacity Grant. The two-year project for \$250,000 is to conduct all preparatory work, such as going through a feasibility study, to create a comprehensive online access system for CalVCP. The system would include an online application, online communication with law enforcement, and online access for claimants and providers. Law enforcement, claimants, and providers would have full online access to information currently communicated via mail and CalVCPs call center. The new system would allow CalVCP to provide services quickly, accurately, and efficiently to internet users. After CalVCP develops the process and receives the proper State approvals, CalVCP can embark on the actual construction of the online system that other states could also replicate.

UCSF Trauma Recovery Center Tour

On September 15th Chairperson Batjer and Executive Officer Nauman visited UCSF Trauma Recovery Center. UCSF is one of three successful centers that received grant funding from CalVCP in year one of the Trauma Recovery Center Grant Program. Ms. Nauman and Secretary Batjer had an opportunity to meet with UCSF's key employees and UCSF General Hospital staff to talk about their approach to trauma recovery center service delivery. CalVCP recently provided over \$800,000 in grants for the Center and it was great to see how the grant dollars were being used and the impact the Center is having on providing victim services.

Trauma Recovery Center Grant Award

At the October 16, 2014 meeting, staff will bring recommendations to the Board for funding for the second year round of funding for Trauma Recovery Centers.

Domestic Violence Awareness Month

October is Domestic Violence Awareness Month. The issue of domestic violence is making headlines currently and considering that over one-quarter of the assistance CalVCP provides is related to domestic violence, CalVCP believes it is necessary to play a lead role in California to spread awareness and educate the public. This year CalVCP officially partnered with WEAVE, the primary provider of crisis intervention services for survivors of domestic violence and sexual assault in Sacramento County, and have several activities scheduled to help raise awareness.

CalVCP will host its annual Suited for Successful Families Drive throughout the month of October to collect men and women's clothing, along with children's toys and clothing. Last year, CalVCP collected over 7,000 items that benefited many domestic violence survivors. Information related to Domestic Violence Awareness Month is currently on CalVCP's website.

CalVCP Awareness Campaign

A PowerPoint was shown that depicted various posters created as a result of CalVCP's Strategic Communication Plan to raise public awareness about CalVCP and the services it provides. CalVCP has taken a bold approach with eye-catching graphics and placed advertisements throughout the Bay Area on MUNI and BART that carry the message that CalVCP is available and can assist victims. As a result, CalVCP has received a tremendously positive reaction to the ads. Several newspaper and radio stations have contacted CalVCP with questions about the Program as well as to request interviews. Executive Officer Nauman and staff have given interviews and received coverage in the *San Francisco Examiner*, *Oakland Tribune*, *San Jose Mercury News*, *East Bay Express*, *Contra Costa Times*, and *Richmond Standard*.

Chairperson Batjer asked whether CalVCP has seen an uptick in traffic as a result of the increased awareness of CalVCP and the services it provides.

Executive Officer Nauman stated that next month CalVCP would have reports from the contractor that CalVCP is working with. The contractor anticipated that with the saturation in communities with high crime rate areas, 20 million impressions would see the advertisements over the course of the campaign, which will run through the end of September.

Chairperson Batjer thanked Executive Officer Nauman and CalVCP staff for the success of the federal grants. She congratulated staff for their hard work in implementing the grant money received in the past as well as for successfully putting together a new grant application.

Item 4. Contract Report

Executive Officer Nauman informed the Board that there was no Contract Report.

Item 5. Legislative Update

Chief Counsel Wayne Strumpfer reported the following bills impacting the VCGCB:

SB 1031 (De Leon), the VCGCB's first Government Claims Bill of 2014, which appropriates \$776,946.59 to pay 332 claims approved by the Board from May 2013 through December 2013 and \$305,900 to pay the erroneous conviction claim of Mario Rocha was signed by the Governor.

AB 1617 (Gatto), the VCGCB's second Government Claims Bill of 2014, which appropriates \$745,042.81 to pay 136 claims approved by the Board from January 2014 through April 2014 and

\$1,450,200 to pay the erroneous conviction claims of Jose Luis Diaz, Johnny Williams, and Francisco Carrillo was signed by the Governor.

SB 384 (Gaines) reopens eligibility for the California Memorial Scholarship Program, which provided scholarships to dependents of California resident victims of the September 11th attacks. It requires VCGCB to identify all persons who are eligible for scholarships and to notify them of their eligibility by July 1, 2015. It requires that eligible participants execute participation agreements by July 1, 2016. The bill was signed by the Governor.

Item 6. Government Claims Program

Consent Agenda (Nos. 1-252)

Nicholas Wagner, Manager, Government Claims Program, stated that item numbers 39 (616688), 78 (619030), and 230 (618957) were removed to allow staff sufficient time to review additional documentation submitted; item numbers 19 (616570), 243 (619088), and 245 (619164) were continued to allow the claimant's an opportunity to address the Board at the October 16, 2014 meeting; and item numbers 37 (616285) and 198 (617537) were removed to allow the claimants an opportunity to address the Board.

Chairperson Batjer stated that she would recuse herself from the vote regarding item numbers 115 (619464) and 167 (619688). She stated that there would be two separate votes on the Government Claims Program consent agenda.

Upon a motion by Board member Chivaro and seconded by Board member Ramos, the Board unanimously approved the staff recommendations for items 1-252 with the exceptions noted by Mr. Wagner, and with the exception of item numbers 115 and 167.

Additionally, upon a motion by Board member Ramos, and seconded by Board member Chivaro, the Board approved the staff recommendation for item numbers 115 and 167. Chairperson Batjer recused herself from the vote.

Consent Agenda Appearance

Item 37, G618078

Claim of Tim Barrett

Tim Barrett was in attendance and submitted documentation for the Board's review. Dave Wiseman, attorney, attended on behalf of the Department of Forestry and Fire Protection.

Nicholas Wagner, Manager, Government Claims Program, explained that Mr. Barrett sought compensation from the Department of Forestry and Fire Protection (Cal Fire) in the amount of \$65,396.00 for damage to personal property. Mr. Wagner stated that Government Claims Program staff recommended that the Board reject the claim because the State is legally immune from liability pursuant to Government Code sections 850, 850.2, and 850.4.

Mr. Barrett stated that he has been a ham radio operator since the mid-1970s. His ham radio equipment and related equipment were kept in a container atop Mt. Diablo. He explained that a fire occurred at Mt. Diablo on September 8, 2013. The fire was extinguished on approximately September 14th or 15th, and thereafter he was given access to the mountain. On September 17, he removed his equipment from Mt. Diablo and on September 19, he contacted Mercury Casualty Insurance, his insurance provider, to open a claim. He received several letters from Mercury Casualty Insurance citing excuses for not paying for the damage. He received the last rejection letter from Mercury Casualty Insurance on December 9, 2013. On December 10, 2013, he contacted Cal Fire because he was told that the fire damage to his trailer was the result of a backfire. The Cal Fire Chief requested that he provide him with all of the details regarding the damage. The Chief went to the top of Mt. Diablo and determined that the damage was caused by a firing operation. He

recommended that Mr. Barrett file a claim with the Government Claims Program. Mr. Barrett stated that he filed his government claim on February 3, 2014. On February 13, 2014, he was contacted by Cal Fire and was asked to provide all records and estimates. Mr. Barrett stated that he was shocked when he received a form letter from the Government Claims Program on July 1, 2014 notifying him that his claim was being recommended for rejection. He explained that he contacted Government Claims Program staff and requested to address the Board.

Mr. Wiseman explained that he had an opportunity to speak with Mr. Barrett shortly before the Board meeting began. He stated that he reviewed the documentation that Mr. Barrett submitted to the Board quantifying his loss; however, the issue was who the proper party would be as a potential defendant for recovery purposes. He stated that ultimately under Government Code section 850.4, Cal Fire is rendered immune regarding fire suppression activities; however, he could help Mr. Barrett obtain a copy of the fire investigation report that would potentially identify the responsible party. If Cal Fire set a backfire that engulfed Mr. Barrett's property, then Cal Fire would be rendered immune. He explained that when a Public Records Act Request is made for a fire investigation, Cal Fire has certain protections in providing them. Pursuant to Government Code section 6254 (k), victims or insurance companies may be able to obtain a copy of a redacted report; however, he cautioned that he could not commit to providing the report until after he spoke with the Region Chief.

Mr. Barrett explained that he contacted the Contra Costa County Fire Department and was told that Cal Fire would conduct an investigation. He stated that the Contra Costa County District Attorney determined that there was no criminal activity, but there could be a civil suit. He stated that he called the District Attorney to find out if he could get the person's name whom they determined caused the fire, but they would not give it to him.

Chairperson Batjer recommended that Mr. Barrett contact his representative in Contra Costa to address the issue with the Contra Costa County Fire Department.

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously adopted the staff recommendation and rejected the claim.

Consent Agenda Appearance

Item 198, G617537

Claim of Dana Arline

Dana Arline and his representative Nana Gyamti were in attendance. Tamiya Davis and Mellonie Yang attended on behalf of the California Department of Corrections and Rehabilitation.

Nicholas Wagner, Manager, Government Claims Program, stated that Dana Arline requested leave to present a late claim for compensation from the California Department of Corrections and Rehabilitation (CDCR) in an amount exceeding \$25,000 due to discrimination and retaliation. Mr. Wagner stated that Government Claims Program staff recommended that the Board deny the late application for failure to meet the criteria required in Government Code section 911.6. Additionally, Government Claims Program staff recommended that the Board reject the claim because it raised complex matters of fact and law not typically undertaken by the Board.

Ms. Gyamti asked whether the Board would make a decision on the late claim only or if the Board would decide the late claim as well as the other claim that was filed timely.

Mr. Wagner clarified that the Board would make a decision on the late application. He explained that when a late application is considered and acted upon by the Board, the underlying claim also receives action on the matter to ensure that a claimant can properly proceed to court; however, the Board was only considering the late application.

Ms. Gyamti stated that Mr. Arline requested that his late claim be granted. She explained that at the time that Mr. Arline would have normally filed his claim, he was determined to be temporarily permanently disabled with respect to his mental state that occurred on November 23, 2010 and that continued through the time when he normally would have filed based upon his last incident. He would have filed by May 20, 2011; however, he continued to be temporarily permanently disabled until July 2012. Once he returned to work, many of the same issues that he raised regarding his claims before his temporary permanent disability continued and caused him to file a claim on March 24, 2013, in which he combined everything that occurred before his temporary permanent disability as well as what occurred since his return to work. She stated that based upon the facts regarding Mr. Arline's illness, including his mental illness, it was sufficient to toll the six-month requirement. She requested the Board allow Mr. Arline to file his late claim.

Mr. Arline stated that he had a doctor's report regarding the evaluations and determinations; however, because the report entailed so much personal information, he did not present it to the Board. He explained that he was still being treated by the doctor, as needed; however, now, because of a subsequent incident, he also has another doctor who deals with other aspects.

Ms. Yang stated that CDCR was not making a determination regarding the lateness of the claim because it was difficult to determine whether any part of the claim was timely; however, CDCR recommended that the Board adopt the staff recommendation.

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously adopted the staff recommendation to deny the late application for failure to meet the criteria required in Government Code section 911.6 and rejected the claim because it raised complex matters of fact and law not typically undertaken by the Board.

Item 7. Applications for Discharge From Accountability for Collection

Nicholas Wagner, Government Claims Program Manager, explained that there were 21 requests by state agencies (applicants) to discharge from accountability for collection of debt totaling \$278,758,949.93. Mr. Wager stated that Government Claims Program staff requested the Board approve the applications for discharge from accountability.

Upon a motion by Board member Chivaro and seconded by Board member Ramos, the Board unanimously adopted the staff recommendation to approve the 21 requests by state agencies.

Item 8. Bid Protest of Bonander Truck & Trailer Invitation for Bid Number 1405-016

Jonette Banzon appeared and addressed the Board on behalf of the Department of General Services. Brian Rottweiler attended on behalf of Western Truck Center, the proposed awardee. Steve Mannion and Ryan Katzenbach were in attendance on behalf of Bonander Truck & Trailer.

Wayne Strumpfer, VCGCB Chief Counsel, stated that the invitation for bid was for the procurement of six fire dozer transport trucks for the California Department of Forestry and Fire Protection. He explained that the Department of General Services issued a Notice of Intent to Award the contract to Western Truck Center (WTC) and Bonander Truck and Trailer (Bonander) filed a Detailed Statement of Protest. He stated that the Proposed Decision of the Hearing Officer was to deny the protest.

Mr. Mannion explained that he has bid and supplied the State with trucks for 43 years and this was the first time he had ever been involved in a formal protest. Bonander protested the award to WTC based on the fact that they were non-compliant with the technical specification contained in the invitation for bid. The bid specifically called for a Hendrickson HAS 460-55 or equivalent 46,000 lbs. suspension; however, WTC provided 40,000 lbs. rear suspension. WTC supplied a complete

printout of their truck that they were proposing to the State that had inconsistencies with the specifications and with the questionnaire that the State supplied. The specifications specifically called for a 270-amp alternator; however, WTCs bid included a 165-amp alternator. The State's questionnaire asked how many tires and wheels would be provided per truck, including a spare, which would equate to 11 tires and wheels; WTCs questionnaire indicated 10. On WTCs factory sheet, they indicated they would provide quarter stainless steel fenders; however, the invitation for bid required trucks provide three-quarter fenders. He stated that in the many years that he bid on contracts, he had been an apparent lowest bidder; however, during the State evaluation process, he was deemed noncompliant for the same inconsistencies made by WTC. He explained that if he put anything in the bid that was in any way inconsistent, he included a disclaimer indicating that it was only a representation and did not actually represent what he was supplying to the State; however, WTC did not do that.

Chairperson Batjer asked Mr. Mannion whether he had been a successful bidder on a DGS contract in the past.

Mr. Mannion stated that he has been a successful bidder for 43 years. He stated that he was currently receiving purchase orders for Caltrans and the Department of Education. He further stated that he has supplied in excess of 300 trucks to the State.

Mr. Rottweiler stated that all items that Mr. Mannion mentioned had been addressed in detail and reviewed by DGS. Further, WTC met the bid requirements.

Ms. Banzon requested the Board adopt the hearing officer's proposed decision, because the facts stated in the proposed decision were supported by sufficient evidence.

Upon a motion by Board member Chivaro and seconded by Board member Ramos, the Board unanimously adopted the staff recommendation to deny the bid protest by Bonander Truck and Trailer.

Board member John Chiang, State Controller, joined the Board meeting at 10:55 a.m.

Item 9. Claim of Ronald Ross (Pen. Code, § 4900 et seq.)

Reid Mullen, attorney, appeared and addressed the Board on behalf of Ronald Ross. Kenneth Sokoler, Deputy Attorney General, was in attendance on behalf of the Attorney General's Office.

Mr. Strumpfer explained that Ronald Ross was convicted of premeditated attempted murder and assault with a firearm for the shooting of Renardo Williams and was sentenced to 25-years-to-life in prison. Following an evidentiary habeas corpus hearing, the Alameda County District Attorney determined that false evidence was used in the conviction of Mr. Ross. Without objection, the Superior Court granted the writ of habeas corpus. Mr. Ross requested \$229,000 in compensation, which represented \$100 for each day of his 2,299 days of incarceration.

Mr. Mullen stated that the Attorney General's Office conducted an independent review of the case and determined that the case should be granted and the hearing officer reached the same conclusion. He stated that Mr. Ross is innocent, met his burden of proof, and is entitled to compensation. The Attorney General's proposed recommendation and the proposed decision of the hearing officer were consistent with the action of the Alameda County District Attorney who eventually investigated Mr. Ross' claim for over a year and determined that the habeas petition was meritorious based on the same facts. Eventually, the Alameda County District Attorney joined Mr. Ross' petition.

Mr. Sokoler stated that the Attorney General's Office recommended that the claim be paid and asked that the Board to adopt the proposed decision of the hearing officer.

Board member Ramos stated that he had the upmost respect for Alameda County District Attorney Nancy O'Malley and the Attorney General's Office. Board member Ramos stated that he agreed with the staff recommendation.

Upon a motion by Board member Ramos and seconded by Board member Chiang, the Board unanimously adopted the staff recommendation to approve the Penal Code section 4900 claim of Ronald Ross.

Request by CalVCP Claimant to Discuss Claim in Open Session

Chief Counsel Wayne Strumpfer announced that CalVCP claimant Derrick R. (A08-0462044), Number 1 on the VCP agenda, agreed to waive his right to confidentially and discuss his claim in Open Session. Mr. Strumpfer explained that the Board would adjourn into Closed Session then come back to hear Derrick R.'s claim.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:58 a.m.

Closed Session

Pursuant to Government Code section 11126(c)(3) and (e)(1), the Board adjourned into Closed Session with the Board's Executive Officer and Chief Counsel to discuss pending litigation and deliberate on proposed decision numbers 2-138B.

Open Session

The Board reconvened into Open Session pursuant to Government Code section 11126 (c)(3) and (e)(1) at 11:12 a.m. Upon a motion by Board member Ramos and seconded by Board member Chiang, the Board unanimously adopted the hearing officer's recommendations to approve proposed decision numbers 2-138B.

Appearance by Derrick R., Application Number A08-0462044

Chairperson Batjer asked Derrick R. if he wished to waive confidentially regarding his claim and discuss his claim in Open Session.

Derrick R. agreed to waive confidentially. Derrick R. stated that he objected to the staff recommendation to deny his claim and the overpayment. He explained that he previously had a hearing on the same issue in September 2012 and the hearing officer allowed his claim; however, now the Board was rehearing the same matter again. He stated that he explained to the hearing officer that his claim was previously allowed, but the hearing officer informed him that there was a new requirement and he had to provide an offer letter to verify his employment.

Chairperson Batjer asked Derrick R. to confirm whether he received compensation for income loss in the amount of \$17,151.93.

Derrick R. acknowledged that he received compensation for income loss.

Chairperson Batjer asked if he understood that the Board was not asking him to repay the money.

Derrick R. stated that the hearing officer informed him that there would be an overpayment.

Executive Officer Nauman clarified that the decision of the hearing officer was that while Derrick R. did receive compensation, it was determined that technically he was not eligible to receive it;

however, the hearing officer was recommending that the Board not request repayment. She further explained that Derrick R. received over \$17,000, which was allowed in error; however, it was the decision of the hearing officer that ethically, looking at all of the facts, the Board would not ask Derrick R. to repay the money and he would not be eligible for any additional money.

Derrick R. stated that he did not understand how his application was considered an error but it was allowed.

Executive Officer Nauman explained that over a period of time, additional information became available about Derrick R.s work history. The Board had the right to request repayment; however, he would not be asked to repay the money.

Upon motion by Board member Ramos and seconded by Board member Chiang, the Board unanimously adopted the hearing officer's recommendation.

The Board meeting adjourned at 11:21 a.m.