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

In the Matter of the Application of:

Judith D.

Precedent Decision No. 12-01

Introduction

A telephonic hearing on this application was held on November 9, 2011, in Sacramento, California, by Edward R. Carrillo, Hearing Officer, California Victim Compensation and Government Claims Board. The applicant, Judith D., participated in this hearing and testified under oath. The record remained open for the submission of additional documents. The documents were received and the record closed.

Procedural Background

This application for compensation from the California Victim Compensation Program arises from a burglary that occurred on May 23, 2010. The application was received on August 2, 2010, and requests compensation for medical, mental health and home security expenses. The Program staff recommended that this application be denied because there was not a preponderance of the evidence that a qualifying crime occurred. Judith D. timely appealed the recommended denial of her application.

Statement of Issues

Is there a preponderance of the evidence that Judith D. was the victim of a qualifying crime?

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Summary of Evidence

According to the crime report, Judith D.'s residence was burglarized on May 23, 2010. Judith D. told the police someone started ringing her doorbell at 3:00 a.m. while she was asleep. She did not answer the door. Judith D.'s doorbell rang a second time at which point she saw a man with a baseball cap and a dark shirt walking around to the back of her house. Judith D. then heard the door knob moving. She grabbed the phone and called 9-1-1. The dispatcher told her to hide from the suspect. Judith D. then hid in a closet and while still on the phone with 9-1-1, she heard a window break and movement inside her house. When the police arrived, the suspect ran from the residence but was later apprehended. The suspect was eventually charge by the District Attorney with attempted burglary.

During the hearing, Judith D. testified that she was terrified throughout the incident. She lives alone and being a small woman (4 feet 10 inches tall and very thin), is relatively defenseless against a physical assault by an adult male. Judith D. also testified that she had no way of knowing of the suspect's intent during the incident and that she felt physically threatened by the intruder.

After the hearing, Judith D. submitted additional information including letters from two registered nurses corroborating the mental and physical toll inflicted on Judith D. both during and after the qualifying crime.

Determination of Issues

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The Board shall approve an application if a preponderance of the evidence shows that as a direct result of the crime the victim incurred an injury that resulted in a covered pecuniary loss.¹ A "qualifying crime" is defined as a crime that results in injury to the victim, threat of injury to the victim, or death to the victim.² A threat of physical injury includes, but is not limited to, a situation where the victim is directly threatened with a weapon, the victim is in sight of a person brandishing a weapon and reasonably feels threatened for their own safety, or the victim was directly threatened verbally with serious bodily injury and there was a reasonable probability that the threat would be carried out and

¹ Gov. Code, §§ 13955, 13957.

² Cal. Code Regs., tit. 2, § 649(a)(17). All regulations citations are to California Code of Regulations, title 2.

1 physical injury would result if the threat was carried out.³ Judith D. has the burden of proof on all
2 issues necessary to establish her eligibility for Program compensation.⁴ The standard of proof is a
3 preponderance of the evidence.⁵

4 California Code of Regulations, title 2, section 649.40 is permissive. It only provides examples
5 of what constitute qualifying crimes. It is not limited to those examples. At the hearing, Judith D.
6 testified credibly that upon *observing* the suspect, and *hearing* him attempting to open the door and
7 break her window, she felt threatened for her own safety. In fact, she was so terrified, that she hid in
8 her closet and called the police, whereupon she had to wait and continue to listen to the suspect
9 attempt to gain entry into her house until the police arrived. These facts lie squarely within the
10 meaning of section 649.40, notwithstanding the examples enumerated therein.⁶

11 Further, Government Code sections 13955 and 13957 and Regulation section 649.40 are
12 remedial in nature. They are not construed within narrow limits of the letter of the law, but rather are to
13 be given liberal effect to promote the general object sought to be accomplished.⁷ It is fundamental that
14 statutes are to be scrutinized in the light of the legislative intent.⁸ Moreover, the legal concept of
15 presumed threat of injury during a residential burglary is not a novel one in this state. Notably,
16 California has enacted a *statutory presumption* that a resident of a home is, in fact, in reasonable fear
17 of death or great bodily injury to himself, his family, or any member of the household, when someone,
18 not a member of the family or household, has forcibly and unlawfully entered the residence, thus
19 legalizing the resident's use of deadly force within the residence, absent evidence tending to rebut the
20 presumption.⁹

22 ³ Regs., § 649.40.

23 ⁴ Gov. Code, § 13959(c); Regs., § 647.32(a).

24 ⁵ Regs., § 647.32(c).

25 ⁶ Conversely, in those cases where an uninjured victim was asleep during a residential burglary, the
26 Board has properly found that no qualifying crime occurred because the victim was simply not
conscious to be injured or placed under a reasonable apprehension of injury.

27 ⁷ *Van Wagener v. MacFarland*, 58 Cal.App. 115, 118-119.

28 ⁸ *McKesson v. Lowery*, 51 Cal.2d 660, 662.

29 ⁹ California Penal Code § 198.5, *People v. Owen*, 266 Cal.App.3rd 996, 1003-1004.

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Given the facts of this case, it is evident that Judith D. was under a reasonable apprehension of injury and that there was at least a reasonable probability that the threat would be carried out. To interpret the regulation so narrowly and conclude otherwise would result in the misapplication of the law and defeat the objectives of the Program.

Therefore, it is determined that Judith D. has shown by a preponderance of evidence that she was the victim of a qualifying crime by suffering emotional injury with the threat of physical injury.

The application is granted.

Dated: January 4, 2012

Edward R. Carrillo
Hearing Officer
California Victim Compensation and
Government Claims Board

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8 On March 15, 2012, the California Victim Compensation and Government Claims Board
9 designated as precedent its decision In the matter of the Application of Judith D.,
10 Precedent Decision No. 12-01.

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12 Dated: March 15, 2012

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14 Tisha Heard
15 Board Liaison
16 California Victim Compensation and
17 Government Claims Board
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