

Precedent decision 01-08

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

In the Matter of the Application of:

H.J.P.

Precedent Decision No. 01 – 08

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, H.J.P., attended the hearing. H.J.P. was represented by Marlene E. Ramos, Senior Service Coordinator, Los Angeles City Attorney's Office. Susan Choi, Victim Service Coordinator, Los Angeles City Attorney's Office, served as interpreter and testified.

Claim History

The application was received on March 7, 2001. H.J.P. requested funds for medical expenses and mental health counseling resulting from a possible hit and run and robbery. Board staff recommended denial of the application based on the staff's determination that there was a lack of evidence that H.J.P.'s injuries were the direct result of a crime and that H.J.P.'s failure to timely report the crime constituted a failure to cooperate with law enforcement. The recommendation for denial was scheduled for the May 18, 2001, consent agenda. A timely appeal was filed and the matter was set for hearing.

Summary of Issues

Staff recommended denial of H.J.P.'s application based on staff's determination that H.J.P. was not a victim of a qualifying crime and that H.J.P. had failed to cooperate with law enforcement.

Findings of Fact

H.J.P. testified through his interpreter that October 22, 2000, he went to a bar called the Vineyard. H.J.P. arrived at the Vineyard at approximately 10:30 p.m. H.J.P. had a few drinks. He left the bar around 1:00 a.m. H.J.P. started to walk home. H.J.P.'s apartment is approximately twenty minutes from the Vineyard. He was walking on Vermont Avenue in Los Angeles. He decided to stop and have some Korean food at a restaurant. He remembers crossing the street. The next thing H.J.P. remembers is seeing paramedics.

Hospital records reflect that H.J.P. was found lying in the street and that he had amnesia from the event. H.J.P. had a fractured jaw, bone fragments in his knee, and head trauma. The paramedics and hospital staff surmised that an automobile had hit H.J.P. H.J.P. was discharged from the hospital on November 3, 2000. Due to his injuries, H.J.P. missed one week of work.

H.J.P. testified that while in the hospital he realized that his wallet was missing. He knew he had his wallet when he was at the Vineyard because he paid for his drinks. H.J.P. canceled his credit card. Subsequently, he received notice of a Discover credit card purchase that he had not incurred. H.J.P. provided a copy of the receipt. The receipt shows that the credit card was used at a Shell Station for gasoline on October 22, 2000, at 2:27 a.m. Paramedics arrived on the scene to assist H.J.P. on October 22, 2000, at 2:34 a.m. Additionally, H.J.P. provided a November 11, 2000, letter from Discover card reversing the charge.

H.J.P. has lived in the United States for eleven years. H.J.P. testified that he lives removed from the English-speaking community and he was not aware of the Victim Compensation Program. H.J.P. lives in a predominantly Korean community and worked for a Korean company.¹³

H.J.P. learned of the program from his brother, E. P. His brother was overseas in the military. When his brother came home he told H.J.P. about the program. H.J.P. and E. P. contacted the City Attorney's Office and spoke to Ms. Choi. Ms. Choi told H.J.P. that he needed to make a police report. H.J.P. testified that he thought the paramedics reported the incident to the police.

H.J.P. testified that he learned after the incident that a few blocks away from Vermont is a high crime area. H.J.P. stated that he felt partly responsible for the crime because he had walked instead of taking a cab.¹⁴ He felt partly responsible for the crime and therefore did not feel comfortable asking for compensation. H.J.P. also stated that he was embarrassed by his inability to communicate easily in English. He

¹³ Ms. Choi testified that in her experience most individuals in the Korean-speaking community do not know about the program. Ms. Choi stated the program is advertised in Korean newspapers and on the radio. However, Ms. Choi has found that most individuals in the Korean-speaking community still do not know about the program until "they become a victim of a crime."

¹⁴ H.J.P.'s statement comes from an April 18, 2001, letter to the Board that was drafted by his brother.

did not want his mother to know that he could not take care of himself.¹⁵ Whenever H.J.P. received a letter from the Board he used a dictionary and translated word by word.

H.J.P. and E.P. went to the police.¹⁶ H.J.P. testified that they initially went to a traffic division. H.J.P. thought he should report it to the traffic division because the paramedics said that his injuries were the result of a hit and run. H.J.P. testified that Los Angeles Police Sergeant Montelongo reviewed H.J.P.'s medical records and credit card information.

H.J.P. stated that Sergeant Montelongo, who has investigated numerous traffic accidents, agreed with H.J.P. that his injuries were not the result of a hit and run. Sergeant Montelongo told H.J.P. that the nature of the injuries, to wit, an injury to the back of the head, the front of the head, and his leg, without additional injuries were not consistent with being hit by a car. Sergeant Montelongo told H.J.P. that he needed to report the robbery to the Wilshire Branch.

A Los Angeles Police Report reflects that H.J.P. reported the incident to Officer Sanchez on January 25, 2001. E. P. interpreted for H.J.P. H.J.P. told the officer that he was walking on Vermont and the next thing he remembered was that he woke up in the hospital. H.J.P. told Officer Sanchez that he did not believe he was a victim of a traffic collision but had no recollection of what had happened.

Officer Sanchez noted that no report was made at the time of the incident because H.J.P. thought it was just his "bad luck." Ms. Choi testified that the actual translation is that H.J.P. thought he was in the wrong place at the wrong time.

H.J.P. testified that he brought his medical records and the credit card information to Officer Sanchez. However, Officer Sanchez did not seem interested. H.J.P. thought that perhaps his attitude was based on feeling embarrassed. H.J.P. explained that law enforcement officers in Korea feel responsible when a crime occurs in the area that they are patrolling.

Ms. Choi testified that E.P. called her after meeting with the police. He was very concerned about the officer's lack of interest in writing the report and the inaccuracies that were in the report that was written.

Sergeant Montelongo's observations are not reflected in Officer Sanchez's report. However, Officer Sanchez's report notes that Sergeant Montelongo recommended that an "injury report be taken (no t/c)." From the report it is clear that t/c is the acronym for traffic collision. It appears from the report that Sergeant Montelongo had concluded that H.J.P. was not a victim of a hit and run.

¹⁵ H.J.P. was 29 years old when the crime occurred.

¹⁶ Ms. Choi testified that based on her records, H.J.P. reported the crime to the police within a day or two of her telling him that he needed to report the incident.

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.)¹⁷ The applicant has the burden of proving all issues necessary to establish eligibility by a preponderance of evidence. (Reg. § 647.32.)

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).) A victim whose conduct adversely affected the ability of a law enforcement agency either to investigate a qualifying crime, or to apprehend or convict any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency. (Reg. § 657.1(f).) In order to determine that a victim failed to cooperate with a law enforcement agency for a delay in reporting the qualifying crime, the delay must have adversely affected a law enforcement agency as described in regulation section 657.1, subsection (f). (Reg. § 657.1(g).) 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).)

Staff recommended denial of H.J.P.'s application in part because they determined that there was a lack of evidence that H.J.P.'s injuries were the direct result of a crime. H.J.P. reported the crime three months after it occurred. Staff noted that the Board typically considers a significant delay in reporting a crime a failure to cooperate with law enforcement because it hinders law enforcement's ability to conduct a complete investigation. A delay in reporting a crime often can result in law enforcement's inability to obtain witnesses and information to substantiate that a crime has occurred. Generally, this is true. However, the facts in this case are distinguishable.

There is sufficient evidence that H.J.P. was the victim of a robbery. H.J.P. testified that he had his wallet while at the Vineyard. He started to walk home. The next thing he recalled was the arrival of the paramedics. The paramedics' report shows that they received the call on October 22, 2000, at 2:31 a.m. They arrived at the scene at 2:34 a.m. The credit card purchase for gasoline was made on October 22, 2000, at 2:27 a.m. From the police report, it appears that Sergeant Montelongo concluded that H.J.P.'s injuries were the result of a robbery and not a hit and run.

Based on H.J.P.'s missing wallet, the unauthorized use of H.J.P.'s credit cards, and the nature of H.J.P.'s injuries, it is found that H.J.P. is the victim of a qualifying crime.

H.J.P.'s testimony was truthful and credible. H.J.P.'s failure to timely report the crime to law enforcement stems from a number of factors. H.J.P. lives isolated

¹⁷ All regulation citations are to California Code of Regulations, title 2.

from the English-speaking community. There is a language barrier. He mistakenly believed that the paramedics had reported the crime. His brother, who is fluent in English, told him there was a program that helps victims of crime. H.J.P. contacted the Victim Assistance Program and spoke to Ms. Choi. It was only after contacting Ms. Choi that H.J.P. learned that he needed to report the crime. H.J.P. contacted law enforcement and reported the crime.

Based on the severity of H.J.P.'s injuries it appears that H.J.P. was initially physically unable to report the crime. Further, hospital records note that H.J.P. suffered from amnesia. H.J.P. would not have been able to provide law enforcement with any additional assistance the day of the crime than he did three months later.

When H.J.P. reported the crime, he assisted law enforcement by providing them with documentation showing that someone was using his credit card. Officer Sanchez could have subsequently contacted the merchant to determine if there was any evidence that would lead to the apprehension of the individual that committed the robbery.

H.J.P.'s ignorance of the procedure for reporting a crime does not constitute a failure to cooperate with law enforcement.

Considering all of the evidence, there is sufficient evidence that H.J.P. was a victim of a robbery and there is insufficient evidence that he failed to reasonably cooperate with law enforcement.

Order

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

Date: August 28, 2001

DEBORAH BAIN
Hearing Officer
California Victim Compensation
and Government Claims Board

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On October 19, 2001, the California Victim Compensation and Government Claims Board adopted the attached Decision as an Precedent Decision in the above-referenced matter. The Decision became effective on October 19, 2001.

Date: October 30, 2001

JANICE HILL
Acting Chief Counsel
California Victim Compensation
and Government Claims Board