

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

In the Matter of the Application of:

W.P.

**Precedent Decision No. 01 - 05**

A hearing on this application was held on July 20, 2001, in San Diego, California, by Deborah Bain, 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, W.P., attended the hearing.

***Claim History***

The application was received on December 29, 2000. The application requested assistance for medical and wage losses arising out of a battery. The application was recommended for denial on the May 15, 2001, consent agenda. A timely appeal was filed and the matter was set for hearing.

**Summary of Issues**

Staff recommended denial of W.P.'s application based on the staff's determination that W.P. had failed to cooperate with the law enforcement agency that investigated the qualifying crime.

**Findings of Fact**

W.P. testified that he and his former wife, A.P., were married for four years. In February of 2000, she left him. The P's have two sons: W., age 6, and J., age 4.

The P's had been seeing a marriage and family therapist, M.V., regarding issues involving their divorce. W.P. testified that on November 21, 2000, he attended a therapy session with his boys and former wife. W.P. started to leave with his sons after the therapy session. As he was walking down the stairs, A.P.'s boyfriend, M.R., passed him. M.R. called W.P. a "punk." W.P. told M.R. to "back off."

W.P. left M.R. on the stairwell and proceeded to the parking lot. He put his son J. in his car seat. He had just finished buckling his son W. in the car when M.R. came up from behind. M.R. again called him a "punk," and told him that he was going to "beat his a--." W.P. replied, "You aren't going to do anything." W.P. went around to the driver's side of the car. M.R. followed and got "in his face." M.R. pushed him in the chest. W.P. fell down and struck his head on the pavement.

W.P. testified that when he got up he had "tunnel vision." He immediately put his fist up. He charged at M.R. M.R. charged him. M.R. grabbed him by his sweatshirt. W.P. stated that he tried to swing at M.R. for protection but could not

reach him. M.R. swung him around. W.P. fell and hit his head again. He found that he could not move. He told A.P. that he was having difficulty moving. She said he was fine. A.P. got in the car with M.R. and drove off.

W.P. called the police. After waiting for over an hour, W.P. proceeded to the emergency room. The police arrived at the hospital around 11:00 p.m. W.P. told them about M.R. and the incident. His sons were asleep when the officer arrived. The officer did not attempt to wake them for a statement.

A November 21, 2000, San Diego Regional Crime report reflects a similar statement of events. The officer noted that W.P. had sustained several small abrasions and had a small contusion to the back of his scalp. W.P. told the officer that he did not know what his children had seen. However, he thought that they probably saw most of the incident. The officer reported, "Since both kids were asleep, I did not feel the immediate need to wake the children." The officer wrote that W.P. definitely wanted M.R. arrested for battery.

W.P. sustained a neck strain. W.P. testified that for about a week after the incident, he had pain, weakness in his arms, bruises, a sore shoulder, and a bump on his head. He missed two days of work.

W.P. spoke to San Diego Detective Thomas Boerum between November 21, 2000, and December 5, 2000. He sent the detective a packet of documents pertaining to a pattern of violence on the part of M.R. and a restraining order that had been issued by M.R.'s ex-wife against M.R. W.P. testified that the detective told him that it was the most organized packet that he had ever received.

Detective Boerum's report reflects that he "discussed P's options in this case and the requirement for him to submit his children, the sole witnesses to the battery, to be used in this case if it is to be prosecuted. P. said he would think about it and discuss it with the children's therapist. I telephoned P. after a week went by and left a message. P. returned my call and left a voice mail stating that he was not going to pursue prosecution in this case because of his children but would seek a civil remedy."

W.P. testified that Detective Boerum told him that the only way he would be able to convict M.R. was if the boys would testify. He spoke to therapist M.V. and asked her if he should have his children testify. M.V. said it was not a good idea and that it might be traumatic for the children.

W.P. also spoke to his attorney. His attorney told him that he used to work in the juvenile court system. His attorney said that he thought the judge would be reluctant to even question the children out of concern for their age. W.P.'s attorney said that if the children were questioned it would be hard on them.

W.P. also spoke to his mother and his employer, B.R. They both told him that they did not think it would be good for the children to go through a court proceeding.

W.P. testified to feeling frustrated by the situation. He did not think it was right that M.R. would not be punished. However, W.P. did not want to pursue charges if it was going to be traumatic for his children. He called Detective Boerum and told him of his decision not to go forward. Afterwards, Family Court Judge Wesley Adams told W.P. that he made the right decision as "the boys had enough to deal with."

The crime impacted W.P.'s children. He states that his son J. told the daycare operator that, "M. kicked my Daddy to the ground." W.P. observed that after the incident W. was grinding his teeth and J. was having bedwetting problems. He thinks his children need counseling as the result of the incident.<sup>6</sup>

#### Determination of Issues

Government Code section 13964(a) provides that 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. Written reports from a law enforcement agency responsible for investigating the qualifying crime may be relied upon. (Cal. Code Regs., tit. 2, § 647.31.)<sup>7</sup> The applicant has the burden of proving all issues necessary to establish eligibility by a preponderance of evidence. (Reg. § 647.32.) There is sufficient evidence that W.P. was the victim of a battery.

A victim is not eligible for program assistance if the victim failed to reasonably cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. (Gov. Code, § 13964(c)(2).) Completely and truthfully responding to request for information in a timely manner is one element of cooperating with law enforcement. (Reg. § 657.1(e)(2).) The Program has the burden of proving all issues necessary to disqualify an applicant for failing to reasonably cooperate with law enforcement. (Reg. § 647.32(b).)

W.P.'s testimony appeared to be truthful. W.P. timely reported the incident and the November 21, 2000, police report noted that W.P. desired prosecution. There is no indication that W.P. prevented the officer from questioning his children. On the contrary, the officer stated that since there seemed to be no immediate need, he did not wake the children to question them.

W.P. assisted in the prosecution of the case by giving Detective Boerum background information on M.R. However, Detective Boerum informed W.P. that the only way M.R. could be convicted was if the children were questioned and testified. W.P. declined to have his children questioned only after conferring with his therapist, his employer, attorney, and mother. Based on the opinion that it would be too difficult on his children, he declined to have them testify. The successful prosecution of this case did not rest upon the testimony of a four-year-old or a six-year-old child. There is a high probability that the four-year-old child would not even qualify in court to testify. Any testimony by W.P. would certainly be subject to the claim of bias. The police apparently never attempted to locate any independent witnesses.

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<sup>6</sup> W.P. has not yet submitted an application on behalf of his sons.

<sup>7</sup> All regulation citations are to California Code of Regulations, title 2.

Considering all of the evidence, there is insufficient evidence that W.P. failed to reasonably cooperate with law enforcement.<sup>8</sup>

**Order**

The application should be allowed and any verified, covered pecuniary losses should be reimbursed.

Date: July 22, 2001

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DEBORAH BAIN  
Hearing Officer  
California Victim Compensation  
and Government Claims Board

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<sup>8</sup> Board staff did not address the issue of whether W.P.'s application should be denied on the basis of Mutual Combat. The police report does not assert that this was a case of mutual combat. Further, based on W.P.'s testimony, his fighting stance after being thrown to the ground appeared to be instinctive and a defensive response.

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On September 28, 2001, the California Victim Compensation and Government Claims Board adopted the attached Decision as a Precedent Decision. The Decision became effective on September 28, 2001.

Date: October 5, 2001

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CATHERINE CLOSE  
Chief Counsel  
California Victim Compensation and Government Claims

Board