

VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD AND DEPARTMENT OF CORRECTIONS AND REHABILITATION

Investigations of Improper Activities by State Employees, July 2005 Through December 2005

INVESTIGATIONS I2004-0983 AND I2005-1013
(REPORT I2006-1), MARCH 2006

Victim Compensation and Government Claims Board and Department of Corrections and Rehabilitation's responses as of November 2006

Investigative Highlight . . .

Victim Compensation and Government Claims Board and Department of Corrections and Rehabilitation made duplicate payments to an employee of nearly \$26,000.

We investigated and substantiated an allegation that the Victim Compensation and Government Claims Board (Board) improperly awarded payments to a physician at the California Department of Corrections and Rehabilitation (Corrections).

Finding: The Board and Corrections made duplicate payments on the physician's claims.

In January 2000 Corrections began paying a \$2,700 per month recruitment and retention bonus to Corrections' employees in the classification of chief psychiatrist (psychiatrist bonus). Between October 2000 and May 2002 a physician employed by Corrections filed multiple claims with both Corrections and the Board, stating that he was entitled to the psychiatrist bonus because he claimed he regularly devoted a portion of his work time to psychiatry. The physician received payments from both the Board and Corrections for essentially the same claim and ultimately received at least \$25,950 more than he was entitled to because of the duplicate payments. Further, although the Board and Corrections were aware that the physician was about to receive state funds to which he was not entitled before receiving his final payment and the physician himself directed the Board to reduce his claim on three separate occasions, neither entity adjusted the physician's final claim nor recovered the overpayment.

When the Board considered the physician's claims and made a determination regarding the amount to which he was entitled, the Board may have exceeded its legal authority, and violated its own policy. Moreover, when the Board paid the physician's claims, it relied on legal authority that allows it to order the payment of a claim "for

which no appropriation has been made.” It relied on this legal authority despite the fact that the department that had been ordered to pay this claim by the Department of Personnel Administration (DPA) did, in fact, have an appropriation of funds sufficient to satisfy this claim, and the Board was made aware of this fact before making the duplicate payments. Further, the Board reviewed this claim and determined the amount to which the physician was entitled in disregard of the advice of its own staff and notices from DPA that the Board lacked legal authority in this case.

It is well established that DPA is the state agency that has full authority related to the salaries and other entitlements, such as the retention bonus at issue here, of state employees. Further, Board staff recommended that it reject the claim for lack of authority to order Corrections to reclassify the physician’s position. However, Board members are not required to follow the recommendations of involved departments or its own staff and Board policy directs its staff to allow all claims against state agencies to be heard by the Board, regardless of whether the claim falls within the Board’s statutory authority.

Board’s Action: Partial corrective action taken.

The Board reported that it believes it had jurisdiction to hear the physician’s claims and again stated it did so under state law that allows the Board to hear claims when no statute or constitutional provision provides for a settlement. However, as previously mentioned, the fact that the physician also filed a grievance for essentially the same claim with Corrections and was awarded relief for that claim, clearly demonstrates that statutory relief was available in this case. Moreover, funds were readily available to pay this claim and the Board was informed of this fact prior to its payment of the physician’s claim.

The Board also reported that it has implemented changes that will prevent it from making overpayments in the future; however, these reported changes do not address the issue of the Board’s practice of allowing all claims against state agencies to be heard by the Board, regardless of whether there is other statutory relief available. Consequently, it appears that the Board still lacks the controls necessary to prevent it from hearing claims over which it lacks authority and possibly awarding additional duplicate payments in the future.

Corrections’ Action: Partial corrective action taken.

After we informed Corrections of the overpayment, it initiated action to attempt to recover the \$25,950 overpayment from the physician. As of the date of this report, Corrections reported it has recovered \$2,000 from the physician and is in the process of requiring him to reimburse the State approximately \$2,700 per month—the maximum amount allowed by law—until the total overpayment is collected.

➔ Corrections reported it could not pursue collecting the overpayment through payroll deductions because the overpayment was not a *payroll* overpayment. Corrections added that the physician is voluntarily making payments to the State; however, it was unable to tell us how much the physician is paying monthly or how much he has paid to this point.