

Sakellis, Anthony

CRIME VICTIMS COMPENSATION

Limitation of benefits for felony conviction of the victim (RCW 7.68.070(19))

RCW 7.68.070(19) limits benefits to victims who have been convicted of certain crimes before or after applying for Crime Victims' benefits and have not completely satisfied all legal obligations owed prior to applying for the benefits. Unpaid legal financial obligations incurred after applying for benefits does not defeat eligibility under the plain meaning of the statute.*In re Anthony Sakellis*, BIIA Dec., 10 C1058 (2011)

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: ANTHONY SAKELLIS**) **DOCKET NO. 10 C1058**
2 **CLAIM NO. VL-31718**) **DECISION AND ORDER**
3 _____)

4 **APPEARANCES:**

5 Claimant, Anthony Sakellis, by
6 Law Office of Todd R. Renda, per
7 Todd R. Renda

8 Department of Labor and Industries, by
9 The Office of the Attorney General, per
10 W. Martin Newman, Assistant

11 The claimant, Anthony Sakellis, filed an appeal with the Board of Industrial Insurance
12 Appeals on September 10, 2010, from an order of the Department of Labor and Industries dated
13 June 21, 2010. In this order, the Department declared that Mr. Sakellis's claim was closed because
14 he had been convicted of a violent offense under RCW 9.94A.030 or a crime against persons under
15 RCW 9.94A.411, and had an unpaid legal financial obligation. The Department order is
16 **REVERSED AND REMANDED.**

17 **DECISION**

18 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for
19 review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and
20 Order issued on June 10, 2011, in which the industrial appeals judge affirmed the Department order
21 dated June 21, 2010.

22 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
23 no prejudicial error was committed. The rulings are affirmed.

24 The parties agree that this appeal does not present any genuine issue as to any material
25 fact. The facts are as follows.

26 Mr. Sakellis was injured on April 27, 2006, as the result of a criminal act that made him
27 eligible for benefits under RCW 7.68. He filed his Application for Benefits on April 27, 2006. The
28 Department allowed the claim on June 29, 2006.

29 On December 11, 2006, Mr. Sakellis committed the crime of Assault in the Second Degree
30 while armed with a firearm in violation of RCW 9A.36.021(1)(c). The Pierce County Prosecuting
31 Attorney charged him with the crime on December 14, 2006, and he was convicted in Pierce
32

1 County Superior Court on February 15, 2008. As a result, Mr. Sakellis was sentenced to
2 120 months confinement in prison, and was assessed legal financial obligations in the sum of
3 \$2,800. He has not paid any part of the financial obligation.

4 In Claimant's Response to Department's Motion for Summary Judgment, Mr. Sakellis
5 asserted he did not have an unpaid legal obligation as that term is used in RCW 7.68.070(19) prior
6 to June 29, 2006. The Department did not challenge the statement. When a pleading is properly
7 made and it is not contradicted, it may be taken as factual for purposes of a ruling on a motion for
8 summary judgment. *Preston v. Duncan*, 55 Wn.2d 678 (1960).

9 On June 21, 2010, the Department of Labor and Industries issued an order in which it
10 closed Mr. Sakellis's claim because he had been convicted of a violent offense under
11 RCW 9.94A.030, or a crime against persons under RCW 9.94A.411, and had an unpaid legal
12 financial obligation. On September 10, 2010, Mr. Sakellis filed a Notice of Appeal with the Board
13 from the Department order.

14 Against this factual background, on April 1, 2011, the Department filed Department's Motion
15 for Summary Judgment (CR 56) and Supporting Affidavit. Mr. Sakellis filed Claimant's Motion for
16 Summary Judgment re: Permanent Partial Disability on April 5, 2011. The Department filed its
17 response to Mr. Sakellis's motion on May 5, 2011, and Mr. Sakellis filed his reply to the
18 Department's motion on May 13, 2011. A hearing on the motions was held on May 20, 2011, and
19 Exhibit Nos. 1, 2, and 3 were admitted.

20 We agree with the parties that in accordance with CR 56, the issue this appeal presents is
21 appropriately resolved by ruling on their respective motions for summary judgment. *See, Romo v.*
22 *Department of Labor & Indus.*, 92 Wn. App. 348 (1988). In ruling on the motions, we have taken
23 into consideration the Board's record, which includes the motions and affidavits and the exhibits
24 referenced above.

25 In 2010, the Washington State Legislature amended RCW 7.68.070(19) so that it states:

26 A victim is not eligible for benefits under this act if such victim:

27 (a) Has been convicted of a felony offense within five years preceding
28 the criminal act for which they are applying where the felony offense is a
29 violent offense under RCW 9.94A.030 or a crime against persons under
30 RCW 9.94A.411, or is convicted of such felony offense after applying;
and

31 (b) Has not completely satisfied all legal financial obligations owed prior
32 to applying for benefits.

1 The Department contends that the statute is ambiguous because subsection (b) conflicts
2 with the provisions of subsection (a). It notes that it is impossible for a class of felons who commit
3 crimes after applying for crime victims' compensation benefits to have unpaid legal financial
4 obligations for their post-conviction crimes before they applied for benefits.

5 Because, the Department says, the statute is ambiguous the Board must construe its
6 provisions so as to effectuate legislative intent. It posits that the legislature's purpose was to make
7 ineligible for benefits any felon who committed a relevant crime in the five years prior to making
8 application for benefits and felons who committed crimes after making application for crime victim
9 compensation benefits and who have not completely satisfied all legal financial obligations arising
10 out the felonies for which they were convicted.

11 Mr. Sakellis argues that the meaning of the statute is clear and that the plain meaning of the
12 words it contains must be given effect.

13 Rules of statutory construction require that if the words of a statute, given their ordinary
14 meaning, are clear and unambiguous, the meaning of the statute must be derived from the
15 language of the statute itself. *Harmon v. DSHS*, 134 Wn.2d 523 (1998); *Christensen v. Ellsworth*,
16 162 Wn.2d 365 (2007). Statutory language is ambiguous only when it is susceptible to two
17 reasonable interpretations. *Harmon*; *Cockle v. Department of Labor & Indus.*, 142 Wn.2d 801
18 (2001). We discern no ambiguity in the meaning of RCW 7.68.070(19). The statute is clear and
19 unambiguous, and normal rules of statutory construction require us to grant relief to Mr. Sakellis.

20 We are aware that in response to the Department's Motion for Summary Judgment,
21 Mr. Sakellis filed a motion for partial summary judgment. Our courts have many times granted
22 summary judgment relief to a non-moving party when the record clearly establishes that no genuine
23 issue of material fact exists and the non-moving party is entitled to judgment as a matter of law.
24 *See, Leland v. Frogge*, 71 Wn.2d 197 (1967); *Impehoven v. Department of Revenue*, 120 Wn.2d
25 357 (1992). The record before us clearly establishes Mr. Sakellis's right to judgment as a matter of
26 law.

27 The Department's Motion for Summary Judgment is denied. Because Mr. Sakellis is
28 entitled to judgment as a matter of law, the Department order dated June 21, 2010, is reversed and
29 this matter is remanded to the Department to take such other and further action as the law and the
30 facts dictate.

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32

1 **FINDINGS OF FACT**

- 2 1. On April 27, 2006, Anthony Sakellis filed an Application for Benefits
3 under the provisions of the Innocent Victims of Crime Act, RCW 7.68,
4 with the Department of Labor and Industries. The Department allowed
5 the claim on June 29, 2006. The Department closed the claim on
6 March 17, 2010, but Mr. Sakellis protested the order on June 10, 2010.
7 On June 21, 2010, the Department issued an order in which it declared
8 that Mr. Sakellis's claim was closed because he had been convicted of a
9 violent offense under RCW 9.94A.030 or a crime against persons under
10 RCW 9.94A.411 and had an unpaid legal financial obligation. On
11 September 10, 2010, Mr. Sakellis filed a Notice of Appeal with the Board
12 of Industrial Insurance Appeals. The Board agreed to hear the appeal
13 and on September 23, 2010, under Docket No. 10C 1058, it issued
14 Order Granting Appeal.
- 15 2. Mr. Sakellis was injured on April 27, 2006, as the result of a criminal act
16 regarding which he was an innocent victim.
- 17 3. Mr. Sakellis filed a claim for benefits with the Department under
18 RCW 7.68 on April 27, 2006.
- 19 4. On December 11, 2006, Mr. Sakellis committed the crime of Assault in
20 the Second Degree while armed with a firearm in violation of
21 RCW 9A.36.021(1)(c), and he was convicted of the crime in Pierce
22 County Superior Court on February 15, 2008.
- 23 5. As a result of his conviction, Mr. Sakellis was sentenced to 120 months
24 confinement in prison, and was assessed legal financial obligations in
25 the sum of \$2,800.
- 26 6. Mr. Sakellis has not paid any part of the financial obligation.
- 27 7. Mr. Sakellis did not have any legal financial obligations prior to June 29,
28 2006.
- 29 8. The legal pleadings, affidavits, and exhibits the parties submitted
30 demonstrate that this appeal does not present any genuine issue as to
31 any material fact.

32 **CONCLUSIONS OF LAW**

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties to and the subject matter of this appeal.
2. Mr. Sakellis is entitled to judgment as a matter of law as contemplated by CR 56.
3. As of June 29, 2006, Mr. Sakellis did not have any legal financial obligation.

1 4. The order of the Department of Labor and Industries dated June 21,
2 2010, is incorrect and is reversed. This matter is remanded to the
3 Department with directions to take such other and further action as the
4 law and the facts dictate.

5 Dated: July 20, 2011.

6 BOARD OF INDUSTRIAL INSURANCE APPEALS

7
8 /s/ _____
9 DAVID E. THREEEDY Chairperson

10
11 /s/ _____
12 FRANK E. FENNERTY, JR. Member

13
14 /s/ _____
15 LARRY DITTMAN Member