

California Victim Compensation and Government Claims Board
Open Meeting Minutes
September 17, 2015, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Holly Pearson, Deputy Secretary, Government Operations Agency, at 400 R Street, Sacramento, California, on Thursday, September 17, 2015, at 10:00 a.m. Also present was Board member Richard Chivaro, Deputy State Controller and Chief Counsel, acting for and in the absence of Betty T. Yee, Controller. Member Michael Ramos was absent.

Executive Officer Julie Nauman and Chief Counsel Wayne Strumpfer were in attendance. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the August 20, 2015, Board Meeting

The Board continued the minutes of the August 20, 2015, meeting to its October 15, 2015, meeting.

Item 2. Public Comment

The Board opened the meeting for public comment. Public comment was provided by Barbara Tseng and James Quilici.

Ms. Tseng stated she was the victim of discrimination and retaliation and, as a result, she retired prematurely last year. She commented that harassment training should be required annually rather than every two years and AB 1825 mandates statewide sexual harassment training for any employee who performs supervisory functions. Ms. Tseng further commented that on Tuesday she spoke at a City Council meeting about harassment training and discrimination issues.

Mr. Quilici commented that he was falsely arrested twice by the same officer. He commented that yesterday he met with staff at the Department of General Services regarding opening up a hearing and asked the process to go forward with his request.

Chairperson Pearson informed Mr. Quilici that staff would explain the next steps following the Board meeting.

Item 3. Executive Officer Statement

AB 1140 – Victim Compensation Modernization Bill

Executive Officer Nauman reported that AB 1140 successfully moved through the Legislature and is now heading to the Governor's Office for consideration. The bill comes at a pivotal moment as the Board celebrates its 50th anniversary and would help the Board modernize program statutes, improve access to benefits, and eliminate some eligibility restrictions to make it easier for victims of violent crime access State assistance in their time of need.

Upcoming Regional Conferences

CalVCP is gearing up for its regional conferences funded by the OVC grant. The Northern California conference will take place on Wednesday, September 23 at the UC Davis Conference Center. CalVCP expects approximately 270 guests from the victim's services field and will feature keynote speaker Elizabeth Smart. Engaging workshops will be facilitated by subject experts.

The Southern California conference will take place on October 8 at UCLA. Azim Khamisa, founder of the TKF Foundation that focuses on stopping youth violence, will be the keynote speaker. Following the murder of his only son in 1995 through a gang-related incident, Mr. Khamisa chose the path of forgiveness and compassion rather than revenge.

2015 VOCA National Training Conference

Executive Officer Nauman reported she had a very productive and enlightening trip to the National Victim Services Training Conference last month co-sponsored by OVC. Ms. Nauman addressed the 250 participants and spoke about California's 50 years as a successful program. The level of expertise shared by the top leaders in the nation was impressive and everyone benefitted from the sharing of key strategies and proven practices to help them all serve the victims community in a more efficient and compassionate way. Ms. Nauman shared findings from CalVCPs research conducted through the federal grant and the goals that came from that research.

Item 4. Legislative Update

AB 1140 (Bonta) – Victim Compensation Program Modernization

Chief Counsel Wayne Strumpfer explained that the bill passed the Senate floor and is on the Governor's desk. He reported that the bill was amended to incorporate provisions from SB 519 (Hancock), including a requirement that all correspondence by the Victim Compensation Program to an applicant be written in additional languages, if requested.

AB 165 (Gomez) — Government Claims Bill

VCGCB's first Government Claims Bill of 2015, which appropriates \$504,743.99 to pay claims approved by the Board from May 2014 through December 2014, is on the Governor's desk. It also appropriates \$968,400 to pay the erroneous conviction claims of Ronald Ross, Susan Mellen, and Brian Banks.

SB 304 (Lara) — Government Claims Bill

VCGCB's second Government Claims Bill of 2015, which appropriates \$3,277,141.90 to pay claims approved by the Board from January 2015 through April 2015, as well as two claims that were approved in 2011 but not paid for technical reasons, is on the Governor's desk.

SB 518 (Leno) — Trauma Recovery Centers

The bill would require the Board to use the evidence-based Integrated Trauma Recovery Services model developed by the Trauma Recovery Center at San Francisco General Hospital as a criterion when it provides grants to trauma recovery centers. Mr. Strumpfer reported that the bill was held in the Appropriations Committee and is now a two-year bill.

Item 5. Consent Agenda (Nos. 1-293)

Nicholas Wagner, Government Claims Program Manager, reported that consent agenda item numbers 22 and 114 were continued and item numbers 98, 105, 132, and 270 were removed from the consent agenda to allow the claimants an opportunity to address the Board. Mr. Wagner requested the Board approve the consent agenda, with the exception of the removed claims.

The Board approved consent agenda numbers 1-293, with the exception of the items noted.

Consent Agenda Appearance

Item 105, 622579

Claim of Richard D. Stevens

Richard Stevens appeared and addressed the Board. John Shipley attended on behalf of the California Department of Forestry and Fire Protection. Julie Bole attended on behalf of the California Department of Corrections and Rehabilitation.

Nicholas Wagner, Government Claims Program Manager, explained that Richard D. Stevens sought compensation from the California Department of Forestry and Fire Protection (Cal Fire) and/or the

California Department of Corrections and Rehabilitation (CDCR) in the amount of \$365.00 for reimbursement of towing charges. Mr. Wagner stated that GCP staff recommended that the Board reject the claim because there appeared to be no State liability for the claimed damages.

Mr. Stevens explained that his claim concerned the towing of a used vehicle he purchased from Hertz. He stated that the denial letter he received was inaccurate in its portrayal of the events. He explained that the denial letter was misleading because he was not a part of a meeting concerning people dropping off rental cars for drug deals and possible prison escapes. He explained that at any given time, there are 100 inmates at the camp and approximately 10 staff members. He stated that CalFire staff arrive one hour before his shift begins. He explained that he begins his shift at 8:00 a.m. and at 8:30 a.m. inmates are checked in for the work crews. There was no meeting or discussion regarding vehicles being towed. He checked in his inmates at the other end of the camp, less than 200 yards away, and came back approximately 45 minutes later. He overheard someone speaking on the telephone mention a rental car being towed, which alerted him. He then noticed that his car had been towed. He stated that he followed procedure by informing staff that a new car was on the lot and provided them with information relative to his car. He explained that he parked his vehicle at the camp previously on several occasions and never had a problem before. Lastly, he stated they were aware that the vehicle belonged to him because his laptop and personal mail were in the car.

Mr. Shipley stated that CalFire stood behind their recommendation to reject the claim. He explained that even though the conservation camp does not appear to be a typical correctional facility, it is a correctional facility with prisoners there and certain policies had to be in place to ensure the safety of everyone. There is a requirement that everyone must register their vehicle to make sure they know who owns the vehicle, which was not followed by Mr. Stevens. When discussions occurred regarding the vehicle, DMV and CHP were called to determine who owned the vehicle. There was never a situation that indicated that the car belonged to Mr. Stevens so the vehicle was towed.

Ms. Bole stated that the claim failed to establish liability on behalf of CDCR. CDCR staff did not violate policies or procedures and therefore agreed with CalFire's assessment that Mr. Stevens failed to follow proper parking procedures.

The Board rejected the claim.

Consent Agenda Appearance

Item 132, 625570

Claim of Peter Gruchawka

Claimants Peter and Nancy Gruchawka and claimant's representative, Bradley Carroll, appeared and addressed the Board. John Shipley was in attendance on behalf of the Department of Forestry and Fire Protection.

Nicholas Wagner, Government Claims Program Manager, explained that Peter Gruchawka claimed damages against the California Department of Forestry and Fire Protection (Cal Fire) in an amount exceeding \$25,000 for damages to their land, annoyance, discomfort, and punitive damages. Mr. Wagner stated that Government Claims Program staff recommended that the Board reject the claim because it raised complex issues of fact and law beyond the scope of analysis and interpretation typically undertaken by the Board.

Mrs. Gruchawka explained that she and her husband purchased their remote property in Mendocino County in 2006 because of its ascetics and its ecological values. On January 7-8, 2015, CalFire illegally burned part of their wilderness property on a no burn, spare the air day without notifying

them of their intentions. After the fire, the smell of fuel was in the air. She stated that CalFire dropped a toxic fire accelerant from a helicopter that ignited. Although not all of the vegetation is dead, the land will not recover from fire damage for many years. She explained that in previous years when fires were set on neighboring parcels, she repeatedly called CalFire to express extreme fear of fire spreading to their property. She explained that the deliberate fire was set late in the day, there were very high winds, and the fire was next to their property. She explained that there is only one road of escape and they were concerned for their safety.

Mr. Carroll stated that the fire deliberately set by CalFire was a trespass by fire that burned nearly three acres of their property. CalFire burned a sizable portion of the Gruchawka's property and they admitted they were responsible. A PRA request from CalFire revealed that the vegetative management plan that they were burning under was expired and there was no updated environmental impact report. He explained that the claim was not complex and requested the Board remove the item from consent and refer it to staff for a grant or full staff report and recommendation.

Mr. Shipley stated that CalFire respectfully disagreed with several comments made by Mrs. Gruchawka and Mr. Carroll. CalFire engaged previously in discussions to try to resolve the matter, but in the end CalFire agreed with the staff recommendation that it was complex and more appropriate to be resolved through the litigation process rather than through the government claims process.

The Board rejected the claim.

Consent Agenda Appearance

Item 270, 624617

Claim of Julius C. Pereira

Julius Pereira appeared and addressed the Board and submitted documents for the Board's review. Adam Donaton attended on behalf of the Department of Forestry and Fire Protection.

Nicholas Wagner, Government Claims Program Manager, explained that Julius C. Pereira requested leave to present a late claim for compensation from the Department of Forestry and Fire Protection (Cal Fire) in the amount of \$10,000 for damage to real property and personal property. Mr. Wagner stated that Government Claims Program staff recommended that the Board deny the late application for failure to meet the criteria required by Government Code section 911.6. Additionally, staff recommended that the Board reject the claim because the State is legally immune pursuant to Government Code sections 850, 850.2, and 850.4.

Mr. Pereira stated that CalFire aggressively approached him and other landowners and informed them that they wanted to back burn from their home. He explained that a smoke jumper discussed a contingency line through his property. The smoke jumper told him that the contingency line was only a line in the office on the map to enhance the budget building process. He and the smoke jumper walked the property and decided on a mandated fire line using an existing road through his timbered property which had a better fire line road at the top edge of his property; however, he was told that it was not satisfactory for their use. He stated that the cost of destruction began when an inexperienced dozer operator hired by CalFire proceeded to push new growth and merchantable timber over, carrying soil with the pushed over trees 30-40 yards away from the road destroying young trees and away from the road they intended to be a fire line.

Mr. Donaton stated that CalFire agreed with the staff recommendation. CalFire is immune from liability pursuant to Government Code sections 850, 850.2, and 850.4. According to the Unit Chief, the firefighters acted within the scope of their employment.

The Board denied the late application for failure to meet the criteria required by Government Code section 911.6. Further, the Board rejected the claim because the State is legally immune pursuant to Government Code sections 850, 850.2, and 850.4.

Consent Agenda Appearance

Item 98, 619815

Claim of Justin Carter

Anthony Hall was in attendance on behalf of the claimant Justin Carter. Mellonie Yang attended on behalf of the California Department of Corrections and Rehabilitation.

Nicholas Wagner, Government Claims Program Manager, explained that Justin Carter claimed damages from the California Department of Corrections and Rehabilitation in an amount exceeding \$25,000 for wrongful arrest, false imprisonment, and malicious prosecution. Mr. Wagner stated that Government Claims Program staff recommended that the Board reject the claim because it raised complex issues of fact and law beyond the scope of analysis and interpretation typically undertaken by the Board.

Mr. Hall explained that the claim was the result of Mr. Carter being arrested and imprisoned by a parole agent. The parole violation stemming from the parole hold placed on Mr. Carter resulted in a dismissal. He explained that Mr. Carter was in custody for 24 days prior to his release after the disposition of the criminal case. He stated that Mr. Carter's rights were violated pursuant to the U.S. and California Constitutions. Lastly, Mr. Hall stated that he believed the Board had the ability to grant the claim.

Ms. Yang stated that the Department of Corrections and Rehabilitation did not have a position on the merits of the claim; however, the department recommended that the Board adopt the staff recommendation and reject the claim due to complex issues.

The Board rejected the claim.

Item 6. Request for Continuation of the Government Claims Program/California Highway Patrol Program

Sergeant Ron Wade was in attendance on behalf of the California Highway Patrol.

Nicholas Wagner, Government Claims Program Manager, explained that Government Claims Program staff requested the Board approve the continuation of the Government Claims Program (GCP) / California Highway Patrol (CHP) Program for three years, effective September 17, 2015, through September 30, 2018.

The Board approved the request.

Item 7. Applications for Discharge From Accountability for Collection

There were no applications for discharge from accountability for collection.

Item 8. Claim of John Smith (Pen. Code, § 4900 et seq.)

Claimant John Smith was in attendance. Dave McLane, Innocence Matters, was in attendance on behalf of Mr. Smith. Larenda Delaini attended on behalf of the Attorney General's Office.

Wayne Strumpfer, VCGCB Chief Counsel, explained that in 1994 Mr. Smith was convicted of murder, attempted murder, and two enhancements and was sentenced to 29-years-to-life in prison. In 2010 during a habeas corpus hearing, it was determined that the surviving victim testified falsely at trial. Mr. Smith's habeas was granted and he was released from prison. Later the Los Angeles County District Attorney conceded that Mr. Smith established his innocence by a preponderance of the evidence. Mr. Strumpfer stated that the Attorney General's Office believed that Mr. Smith met his burden under Penal Code section 4900 and, if approved by the Board, the hearing officer recommended the Board grant the claim in the amount of \$653,600.

Mr. McLane stated he submitted on the Attorney General's recommendation that the claim be granted as well as the hearing officer's proposed decision that the claim be granted. He stated everyone was in agreement that Mr. Smith stands as an innocent person and deserves to be compensated. Mr. McLane informed the Board that Deirdre O'Connor, who represented Mr. Smith, was also in attendance at the meeting.

Ms. Delaini stated that the Attorney General's Office believes that Mr. Smith met his burden under Penal Code section 4900. She commented that the facts of the case were disturbing. Mr. Smith was charged with murder and attempted assault. He was identified as being the shooter by Mr. Mvuemba; however, Mr. Mvuemba had consistently changed his testimony and his credibility was at issue. Mr. Mvuemba now stands convicted of forcible rape and other sex crimes and is in prison. He said Mr. Smith was the shooter, but recanted. During the state habeas proceeding, the Superior Court made a specific credibility determination that is binding on the Board that Mr. Mvuemba perjured himself. While Mr. Mvuemba's testimony was inconsistent and varied, Mr. Smith consistently maintained his innocence. Ms. Delaini explained that when the Attorney General's Office interviewed Mr. Smith, he did not ask for immunity. The Attorney General's Office found Mr. Smith to be extremely credible and believed that Mr. Smith met his burden under the statute and should be compensated in the amount of \$653,600.

The Board adopted the hearing officer's proposed decision to approve the claim.

Item 9. Claim of Obie Steven Anthony III (Pen. Code, § 4900 et seq.)

Dave McLane, Innocence Matters, and Paige Kaneb, Northern California Innocence Project, were in attendance on behalf of Mr. Anthony. Craig Meyers attended on behalf of the Attorney General's Office.

Wayne Strumpfer, VCGCB Chief Counsel, explained that in 1995 Mr. Anthony was convicted of one count of murder and two counts of attempted murder and was sentenced to life in prison without parole. In 2011, Mr. Anthony's conviction was reversed on the grounds of ineffective assistance of counsel, false and misleading testimony, and prosecutorial misconduct. In 2014, a Los Angeles County Superior Court judge determined that Mr. Anthony had proven by a preponderance of the evidence that he was innocent pursuant to Penal Code section 1485.55, subdivision (b). Mr. Strumpfer explained that the law directs the Board to approve the claim and compensate Mr. Anthony in the amount of \$581,600.

Ms. Kaneb stated that she would submit on the hearing officer's proposed decision.

Mr. Meyers stated that based on the finding of the Superior Court on May 30, 2014, the Attorney General had to submit on the matter and accepted the proposed decision.

The Board adopted the hearing officer's proposed decision.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 11:22 a.m.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer and Chief Counsel at 11:22 a.m. to deliberate on proposed decision numbers 1-57.

Open Session

The Board reconvened into Open Session pursuant to Government Code section 11126 (c)(3) at 11:30 a.m. The Board adopted the hearing officer's recommendations for proposed decision numbers 1-57, with the exception of number 15, which the Board overturned and granted the appeal and application.

Adjournment

The Board meeting adjourned at 11:31 a.m.