

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

██████████, )  
 )  
Appellant, )  
 )  
v. )  
 )  
VIOLENT CRIMES COMEPNSATION )  
BOARD, )  
 )  
Appellee. )  
 )

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Appeal Case No. 4FA-15-██████████ CI

*Decision on Appeal*

**I. Introduction**

This matter is before this court on appeal from the Violent Crimes Compensation Board (“Board”).<sup>1</sup> Appellant, ██████████ (“██████████”) is seeking \$40,000<sup>2</sup> from the Board as a result of injuries she suffered resulting from a 1 January 2013 assault. This is essentially an appeal of the Board’s decision to grant ██████████ \$3,000 for medical expenses associated with the assault.

**II. Facts**

██████████ met A ██████████ J ██████████ (“J ██████████”) in October 2012, and saw him a total of two or three times.<sup>3</sup> On 30 December 2012, she received a phone call from J ██████████ who asked if he could stay at her house the following evening.<sup>4</sup> She agreed and he arrived at her residence around 11:00pm

<sup>1</sup> The Violent Crimes Compensation Board is a state administrative board which exists to help reduce the financial hardships caused by crime-related medical expenses or loss of income sustained by innocent victims of violent crimes in Alaska.

<sup>2</sup> The sum of \$40,000 is the maximum compensation permissible under AS 18.67.130(c).

<sup>3</sup> Application for Crime Victim Compensation, page 1

<sup>4</sup> Administrative Hearing Transcript, page 9, lines 8-10.

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on 31 December 2012.<sup>5</sup> That evening, they drank and smoked spice together before █████ went to bed.<sup>6</sup> At approximately noon on 1 January 2013 as she was bringing in firewood, J. █████ called her a bitch. █████ told him not to call her names in her house<sup>7</sup> and J. █████ struck █████ in the right temple/forehead with a glass bowl, breaking the bowl.<sup>8</sup> He then proceeded to strike her repeatedly in the head and stated he was going to kill her.<sup>9</sup> █████ contacted Alaska Troopers at 12:29pm and J. █████ left the residence on foot. Troopers arrived within 10 minutes and were unable to locate J. █████ during a half-hour search.<sup>10</sup> Troopers observed a large bump above █████'s right eye and a broken glass bowl inside the residence.<sup>11</sup> Charges for Assault IV were forwarded to the █████ District Attorney's Office.<sup>12</sup>

█████ made a claim to the Board on 3 August 2013 in which she alleged she received a head injury in January 2013 for which she did not seek medical treatment due to lack of funds. The Board denied her claim on the grounds that there were no expenses to compensate.<sup>13</sup> On 18 September 2013, █████ requested a hearing regarding the "closing" of her case.<sup>14</sup> On 2 October 2013, the Board referenced the matter to the Office of Administrative Hearings.<sup>15</sup> A hearing was held on 5 November 2013 in front of Administrative Law Judge Friedman.<sup>16</sup> The judge found that testimony by █████ at the hearing was consistent with the description of the assault in the

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<sup>5</sup> *Id.*, lines 10-11.; The ALJ found that █████ agreed █████ could spend the night at her house (See Administrative Hearing Report, page 1), however, in a 15 November 2013 letter to the ALJ, █████ states she never agreed █████ could spend the night. Whether █████ did or did not grant express permission permitting █████ to spend the night appears irrelevant in this present appeal, and this court finds only that he stayed the night of 31 December 2013 at █████' house.

<sup>6</sup> Administrative Hearing Transcript, page 20, lines 10-16.

<sup>7</sup> Administrative Hearing Transcript, page 20-21, lines 25 and 1.

<sup>8</sup> Administrative Hearing Transcript, page 10, lines 14-16.

<sup>9</sup> Administrative Hearing Transcript, page 21, lines 5-6.

<sup>10</sup> Police Report, page 3.

<sup>11</sup> *Id.*

<sup>12</sup> Police Report, page 1.

<sup>13</sup> Violent Crimes Compensation Board Administrator's Brief and Award Order Form dated 7 August 2013

<sup>14</sup> Postcard to Victim's Assistance dated 18 September 2013.

<sup>15</sup> Notice of Assignment dated 3 October 2013.

<sup>16</sup> Administrative Hearing Report dated 8 November 2013.

police report, with the exception of the amount of time spent drinking.<sup>17</sup> [REDACTED] also testified that she continued to suffer pain and other symptoms from her head injury, and that she hadn't seen a doctor as she could not afford it.<sup>18</sup> She also stated she believed she would benefit from an MRI to determine the nature and extent of the injury.<sup>19</sup>

Administrative Law Judge Friedman found the Board should pre-approve compensation for a physical examination and pre-approve an MRI or other appropriate diagnostic testing if approved by a doctor.<sup>20</sup> On 13 December 2013, the Board pre-approved funds in the amount of \$500 to be used towards [REDACTED] medical expenses and pre-approved funds in the amount of \$3,000 for an MRI if one was recommended by a doctor.<sup>21</sup>

The Board sent a letter to the [REDACTED] on 17 December 2013 regarding the Board's determination and the funds available for her use. [REDACTED] filed a Motion for Review of Tort on 2 January 2015 against the Board for their failure to provide services in her case.<sup>22</sup> [REDACTED] filed a civil complaint on 5 February 2015 against the Board, claiming that the Board failed to act to help or assist her and that it failed to provide her with services of any kind, and suing the Board for \$40,000.<sup>23</sup> On 3 April 2015, Kate Hudson ("Hudson"), Executive Director of the Board, sent [REDACTED] a letter which stated the Board learned [REDACTED] may have not received the 17 December 2013 letter advising her of her award for compensation. The letter then outlined [REDACTED] award of

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<sup>17</sup> Administrative Hearing Report, Page 2

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Administrative Hearing Report, page 3.

<sup>21</sup> Administrator's Brief dated 13 December 2013.

<sup>22</sup> Motion for Review of Tort by VCCB incident 1-2-2015 dated 2 January 2015.

<sup>23</sup> Civil Complaint dated 5 February 2015.



funds to use towards medical expenses, extended the deadline for use of those funds, and informed her of the appeal process.<sup>24</sup>

On 2 June 2015 this case was converted to an appeal at the Board's request.<sup>25</sup> On 13 August 2015 the Board sent a letter to ██████ advising her that the compensation the Board authorized for her use had been used in full. Hudson advised ██████ that any additional funding would have to be approved by the Board for further follow-up medical appointments, but that such funding would likely be granted.<sup>26</sup> To date, the Board has not received any further information from ██████ regarding follow-up appointments or other medical expenses.<sup>27</sup>

██████ filed a Notice of Appeal on 1 September 2015, restating her demand for \$40,000.<sup>28</sup> On 16 September 2015, ██████ filed a motion entitled "Opposition for Appellant Request for Fees" which the court treated as a motion to waive agency costs to prepare the record and granted.<sup>29</sup>

On 16 December 2015, ██████ filed a request for the agency record. On 9 December 2015, the Board filed a notice that the record had been provided to the court. The court then ordered the Board to provide ██████ with a copy of the record.<sup>30</sup>

On 26 January 2016, the court issued a notice that this case would be dismissed if ██████ failed to file a brief by 11 February 2016. On 29 January 2016, ██████ filed a document entitled, "Request and Order for Late Acceptance."<sup>31</sup> She stated that she chose not to file a brief, as she

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<sup>24</sup> Letter from Hudson to ██████ dated 3 April 2015.

<sup>25</sup> Order Converting Case to 602 Appeal dated 2 June 2015.

<sup>26</sup> Letter from Hudson to ██████ dated 13 August 2015.

<sup>27</sup> Appellee Brief dated 31 March 2016, page 4.

<sup>28</sup> Notice of Appeal dated 1 September 2015.

<sup>29</sup> Order Regarding Opposition to Appellant Requests for Fees dated 15 October 2015.

<sup>30</sup> Order Regarding Request for Agency Record dated 7 January 2016.

<sup>31</sup> Appellant filed a similar pleading on 11 February 2016.

already filed an opening statement. Under the appellate rules, an appellant cannot choose to not file a brief,<sup>32</sup> and the court gave her an extension to file an opening brief.<sup>33</sup> [REDACTED] filed a brief on 11 February 2016, which was refiled 2 March 2016. The Board filed a brief on 31 March 2016.

On 2 June 2016, [REDACTED] filed a motion for late acceptance for her response to the Board's brief. Her motion was granted and her response, as well as all other pleadings, was considered in the Court's determination.

### III. Standard of Review

Courts review an administrative agency's factual findings under the substantial evidence test.<sup>34</sup> "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"<sup>35</sup> An agency's decision "need not be the only possible solution to the problem, for it is not the function of the court to reweigh the evidence or choose between competing inferences, but only determine whether such evidence exists."<sup>36</sup> The agency's expertise puts it "in a better position than a court to make such determinations."<sup>37</sup> Accordingly, an agency's interpretation of its own regulation will not be reversed unless its interpretation is "plainly erroneous and inconsistent with the regulation."<sup>38</sup>

### IV. Arguments

Appellant's brief, filed 2 March 2016, states that [REDACTED] has pursued this case since its inception. Her brief shows her dissatisfaction with the lack of prosecution of the 1 January 2013

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<sup>32</sup> See, Appellate Rule 212(c)(10).

<sup>33</sup> Order Regarding Status of Appeal dated 14 February 2016.

<sup>34</sup> *Robertson v. American Mechanical, Inc.*, 54 P.3d 777, 779 (Alaska 2002).

<sup>35</sup> *Lindhag v. State, Dept. of Nat. Resources* 123 P.3d 948, 952 (Alaska 2005)(citing *Bradbury v. Chugach Elec. Assoc.*, 71 P.3d 901, 905 (Alaska 2003)).

<sup>36</sup> *Interior Paint Co. v. Rodgers*, 522 P.2d 164, 170 (Alaska 1974).

<sup>37</sup> *Weaver Bros., Inc. v. Alaska Transp. Comm'n*, 558 P.2d 819, 821 (Alaska 1978).

<sup>38</sup> *Bd. Of Trade, Inc. v. State, Dep't of Labor, Wage & Hour Admin*, 968 P.2d 86, 89 (Alaska 1998); see *Kuzmin v. State, Dep't of Labor, Wage & Hour Admin*, 223 P.3d 86,89 (Alaska 2009).

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assault and her perceived mishandling of the investigation by the Alaska State Troopers. Her brief does not specify her points on appeal, but in prior pleadings [REDACTED] has expressed her belief that the Board owes her compensation in the amount of \$40,000 related to the 1 January 2013 assault. This is essentially an appeal of the Board's decision to grant [REDACTED] \$3,000 for medical expenses associated with the assault. She moved for an expedited hearing/oral argument on these matters.

The Board argues that although it found [REDACTED] injuries were compensable, she is not automatically entitled to the maximum compensation of \$40,000. AS 18.67.110(a)(1) limits compensation paid by the Board to "expenses actually and reasonably incurred as a result of personal injury or death or the victim" and 2 AAC 80.050 sets forth six factors the Board uses to determine compensation. The Board contends that nothing in the record or in the communications between [REDACTED] and the Board shows that the Board failed to comply with those requirements or that [REDACTED] is entitled to \$40,000 compensation. It also states that it has reasonably applied the applicable statutes in determining [REDACTED] compensation.

## V. Analysis

This court has reviewed the pleadings, the hearing, and the agency record and finds that the Board's findings are appropriate. There is substantial evidence based on the record and [REDACTED] testimony to support the finding that an award of \$3,000 was appropriate for medical expenses and treatment for injuries [REDACTED] sustained during the 1 January 2013 assault. The court does not find merit in [REDACTED] argument that the Board failed to act or assist [REDACTED] throughout this matter, or that it failed to provide her with services. The court does not find that [REDACTED] is entitled to an award of \$40,000. There is evidence in the record that the Board contacted [REDACTED] to assist



her by extending the deadline for use of the award of funds, and also to explain what steps were necessary after the awarded funds were depleted.

In reviewing the pleadings, the hearing and the agency record, this court also finds that the Board did not exceed their authority in accepting the compensation recommendation of the Office of Administrative Hearings and determining the amount of funds available for [REDACTED] use. The Board's determination is consistent with its regulations and within the scope of its authority. The Board did not exceed its authority, and its interpretation of its own regulation is not plainly erroneous or inconsistent with its regulations.

**VI. Conclusion**

The court finds that substantial evidence exists to support the Commission's findings and that the Board did not exceed its authority in making its determination. The court additionally finds that the Appellant was treated fairly and that she was allowed ample opportunity to litigate extraneous issues.

The Court having reviewed the Administrative Record holds: The determination of The Violent Crimes Compensation Board is **UPHELD**. [REDACTED] appeal is therefore **DENIED**.

Dated at Fairbanks, Alaska this 19 day of June 2016.

[REDACTED]  
Michael P. McConahy  
Superior Court Judge

I certify that on 6/16/16  
copies of this form were sent to:  
CLEAR [REDACTED]

[REDACTED] - mail  
A60/Anch - mail  
VCCB - mail