

State of New Jersey
Victims of Crime Compensation Board
Department of Law & Public Safety



ANNUAL REPORT
July 1, 1995 - June 30, 1996

Christine Todd Whitman, Governor
Deborah T. Poritz, Attorney General

James K. O'Brien, Commissioner/Chairman
Commissioner Jacob C. Toporek, Esq.
Commissioner Matthew V. Scannapieco
Commissioner William M. Hunt, Esq.
Commissioner Lorraine Pullen, Esq.

50 Park Place
Newark, NJ 07102

198 West State Street
Trenton, NJ 08625

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State of New Jersey
VICTIMS OF CRIME COMPENSATION BOARD

CHRISTINE TODD WHITMAN
Governor

JAMES O'BRIEN
Chairman

Dear Governor Whitman:

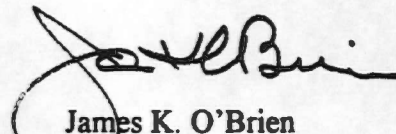
The mission of the Victims of Crime Compensation Board is to provide victims of crime in New Jersey with the financial means to help put their shattered lives back together. The determination to make this happen has never been stronger.

In FY 95-96, the Board paid 1,683 claims, while continuing to reduce the number of claims outstanding 839. The number of claims concluded was 3,519, and the total compensation paid to victims was \$7,339,225.11.

Our two-tier system of processing claims and the quick tracking review of new applications has continued to reduce the number of outstanding claims. This reduction could not have been achieved, however, without the dedication of the employees of the VCCB.

Although statistics continue to show a drop in the crime rate across the country, it has not been reflected in the vast number of victims requesting compensation from the Board. In fact, the total amount paid to those whose lives have been tragically altered, through no fault of their own, has grown. The Commissioners and staff of the VCCB will continue to dedicate our efforts to place the emphasis on the victims.

Very truly yours,


James K. O'Brien
Chairman

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VCCB STATUTORY

AND

RULE CHANGES

FISCAL YEAR 1996

Public Law 1996, Chapter 135

3. Where the Board determines that because of the victim's conduct, the victim contributed to the inflection of his or her injury, the Board may limit the amount of the award, reduce it or deny compensation altogether. Where an award is to be limited or reduced due to contribution or other circumstances relating to the victim's behavior or action, said award shall not exceed \$12,500 in the aggregate.

(b)-(e) (No change.)

(f) Unless otherwise permitted by these rules and the provisions of N.J.A.C.

13:75-1.25(e), the Board shall limit its award to losses incurred as a result of personal injury or death resulting from a violent crime as defined by N.J.S.A. 52:4B-11. All property damage is specifically excluded.

(g) For injuries resulting from incidents occurring on or after December 7, 1982, no compensation shall be awarded in an amount in excess of \$25,000.[00.] For incidents occurring on or prior to December 6, 1982, the maximum compensation shall not exceed \$10,000.[00.] These limitations shall remain in effect until statutory law provides otherwise.

1. For incidents occurring on or after June 26, 1995, any claim for compensation shall expire five years after the entry of an initial determination order. No further order is to be entered with regard to the claim except for requests for payment of specific out-of-pocket expenses received by the Board prior to the expiration of the five year period or for expenses for which the Board had notice or should reasonably have known existed prior to the expiration of the stated five-year period.

(h) (No Change.)

(i) No passenger in a motor vehicle, vessel or commercial vehicle, who knew or reasonably should have known that the driver was operating the vehicle or vessel while under the influence of alcohol or drugs is eligible for compensation.

1. In order for a victim to be eligible for compensation, it is not necessary that the offender is convicted of a violation under N.J.S.A. 39:4-50, **39:3-10.13** or **12:7-46** nor that a blood alcohol test be administered to the offender. However, the victim or claimant must demonstrate by a preponderance of the credible evidence that the incident involved driving a vehicle or operating a vessel while under the influence of alcohol or drugs.

i. (No change.)

ii. In any matter involving a violation of N.J.S.A. 39:4-50 or **12:7-46** relating to driving a vehicle or operating a vessel while under the influence of intoxicating liquor, the following factors will be taken into account [.]:

(1) (No change.)

(2) A blood alcohol reading in excess of 0.05 percent but less than 0.10 percent shall not give rise to any presumption that the offender was or was not under the influence of intoxicating liquor, but such fact may be considered with any other competent evidence; [and]

(3) A blood alcohol reading of 0.05 percent or less shall give rise to the presumption that the offender was not under the influence of intoxication liquor [.] and

(4) A blood alcohol reading of 0.04 percent is prima facie evidence of a violation of N.J.S.A. 39:3-10.13, operating a commercial vehicle while under the influence.

VICTIMS GUIDELINES

FOR

FORMAL HEARINGS

OF

COMPENSATION CLAIMS

ADOPTED FEBRUARY 28, 1996

How will notice be given?

You will be notified in writing of the date, time, and place of the hearing. If there is any change regarding the formal hearing, you will be contacted by telephone. If the date is not convenient, every effort will be made to accommodate your schedule.

May I bring an attorney to the hearing?

Yes, an attorney, licensed to practice law in New Jersey, may represent you at all stages of the proceedings. The Board provides an attorney referral service if you cannot arrange for representation. Should compensation be awarded, the Board will pay the attorney's fee. An attorney may not ask for or receive any sum from the claimant other than the fee set by the Board.

How should I prepare for the formal hearing?

VCCB staff will contact you about what you need to bring. They will also review the hearing process with you. On the day of the hearing, you will have an opportunity to acquaint yourself with the meeting room and anything else you want to know in advance of the hearing.

Are formal hearings open to the public?

Hearings, in general, are open to the public. Formal hearings may be held in private if the interest of the victim and/or witness(es) will be served.

What rules or laws govern the VCCB's decisions?

Although similar in ways to the rules which govern courtroom procedure, VCCB procedures are more flexible. Established rules exist which will be explained to you. In addition, the VCCB has the right to consider all circumstances surrounding the incident which it deems relevant, including factors concerning the victim's cooperation with law enforcement and the victim's behavior which may have contributed to his/her injury or death. The VCCB limits its awards to losses incurred as a result of personal injury or death. Property damage is specifically excluded and there is no payment for pain or suffering.

What if I am unable to appear at the formal hearing?

You should give the VCCB advance notice if you are unable to attend a scheduled hearing, otherwise your claim may be determined ineligible for compensation. If you have a good reason not to be present, the VCCB may excuse your absence and schedule a new formal hearing date.

Must I be present at the hearing?

You have the right to be present at the hearing to give or hear testimony and to question witnesses. However, you may request to be excused.

May anyone, other than my attorney and witnesses, appear on my behalf?

Any person with a substantial interest in the proceedings may appear, provided their presence is confirmed, in advance, with the VCCB.

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COURT DECISIONS

1996

The VCCB concluded that "[w]orking two hours less per day [did] not constitute unemployment." In denying victim/claimants request for additional compensation, the Board found the testimony of victim/claimant and her husband to be questionable. Together with an absence of documentation certifying victim/claimants unemployment status during the relevant time period or, in the alternative, a showing of some decrease in earnings, a preponderance of the credible evidence pointed to a status of employment and no loss of earnings.

The Appellate Court was satisfied that appellant's contention was without merit. The judges wrote that the Board's conclusion was supported by substantial credible evidence in the record as a whole and, therefore, victim/claimant was not entitled to compensation for her husband's alleged loss of earnings.

C) Sweeney v. VCCB

This matter was heard in the Superior Court under an Order to Show Cause filed by the victim/claimant against the VCCB. As in the Reyes case (above), victim/claimant objected to a claim from the Board which sought to share in funds recovered in a personal injury action against non-criminal defendants.

The VCCB awarded \$8,738.38 to victim/claimant because she had suffered injuries at the hands of her estranged husband. Collaterally, she settled an action with various tortfeasors, including the municipality, it's police department, two veterans groups, two police officers and two other individuals. Neither her assailant, nor his estate, were involved in this recovery.

In denying victim/claimant's application, the Court cited the existing statute and Board rules. NJSA 52:4B-20 states that "whenever an order for the payment of compensation is or has been made ...the Board shall, be subrogated to the Cause of Action of the applicant against the person or persons responsible for such personal injury ..." This provision, the Court wrote, must be read in the context of NJSA 52:4(b)-19 which states, the Board shall take into consideration amounts received or receivable from any other sources by the victim.

The Administrative Code, Section 13:75-1.19, was also made part of the judge's opinion. Section "b" states "source or sources means a source of benefit or advantages which the claimant has received in lieu of economic loss or which is readily available to the claimant from, but not limited to (1) the offender" --- and then it lists eight others and concludes with number nine -- "the net amount received by the victim or claimant in excess of \$1,000 in the case of any related civil suit for damages ..."

The Court also pointed to the language of the award order and accepted by victim/claimant which states, "In accepting this award, the claimant and claimant's attorney agree that in the event they are successful in recovering money from any other source, they will notify the Board of such recovery at which time the issue of reimbursement of the award made herein will be addressed." The language is in the nature of a contract, the Judge stated. The order signed by the VCCB and the victim/claimant clearly indicated that recovery from any source was subject to a reimbursement claim.

CASE SUMMARIES

The victim signed a complaint against the offender charging him with knowingly committing a sexual act while infected with a sexually transmitted disease. The offender denied the charges which were later downgraded to simple assault. He was found guilty of a being a diseased person who had committed an act of sexual penetration.

The victim's application for compensation was approved in view of the knowing assault committed by the offender even though a consensual relationship existed between the two. Medical expenses and the victim's counseling needs were met by the Board.

VCCB

STATISTICS

VICTIMS OF CRIME COMPENSATION BOARD

FISCAL YEAR 1995-1996

	Claims received	Claims paid	Claims denied	Claims concluded	Cum	Open claims	Awards entered
JULY	254	162	166	328	-74	5,418	\$760,516.34
AUGUST	266	155	202	357	-91	5,327	\$587,090.07
SEPTEMBER	231	147	159	306	-75	5,252	\$796,879.97
OCTOBER	232	205	207	412	-180	5,072	\$898,110.00
NOVEMBER	283	128	159	287	- 4	5,068	\$656,639.78
DECEMBER	223	91	123	214	-9	5,077	\$501,492.99
JANUARY	212	123	146	269	-57	5,020	\$546,144.41
FEBRUARY	218	132	173	305	-87	4,933	\$609,607.22
MARCH	210	187	159	346	-136	4,797	\$599,945.85
APRIL	148	125	112	237	-89	4,708	\$459,768.63
MAY	152	110	116	226	-74	4,634	\$457,223.73
JUNE	251	118	114	232	-19	4,653	\$465,806.12

TOTAL	2,680	1,683	1,836	3,519	-839	4,653	\$7,339,225.11
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REASONS CASES WERE DENIED (B)

Determination of Eligibility	FY 95	FY 96
No police report	87	22
No minimum loss	706	394
Losses reimbursed from other sources	389	330
Doesn't meet stolen cash guidelines	8	NA
No personal property	63	49
No compensation for pain & suffering	5	3
Late filing	16	16
Motor vehicle accident	8	2
No personal injury	8	10
No prohibited criminal activity	24	18
Official capacity (police/fire)	2	2
Foreign jurisdiction	13	8
Not resident/crime not in NJ	9	1
Third party action	102	69
Workers' comp claim	10	24
Restitution/VCCB penalties owing	103	89
Occurred before Board existed	<u>0</u>	<u>5</u>
SUB-TOTAL (B) =	1,553	1,042
SUB-TOTAL (A) =	1,710	791
GRAND TOTAL =	3,263	1,833

VICTIM COUNSELING SERVICE HOT-LINE STATISTICAL REPORT FISCAL YEAR 1996

ORIGIN OF CALL BY COUNTY:

	FY 96
Atlantic	143
Bergen	48
Burlington	43
Camden	143
Cape May	29
Cumberland	60
Essex	539
Gloucester	30
Hudson	147
Hunterdon	14
Mercer	73
Middlesex	138
Monmouth	87
Morris	20
Ocean	64
Passaic	69
Salem	16
Somerset	31
Sussex	20
Union	70
Warren	12
Out-of-state	47
Total:	1,843

CRIME CATEGORIES:

	FY 96
Domestic Violence	79
Child Physical Abuse	20
Child Sexual Abuse	55
Sexual Assault	78
Incest/Child	10
Incest/Adult	01
Homicide	64
DWI/Death	03
DWI/Injury	04
Elderly Abuse	00
Lewd/Indecent/Obscene	02
Assault	1,115
Robbery	238
Terroristic Threats	29
Kidnapping	02
Arson	08
Burglary	66
Food Tampering	00
Ineligible under statute	69
Total:	1,843

CALLERS BY AGE: 1,843

0-12	76
13-17	137
18-29	585
30-44	675
45-59	281
60+	89

CALLERS BY SEX: 1,843

MALE	883
FEMALE	916

