

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

GARY ROBBINS,)
)
Plaintiff/Appellant,) C.A. No. N13A-05-012 ALR
)
v.)
)
)
VICTIMS' COMPENSATION)
ASSISTANCE PROGRAM,)
)
Defendant/Respondent.)

Submitted: September 5, 2013
Decided: November 20, 2013

**On Appeal from Decision of the Victims' Compensation Assistance Program
AFFIRMED**

MEMORANDUM OPINION

Garry Robbins, Wilmington, Delaware, *self-represented*

Ralph K. Durstein III, Deputy Attorney General, Wilmington, Delaware, *counsel for Appellee*

ROCANELLI, J.

This is an appeal by Gary Robbins (“Applicant”) from the Victims’ Compensation Assistance Program’s (“VCAP”) decision to deny Applicant’s claim. Following the death of Applicant’s son, Kevin Bell, Applicant made a claim with VCAP for reimbursement of funeral expenses. The claim was denied. Applicant appealed VCAP’s decision to the Appeals Board (“Board”). After a hearing, the Board voted unanimously to uphold VCAP’s decision. Accordingly, funeral expenses would not be paid by VCAP. Applicant appealed the Board’s decision to this Court. According to Applicant, his claim for funeral expenses meets the standard for VCAP compensation. Applicant also contends that the Board’s decision is not supported by substantial evidence.

Facts

On November 4, 2012, there was a shooting outside the Thunderguards Motorcycle Club (“Thunderguards”) located at 2800 Northeast Boulevard (“Clubhouse”). Thunderguards were hosting an event at the Clubhouse. Bell engaged in an altercation with a bouncer outside the Clubhouse. After the altercation with the bouncer, Bell crossed Northeast Boulevard away from the Clubhouse. A short time later, Bell returned and began walking towards the Clubhouse. Bell had a firearm and he fired several shots into the crowd gathered outside the Clubhouse. Individuals in the crowd outside the Clubhouse returned gunfire and Bell was shot. Several witnesses confirmed that Bell fired the initial shots.

The Board’s Decision

On November 26, 2012, VCAP denied Applicant’s claim finding that Bell’s actions had either directly or indirectly lead to his death. Applicant appealed VCAP’s

decision to the Board. On February 19, 2013, a hearing was held and the Board voted unanimously to uphold VCAP's decision. The Board concluded that Bell's behavior had either directly or indirectly contributed to his death. Accordingly, funeral expenses would not be paid by VCAP.

Standard of Review

This Court's scope of review on appeals from the Board is limited to a review of the factual findings and to determine whether the Board abused its discretion or committed an error of law.¹ This Court must uphold the Board's decision unless the Board acted arbitrarily, committed an error of law or made findings of fact unsupported by substantial evidence.² It is for the Board, not this Court, to determine the credibility of witnesses.³ This Court will not substitute its judgment for that of the Board.⁴ If the party who bears the burden of proof fails to meet its burden to convince the Board the claim is compensable, the denial may be overturned only for errors of law, inconsistencies, or capricious disregard of competent evidence.⁵

Discussion

Applicant has appealed the Board's decision to deny Applicant's claim for payment of funeral expenses. Applicant contends that the Board's decision was not supported by substantial evidence. Further, in Applicant's Reply Brief, Applicant requested that this Court not accept VCAP's Answering Brief because it was not timely

¹ *Cameron v. Delaware Violent Crimes Compensation Bd.*, 2008 WL 2690360, at *1 (May 20, 2008 Del. Super.).

² *Campbell v. Delaware Violent Crimes Compensation Bd.*, 1992 WL 19971, at *1 (Jan. 14, 1992 Del. Super.).

³ *Id.* at *3.

⁴ *Id.*

⁵ *Flood v. Violent Crimes Compensation Bd.*, 2001 WL 659826, at *1 (Del. Super. May 31, 2001).

filed. Finally, Applicant has requested that the Court appoint counsel to assist Applicant in this matter.

A. Timing of VCAP's Answering Brief

Applicant contends that VCAP's Answering Brief should be rejected because it was not filed by the August 19, 2013 filing date set by the scheduling order. However, on August 20, 2013, this Court issued a Final Delinquent Brief Notice to VCAP, pursuant to Superior Court Rule 107(f), and extended an additional ten (10) days for VCAP's submission. VCAP's answering brief was filed on August 20, 2013. Accordingly, VCAP's Answering Brief was timely filed and will be considered by this Court.

B. Applicant's request for Court-appointed counsel

Applicant requested for the Court to appoint counsel to prosecute this appeal. In a civil case where there is no possibility of the civil litigant being deprived his or her personal liberty as a direct result of the litigation, there is no requirement to appoint counsel in the absence of special and compelling circumstances.⁶ Further, there is no decisional law that is instructive on the facts of this case. Delaware courts have addressed this issue in the context of insuring indigent incarcerated prisoners' right to the civil justice system and termination of parental rights. However, the concerns in those cases are not applicable in this case.

Here, Applicant has access to the courts and has demonstrated his ability to file an appeal, and make written submissions in support of his claim. There are no special or compelling circumstances that would warrant appointment of counsel. The Court is

⁶ *State, Ins. Cov. Office v. Rainer*, 2010 WL 2541665, at *1 (Del. Super. Jun. 22, 2010).

satisfied that no prejudice will result from Applicant being self-represented. The extraordinary remedy of court-appointed counsel is not warranted.

C. The Board's Findings and Decision

Crime victims may file claims with VCAP for indemnification of all pecuniary loss which is a direct result of a crime.⁷ The individual making a claim with VCAP bears the burden of proving that he or she suffered a loss or incurred an expense as a result of violent crime that is compensable according to the statutory authority and the Rules of VCAP.⁸

VCAP is not compelled to provide compensation in any case nor is it required to award the full amount claimed.⁹ In determining whether to make an award, VCAP may consider any circumstances it deems relevant, including the behavior of the victim, which directly or indirectly contributed to injury or death.¹⁰ A claim may be denied or reduced if the victim, either through negligence or through willful and unlawful conduct, substantially provoked or aggravated the incident giving rise to the injury.¹¹

VCAP has broad discretion to decide whether a claim is compensable.¹² In *Newman*, this Court upheld a denial by the Board of the claim filed by the estate of a passenger killed while riding in a vehicle with a drunk driver.¹³ The Court reasoned that it is not the role of the Court to retry the facts or reconsider the Board's decision if there

⁷ 11 Del. C. §9009.

⁸ 1 Del. Admin. C. § 301-14.1 to -14.2.

⁹ The Agency is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Agency may make its award of compensation dependent upon such condition or conditions as it deems desirable. 11 Del. C. §9009(3).

¹⁰ 11 Del. C. §9010(b).

¹¹ 11 Del. C. §9010(c).

¹² *Newman v. Delaware Violent Crimes Compensation Bd.*, 1993 WL 54447, at *2 (Del. Super. Feb. 9, 1993).

¹³ *Id.* at *1.

is substantial evidence to support the Board's finding that the passenger was not entitled to compensation due to his own actions.¹⁴

In this case before the Court, Wilmington Police Department Detective Malcolm Stoddard, the investigating officer, testified at the Board hearing regarding the police investigation of the November 4, 2012 shooting at the Clubhouse. According to Detective Stoddard, several independent witnesses reported that Bell was the aggressor. The record shows that, after considering all information presented, the Board concluded Bell was not entitled to compensation due to his own actions. It is the role of VCAP, and not this Court, to determine the credibility of the witnesses. The Board did not make an error of law in reaching its decision and this Court finds that there is substantial evidence to support the Board's decision. Further, VCAP did not act arbitrarily in reaching its decision in this matter; its decision was supported by the record evidence.

CONCLUSION

The Court has examined the record and considered Applicant's contentions. VCAP did not commit any errors of law, did not act arbitrarily, and VCAP's findings are supported by substantial evidence. **Accordingly, VCAP's decision must be and hereby is AFFIRMED.**

IT IS SO ORDERED this 20th day of November 2013.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

¹⁴ *Id.*