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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**
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9 In the Matter of the Claim of:

Proposed Decision
(Penal Code § 4900 et seq.)

10 **Rochelle Weston**
11

INTRODUCTION

12 Rochelle Weston (Weston) submitted her Penal Code section 4900 application on January 14,
13 2016, and her hearing was held on January 25, 2017. Andrea Konstad was assigned to hear this
14 matter by the Executive Officer of the California Victim Compensation Board (CalVCB). The
15 California Department of Justice, Office of the Attorney General (AG), was represented by Tia
16 Coronado. Weston did not appear and did not submit any documentation prior to the hearing
17 showing her unavailability. The AG submitted on the basis of their brief in response to the application
18 and corresponding exhibits.

19 After considering all of the evidence in the record, it is determined that Weston has not proven
20 by a preponderance of the evidence that the crime for which she was convicted and incarcerated either
21 was not committed or, if committed, was not committed by her. Accordingly, the Hearing Officer
22 recommends that her claim for compensation pursuant to Penal Code section 4900 et seq. be denied.

23 **CRIMINAL PROCEEDINGS**

24 On October 22, 2014, the Sacramento County District Attorney's Office filed an Amended
25 Consolidated Complaint charging Weston with one count of assault by means of force likely to produce
26 great bodily injury against Kristin Cruz (Cruz), in violation of Penal Code section 245, subdivision (a)(4)
27 (count I); one count of making criminal threats against Cruz, in violation of Penal Code section 422
28 (count II); one count of battery against Martin Rosenfeld (Rosenfeld), in violation of Penal Code section

1 242 (count III); one count of making criminal threats against Stella De La Cruz (De La Cruz), in violation
2 of Penal Code section 422 (count IV); and one count of dissuading a witness - De La Cruz - in violation
3 of Penal Code section 136.1, subdivision (c)(1) (count V). It was further alleged with respect to count I
4 that Weston personally inflicted great bodily injury, in violation of Penal Code section 12022.7,
5 subdivision (a). In addition, it was alleged that Weston committed the offenses while released from
6 custody on other felony offenses (Pen. Code, § 12022.1). Following the preliminary hearing, the court
7 held Weston to answer on counts I, II, IV, and V.

8 On April 13, 2015, Weston entered a plea of no contest to battery causing serious bodily injury
9 (Pen. Code, § 243, subd. (d)), as a lesser related offense to that charged in count I. The remaining
10 counts were dismissed in the interests of justice. In exchange for her plea, Weston was sentenced to
11 the middle term of three years in state prison.¹

12 On December 14, 2015, Weston submitted a Penal Code section 4900 application to the
13 CalVCB. Because she was still in custody at that time, the CalVCB returned her application with
14 directions to re-submit her claim after her release.

15 On December 17, 2015, Weston filed an untimely notice of appeal. On July 15, 2016, she filed
16 a written request to dismiss her appeal. Her appeal was dismissed and the remittitur issued on
17 July 20, 2016, thereby rendering the decision final.

18 Weston was released from prison on January 3, 2016, and resubmitted her CalVCB application
19 on January 14, 2016.

20 **PROCEDURAL BACKGROUND**

21 When the CalVCB received Weston's application, Kyle Hedum, Senior Attorney with the
22 California Victim Compensation Board (CalVCB), handled the initial administrative matters; set the
23 matter for hearing on October 4, 2016; and notified Weston of her hearing date via letter dated
24 August 1, 2016. In addition, he informed her that her witness list, and all evidence and exhibits, were to
25 be submitted to the CalVCB and served on the AG no later than September 9, 2016.

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27 ¹ Weston was subsequently re-sentenced to the middle term of three years in county jail, pursuant to
28 Assembly Bill 109.

1 Subsequently, Weston requested an extension of time due to her son's illness (diabetes) and
2 the hearing was rescheduled for January 25, 2017. The due date for her witness list, evidence, and
3 exhibits was extended to December 16, 2016. Mr. Hedum also informed Weston that no further
4 continuances would be granted absent a physician's report confirming her unavailability for the
5 hearing.²

6 On approximately December 28, 2016, Weston left a voicemail message with the CalVCB
7 requesting clarification as to when she was required to submit her witness list, evidence, and exhibits;
8 and inquiring into the nature of the proceedings scheduled for January 25, 2017. She also requested a
9 continuance because she had recently learned that her claim was going to be heard by someone other
10 than Mr. Hedum. In response, the assigned hearing officer, Andrea Konstad, sent Weston a letter on
11 January 3, 2017, stating that the deadline to submit her witness list and documentation had passed and
12 that January 25, 2017, was the date set for her hearing.

13 Thereafter, Weston sent multiple voicemail and email messages to the CalVCB, the AG, and the
14 Government Claims Division, indicating her desire to either amend her claim or file another Penal Code
15 section 4900 claim so she could have the opportunity to amend her allegations and submit her
16 evidence. In one particular voicemail message, left on January 17, 2017, Weston made a vague
17 statement about "cancelling" her claim. Because she also indicated she wanted a continuance,
18 CalVCB staff returned her call in an attempt to get clarification as to what her intentions were, but was
19 unable to do so. Weston again made conflicting statements and disconnected the call before the
20 uncertainties could be resolved. Subsequently, the CalVCB sent Weston a letter on January 19, 2017;
21 and responded to email messages on January 9, 2017, and January 23, 2017, advising her that her
22 hearing would proceed as scheduled on January 25, 2017, at 9:00 a.m., absent medical documentation
23 establishing her unavailability.³ In addition, the letter informed her that if she failed to appear, her
24 application would be decided on the written record.

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26 ² This information was communicated to Weston via letter dated November 3, 2016.

27 ³ The emails were sent to the addresses that Weston had either provided to the Board or had used to
28 communicate with the Board.

1 Weston's hearing was held as scheduled on January 25, 2017. As of that date, Weston had
2 failed to submit her witness list, or her evidence and supporting exhibits, other than her list of financial
3 losses.

4 **FACTS**

5 **I. Preliminary Hearing Transcript**

6 The facts related to count I are as follows:⁴

7 On February 8, 2014, Deputy Martine responded to the Jackson Hewitt Office in North
8 Highlands where he made contact with Cruz. Cruz told police she had previously prepared Weston's
9 tax return, Weston was unhappy with the results, and Weston wanted her paperwork and original W-2's
10 returned to her. When Weston arrived at the tax preparer's office with her daughter, co-defendant
11 Cherelle Howze (Howze), Cruz handed Weston her tax information and asked her to step outside so
12 they could talk.⁵ Once they were outside, Weston slapped Cruz across the face. In order to avoid a
13 physical fight, Cruz grabbed hold of Weston's arm, spun her around, and tried to control her. Weston
14 started to struggle and slip away, so Cruz sat down and pulled Weston on top of her in order to
15 maintain control of the situation. While Cruz was restraining Weston, Weston told her, "I'm going to
16 kick your bitch ass. Fuck you, bitch." She also threatened to return at a later date, and beat and kill
17 Cruz. Howze then entered the fight and hit Cruz in the face and back of the head multiple times, and
18 pulled her hair. Weston bit Cruz on the finger.

19 At some point during the struggle, two of Cruz's co-workers exited the business and started
20 struggling with Howze. Rosenfeld tried to restrain Howze, but she repeatedly broke free and resumed
21 her attack of Cruz. The second employee, Gino Kostikov, heard Weston tell Cruz, "I will kill you for
22 that." Weston told Howze to go get her brother from the parking lot and Howze knocked Rosenfeld to
23 the ground, broke free, and ran in that direction. Cruz pushed Weston off of her and ran back inside
24 the business.

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26 ⁴ Because Weston was convicted of a lesser related offense to only one of the counts, the facts relating
27 to the remaining counts alleged in the complaint are omitted.

28 ⁵ Howze was charged in counts I and III, along with Weston.

1 The responding officer observed that Cruz had several minor injuries consisting of bruises on
2 her left shoulder, wrist, and forearm; and cuts to her forehead and middle finger. She also showed the
3 officer a hair clip that had been pulled out during the struggle containing some of her hair and
4 complained of pain to her head.

5 Subsequently, police spoke with Cruz again on May 2, 2014. At that time, Cruz reported she
6 had been experiencing anxiety, "wooziness," and short-term amnesia.

7 **II. Change of Plea Transcript - Factual Basis for the Plea**

8 At the time Weston entered her no contest plea, the prosecuting attorney gave the following
9 factual basis in support of the plea:

10 On or about February 8th, 2014, in the County of Sacramento ... Rochelle
11 Weston ... did commit ... a felony violation of Penal Code section 243(d)
12 in that she did go to [Hewitt Jackson] Tax Company while Ms. Cruz, the
13 named victim in this case, was engaged in her normal work duty she was
14 approached to come speak with Ms. Weston who was angry about some
15 taxes she said had happened. (*Sic.*) Ms. Cruz tried to speak with her
16 outside. When they both got outside the defendant Ms. Weston started to
17 essentially hit Ms. Cruz.

18 When Ms. Cruz was hit the first time she did restrain Ms. Weston in an
19 attempt to keep her from hitting her again. The victim ended up being
20 dragged down to the ground throughout the struggle. She was trying to
21 defend herself. Ms. Weston continued to hit and kick her a number of
22 times and elicited the help of her daughter Cherelle Howze. At which
23 time Ms. Howze did commit a ... violation of Penal Code Section
24 245(a)(4)

25 The victim did suffer numerous injuries including the lacerations, the hair
26 pulling out that we've talked about today. And the main crux of her
27 injuries is due to her mental injuries that she's sustained as a result of this
28 assault on her, including having problems with her memory and having
difficulty remembering events that have occurred in her past.

(Attorney General's Response, Exhibit 2, at pp. 109-110.)

29 **DETERMINATION OF ISSUES**

30 Penal Code section 4900 provides that an innocent person who has been erroneously convicted
31 of, and imprisoned for, a felony can apply for compensation from the state for every day she was
32 imprisoned, for pecuniary injury she sustained as a result of the erroneous conviction and
33 imprisonment. In order to establish a successful claim for relief, a claimant must prove, by a

1 preponderance of the evidence, that the crime with which she was charged was either not committed at
2 all, or, if committed, was not committed by her and that she sustained a pecuniary injury through her
3 erroneous conviction and imprisonment.⁶ “Preponderance of the evidence” means evidence that has
4 more convincing force than that opposed to it.⁷

5 In reaching its determination of the merits of a Penal Code section 4900 claim, the Board may
6 consider the claimant’s mere denial of commission of the crime for which she was convicted, reversal
7 of the judgment of conviction on appeal, acquittal of the claimant on retrial, or the failure of the
8 prosecuting authority to retry the claimant for the crime.⁸ However, those factors will not be deemed
9 sufficient evidence to warrant the Board’s recommendation that a claimant be indemnified in the
10 absence of substantial independent corroborating evidence that the claimant is innocent of the crime
11 charged.⁹ The Board may also consider as substantive evidence the prior testimony of witnesses the
12 claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings relating to
13 the claimant and the crime with which she was charged to which the claimant had an opportunity to
14 object.¹⁰ Finally, the Board may also consider any information that it may deem relevant to the issue
15 before it.¹¹

16 Because the purpose of these administrative hearings is to determine whether the claimant has
17 met her burden of proving she is innocent of the crime for which she was convicted and incarcerated,
18 all relevant evidence is admissible, irrespective of whether it would be admitted at a criminal jury trial,
19 or in a civil or administrative proceeding, so long as the evidence is probative to the claimant’s
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21 ⁶ Pen. Code, § 4903; *Tennison v. Victim Compensation and Government Claims Board* (2006) 152 Cal.
22 App. 4th 1164.

23 ⁷ Pen. Code, § 4903; *People v. Miller* (1916) 171 Cal. 649.

24 ⁸ Cal. Code Regs., tit. 2, § 641, subd. (a).

25 ⁹ Cal. Code Regs., tit. 2, § 641, subd. (a); *Tennison v. Victim Compensation and Government Claims*
26 *Board* (2006) 152 Cal. App. 4th 1164.

27 ¹⁰ Cal. Code Regs., tit. 2, § 641, subd. (b).

28 ¹¹ Cal. Code Regs., tit. 2, § 641, subds. (c), (d), and (f).

1 assertion that she is innocent.¹² The formal hearing rules of the Administrative Procedures Act are not
2 applicable.¹³

3 If a claimant meets her burden of proof, the Board shall recommend to the legislature that an
4 appropriation of \$140.00 be made for each day of incarceration she served in prison or jail subsequent
5 to her conviction.¹⁴

6 Based on all of the evidence presented to the Board, Weston has not met her burden under the
7 statute. Not only did she admit to the underlying factual basis when she entered her plea of no
8 contest, but she acknowledged in an email she sent to the Hearing Officer on January 21, 2017, that,
9 “this claim does not state anything that proves my innocence.”¹⁵ Her specific allegations are as
10 follows:

11 I. Denial of Commission of Crime Insufficient

12 Weston contends she never committed the crimes with which she was charged and that the
13 crimes were not, in fact, committed. Specifically, she alleges she never assaulted a police officer,
14 never assaulted anyone with a firearm or deadly weapon, never made any terrorist threats against De
15 La Cruz, and never committed a crime against a tax preparer.

16 Initially, the Board notes that Weston was never charged with, or convicted of assaulting a
17 police officer or assaulting anyone with a firearm or deadly weapon. Accordingly, her claim, with
18 respect to these assertions, is baseless. Her allegation that she never threatened De La Cruz or
19 attempted to prevent her from testifying is also baseless as those two counts (count IV and V) were
20 dismissed pursuant to the plea bargain.

21 As to the remaining offense – battery causing serious bodily injury - Weston’s bare contention
22 she did not commit this crime and that it was not committed at all fails to meet her burden of proof.

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24 ¹² Cal. Code Regs., tit. 2, § 641, subd. (d).

25 ¹³ Cal. Code Regs., tit. 2, § 615.1.

26 ¹⁴ Pen. Code, § 4904.

27 ¹⁵ The Board recognizes that a no contest plea would not preclude a claimant from receiving
28 compensation so long as she proved her innocence by a preponderance of the evidence.

1 While a blanket denial *may* be considered by the Board in reaching its determination of the merits of
2 the claim, it “will not be deemed sufficient evidence to warrant the Board’s recommendation that
3 claimant be indemnified in the absence of substantial independent corroborating evidence that
4 claimant is innocent of the crime charged.”¹⁶ Here, Weston did not submit any evidence at all.

5 **II. Double Jeopardy Claim Inapplicable**

6 Weston contends, “I was charged twice for PC 422 same case which is double jeopardy.”

7 “The double jeopardy clauses of the Fifth Amendment to the United States Constitution and
8 article I, section 15, of the California Constitution provide that a person may not be twice placed ‘in
9 jeopardy’ for the ‘same offense.’ The double jeopardy bar protects against a second prosecution for
10 the same offense following an acquittal or conviction, as well as against multiple punishment for the
11 same offense. (*People v. Anderson* (2009) 47 Cal.4th 92, 103-104, internal citations omitted.)

12 Contrary to Weston’s assertion, she was not charged twice for the same conduct. While the
13 amended consolidated complaint contained two charges of making criminal threats (Pen. Code,
14 § 422), each count related to a different incident, committed on different days, against different victims.
15 Further, both of these charges were dismissed as part of the plea bargain so Weston does not even
16 stand convicted of a Penal Code section 422 violation. In any event, a violation of the double jeopardy
17 clause does not establish factual innocence – the standard she must meet in order to obtain relief on
18 her application.

19 **III. Challenge of Plea Agreement Inapplicable**

20 Weston contends her plea is invalid because she did not understand the terms of the plea
21 bargain she entered. In addition, she contends the sentencing judge changed the terms of the plea
22 bargain without her knowledge. Specifically, she contends it was her belief she was to receive a
23 three-year prison term in exchange for her no contest plea to four felonies and one misdemeanor;
24 however, she later learned the trial judge had “dropped all of her felonies [and] misdemeanor” and
25 given her a “similar charge” without her knowledge.

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27 ¹⁶ Cal. Code Regs., tit. 2, § 641, subd. (a).
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1 According to the Reporter's Transcript on Appeal (transcript), Weston entered her plea of no
2 contest to one count of battery causing serious bodily injury (Pen. Code, § 243, subd. (d)), a lesser
3 related offense to assault with means likely to produce great bodily injury (Pen. Code, § 245, subd.
4 (a)(4)) as charged in count I. In exchange for her plea to the lesser related offense, the remaining
5 counts and enhancements were dismissed in the interests of justice. The transcript reflects Weston
6 was fully advised of the terms before she entered her plea, and that she stated she had fully discussed
7 the plea with her attorney and understood both the terms of the plea and her negotiated sentence.
8 Therefore, any claim that she did not knowingly enter her plea or that the charges were somehow
9 changed without her knowledge, is meritless.

10 Even if, for the sake of argument, Weston's assertions were proven true, it would not establish
11 factual innocence so as to warrant relief on her application.

12 Weston's claim for compensation as an erroneously convicted person is denied because she
13 has not offered any credible evidence to show by a preponderance of the evidence that she is
14 innocent of the crime for which she was convicted and sentenced.¹⁷

15
16 Date: January 30, 2017

17 _____
18 Andrea L. Konstad
19 Hearing Officer
20 California Victim Compensation Board

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23 _____
24 ¹⁷ On January 27, 2017, after the record had already closed, CalVCB received a second Penal Code
25 section 4900 claim from Weston. In it, she contended she was unlawfully retained in custody on
26 count V of the Amended Consolidated Complaint after that charge was dropped pursuant to her plea
27 bargain. She further contended that she never attempted to dissuade the alleged victim from testifying.
28 Weston then contended that she never committed an assault with a firearm on the mistaken impression
that she was charged with such an offense. Finally, Weston denied that she ever touched the victim
alleged in count I of the Amended Consolidated Complaint – Cruz. None of these claims affect the
determination stated in the body of this Proposed Decision.

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**BEFORE THE VICTIM COMPENSATION BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

Notice of Decision

Rochelle Weston

On March 16, 2017, the California Victim Compensation Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: March 20, 2017

Tisha Heard
Board Liaison
California Victim Compensation Board