

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

In the Matter of the Application of:

J.B.

Precedent Decision No. 01 – 03

A hearing on this application was held on June 1, 2001, at 10:00 a.m., in San Pablo, California. Present at the hearing was Donna D. Ferebee, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the Victim Compensation and Government Claims Board (Board).

The applicant, J.B., and her attorney, Jaynelle Bell were present.

Claim History

The emergency application was recommended for denial on the March 20, 2000, consent agenda. The regular application was received on March 14, 2000, and was recommended for denial on the June 27, 2000, consent agenda. A timely appeal was received, and the matter was continued and finally heard on June 1, 2001.

J.B. claims injury to her left shoulder, left arm, and left knee and foreleg as a result of this incident.³ J.B. claims to have sustained \$3,300 in medical expenses as a result of the crime, and \$6,000 in support loss although her application lists only her own name as the person who relies on her for support. On her application, J.B. requested assistance in the form of mental health counseling and rehabilitation. Staff has not verified any of the claimed losses.

In addition to this claim, J.B. has filed claim number 635711 arising out of an alleged assault occurring on December 15, 2000, wherein she requests reimbursement for medical, mental health counseling, and relocation expenses.

Summary of Issues

Staff recommended the application be denied because staff determined that there was insufficient evidence that J.B. was the victim of a qualifying crime.

Findings of Fact

On May 9, 1999, J.B. was walking with her guide dog when another dog ran towards them and began to fight with her dog. The owner of the other dog, K.W.

³ According to J.B.'s medical records, she injured her neck and back on a bus in February of 1998, and injured her left shoulder and back during a slip and fall accident in August of 1998. J.B. also suffered a stroke in 1992, which affected her vision and caused the need to have a guide dog. In 1994, she experienced symptoms related to carpal tunnel syndrome.

came out of his house and attempted to separate the dogs. During this altercation, K. W. inadvertently stepped on J.B.'s foot. J.B. reported the incident to the Oakland Police Services Agency on May 12, 1999. No criminal charges were filed.

At the hearing, J.B. declined to provide any oral testimony regarding the facts of the incident, and she did not call any witnesses to testify regarding the incident. Instead, J.B. stated that everything she wanted to say about the incident was contained in a letter she claimed to have mailed to the Board. Because neither she nor her attorney brought a copy of this letter to the hearing, and the file did not contain the letter, the hearing was concluded and the record held open until 5:00 p.m., on June 15, 2001, to allow time for J.B. or her representative to forward the letter to the hearing officer.⁴ On June 15, 2001, at approximately 2:00 p.m., the representative sent the hearing officer the letter via fax, and the record was officially closed.

The letter, dated May 17, 2001, was addressed to J.B.'s representative only, and was not received by the Board prior to the hearing officer's receipt of it via fax on June 15, 2001.

J.B. states in the letter that the dog was barking and snarling as it ran out and "pounced on her as it reached for her service dog." The letter states that the dog's owner, K.W. came running out of his yard yelling and cursing and gave his dog a command that apparently made it angrier. The letter goes on to say that K.W. grabbed the dog's neck chain as he cursed at her and her dog, and then "threw his dog right into me, stepping very hard on my feet himself as he did so." The letter states that the incident was reported to the police who came immediately but could not locate either K.W. or his dog.

J.B. filed suit against K.W. and received a default judgment for damages in the amount of \$6,007.05, due to K.W.'s failure to answer the complaint or appear in court. The costs that comprise the amount of the judgment are not clear, but \$590.00 of it is for attorney fees and court filing fees. J.B. claims that she has been unable to collect any money on the judgment.

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).) At the hearing, the applicant shall have the burden of establishing by a preponderance of the evidence that, as a direct result of a crime, the victim incurred an injury that resulted in a pecuniary loss. (Gov. Code, § 13963(c).)

For purposes of the Victims of Crime Program, "crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in

⁴ Moments after going off the record, J.B. presented the hearing officer with what she thought was this missing letter. The hearing officer took a copy of it and considered the matter closed. It was not until late that afternoon that the hearing officer discovered that this letter was actually in reference to another of J.B.'s claims. On June 4, 2001, the hearing officer notified J.B.'s representative of the discrepancy and advised her that she had until June 15, 2001, to forward the correct letter, if one existed, or to request an extension of time or a new hearing.

California by a competent adult which results in injury. (Gov. Code § 13960(c).) A crime is a qualifying crime if it results in death, physical injury or threat of physical injury. (Gov. Code, § 13960(b)(1); Cal. Code Regs., tit. 2, § 649(a)(18).)⁵

Factors that may be considered as evidence of a qualifying crime include an admission of guilt to law enforcement, and the filing of a criminal charge for the qualifying crime, but medical or mental health records alone may not be sufficient evidence that a qualifying crime occurred.

(Reg., § 653.5(c) and (d).)

As stated, J.B. declined to testify at the hearing, and provided no witnesses who could corroborate the version of the facts as related in the letter. Therefore, the hearing officer was unable to ask questions of J.B., or to judge her credibility.

Since she first applied for assistance, J.B. has submitted several written accounts of the incident, not one of which ever alleged that K.W. "threw his dog into her." This statement is not credited. It is found that K.W. accidentally stepped on J.B.'s foot as he was trying to separate the two dogs.

Applying the law to those facts, there is not a preponderance of the evidence that J.B. incurred an injury resulting in a pecuniary loss *as a direct result of a crime*. It is undisputed that J.B. received a default judgment for damages against K.W. when he failed to appear for a hearing arising out of a lawsuit J.B. filed against K.W. It is also undisputed that J.B. suffers from some medical problems, but the connection between those medical problems and this incident are not clear. In any event, neither J.B.'s attainment of the civil judgment nor the existence of her medical problems have any bearing on whether a crime was committed against her in this instance. It is found that K.W. accidentally stepped on J.B.'s foot, and no crime was committed.

J.B. has not met her burden of establishing by a preponderance of the evidence that she incurred an injury that resulted in a pecuniary loss as a direct result of a crime.

The application is denied. J.B. is not eligible for program assistance.

Date: June 28, 2001

DONNA D. FEREBEE
DONNA D. FEREBEE
Hearing Officer
Victim Compensation and Government Claims Board

⁵ All citations to regulations are to Title 2, California Code of Regulations.

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On August 10, 2001, the Victim Compensation and Government Claims Board adopted the attached Decision as a Precedent Decision. The Decision became effective on August 10, 2001.

Date: August 14, 2001

Board

CATHERINE CLOSE
Chief Counsel
Victim Compensation and Government Claims