

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY

ANTHONY WHITE, : C.A. No. 06A-03-002  
Appellant, :  
v. :  
STATE OF DELAWARE :  
VIOLENT CRIMES COMPENSATION :  
BOARD, :  
Appellee. :

O R D E R

1) Pending before the Court are an appeal which appellant Anthony White (“appellant”) has filed from decisions of the Violent Crimes Compensation Board (“VCCB”) and a motion to proceed in forma pauperis.

2) The motion to proceed in forma pauperis is granted. However, that does not mean that the appeal proceeds. Instead, the Court reviews the pleadings to determine if the appeal should go forward. 10 Del. C. § 8803(b).

3) Appellant was the victim of a crime and has submitted a number of claims to the VCCB. The procedural histories regarding these claims are summarized below.

4) On July 26, 2005, the VCCB authorized an award to appellant in the amount of \$6,245.77 for prescription expenses and medical expenses. The VCCB also instructed appellant to submit any loss of earnings documentation within thirty (30) days. The order, which was released on August 3,

2005, explained to appellant that in order to seek future losses, he must submit a request to reopen his claim within two (2) years from the date of the authorization. This order, **as well as all orders sent to appellant (other than the order issued after a live hearing)**, contained the following paragraphs:

IF THE DECISION IS ACCEPTABLE PLEASE SIGN, HAVE NOTARIZED, AND RETURN THE ENCLOSED RIGHT OF APPEAL. APPLICABLE PAYMENTS WILL BE RELEASED WITHIN THIRTY (30) DAYS FROM THE RECEIPT OF THE WAIVER.

IF THE DECISION IS NOT ACCEPTABLE, THE CLAIMANT MUST FORWARD A WRITTEN REQUEST FOR A HEARING WITH THE BOARD. THE REQUEST MUST OUTLINE THE REASON(S) FOR DISPUTE, AND MUST BE RECEIVED BY THIS OFFICE WITHIN FIFTEEN (15) DAYS FROM THE RELEASE DATE AT THE BOTTOM OF THIS DOCUMENT.

5) On August 18, 2005, appellant requested a live hearing on this matter, in particular on the portion of the decision denying him loss of earnings. The VCCB held a hearing and, in a decision authorized on October 19, 2005 and released on October 26, 2005, the VCCB decided to give appellant thirty (30) days to submit the required documentation for loss of earnings. The decision also stated: "IF THE DECISION IS NOT ACCEPTABLE, THE CLAIMANT MAY APPEAL TO THE SUPERIOR COURT WITHIN THIRTY (30) DAYS OF THE DECISION OF THE BOARD, ANY APPEAL TO SUPERIOR COURT SHALL NOT BE DE NOVO." Appellant signed a right of appeal waiver stating that the October 19, 2005, decision was completely acceptable to him. In an order authorized on November 29, 2005 and released on December 7, 2005, the Board issued its final decision on the loss of earnings issue, ruling that since appellant had not provided documentation on loss of earnings within thirty (30) days, the VCCB was denying the request for loss of earnings.

6) Meanwhile, back in August, 2005, appellant, while pursuing the live hearing noted above,

sought to reopen to recover additional expenses. In an order authorized on August 15, 2005 and released on August 23, 2005, the VCCB awarded appellant \$510.97 for medical expenses and out-of-pocket prescription costs. The VCCB denied him the request for loss of earnings because no payroll records or pay stubs were submitted and because the employer questionnaire stated appellant had not been at work prior to the victimization.

7) In January, 2006, appellant sought to reopen his case to address unpaid medical expenses and mileage expenses for doctor's visits. In a decision authorized on January 17, 2006 and released on February 8, 2006, the VCCB awarded him \$19.46 for medical expenses and \$688.64 for mileage, for a total of \$708.10.

8) Appellant thereafter sought to reopen his case to address rehabilitation expenses, out-of-pocket prescription expenses, and a medical shower chair. In a decision authorized on February 21, 2006, and released on February 28, 2006, the VCCB awarded him \$137.00 for physical therapy expenses. In this decision, the VCCB approved an award of \$52.99 for outstanding expenses to buy a shower chair pending insurance settlement from Medicare; appellant was instructed to notify the VCCB if any outstanding balances remained after the insurance settlement. The VCCB approved \$56.56 for out-of-pocket prescription expenses pending documentation from the treating physician that the expense was crime-related. With regard to appellant's request for payment for a gym membership and rehabilitation, the VCCB ruled it would pay an initiation fee of \$49.00, \$49.00 for the first month, and an assessment fee of \$39.00, provided appellant obtains a note from his treating physician that a personal trainer is necessary for his rehabilitation and he submits the required documentation.

9) On March 10, 2006, appellant filed the pending appeal with this Court. His Notice of

Appeal states he is filing an appeal of the Board's decisions of October 18 [sic], 2005, January 17, 2006, and February 21, 2006. The grounds are:

- 1) Board fail [sic] to keep commitment as agreed in Board Hearing
- 2) Fail to pay some medical expenses, loss wages, prescriptions [sic] drugs, pain and suffering offer of 25,000 and 25,000 for medical expenses, \$50,000 total.

10) The statutory framework for presenting claims to the VCCB and for appeals therefrom appears in Chapter 90 of Title 11, Del. C. First, the claimant submits his or her claims to the VCCB and that entity investigates the claim(s) and renders a decision on the request(s). 11 Del. C. § 9008(a).<sup>1</sup> The claimant, if dissatisfied, may request from the VCCB a hearing on that decision. 11 Del. C. § 9008(b).<sup>2</sup> If the claimant requests a hearing, then a hearing is held before the VCCB and

---

<sup>1</sup>In 11 Del. C. § 9008(a), it is provided in pertinent part:

(a) \*\*\* The Board shall initiate an investigation of the claim within 30 days of the filing of the claim. After this investigation, the Board shall render a decision on whether or not to award compensation to the claimant, and if an award is made, the amount of that award. The Board shall immediately mail a copy of its decision to the claimant, together with written notice that if claimant is dissatisfied with the Board's decision then claimant must, within 15 days after the date the Board's decision is mailed, request a hearing before the Board, and that if such request is not timely made, then the Board's decision shall be final and not appealable to the Superior Court, notwithstanding § 9005(3) of this title.

<sup>2</sup>In 11 Del. C. § 9008(b), it is provided in pertinent part:

If the claimant is dissatisfied with the Board's decision, the claimant may, within 15 days after the date the decision is mailed, request a hearing before the Board. If no decision is requested within 15 days after the date the Board's decision is mailed, the Board's decision shall be final and not appealable to the Superior Court, notwithstanding § 9005(3) of this title. If a hearing is timely requested, the Board shall fix the time and place for a hearing. \*\*\* At the hearing, the claimant may present evidence to the Board to show why the Board's decision should be reversed or modified. Within 90 days of the conclusion of any and all hearings on the matter, the Board shall mailed to the claimant a statement of its final decision to award or deny the claim and a statement of any conditions under which the claim shall be awarded. The Board may affirm, reverse or modify its initial decision.

the VCCB issues a decision. Id. That decision, and that decision only, is appealable to this Court. 11 Del. C. § 9005(3).<sup>3</sup> The claimant has thirty (30) days from the mailing of the decision rendered after a live hearing to file an appeal to this Court. Id.

11) The appeal to this Court from the October 19, 2005, decision, which was mailed on October 26, 2005, is time-barred. More than thirty (30) days had passed from October 26, 2005, when appellant filed the appeal on March 10, 2006.

12) Appellant also is barred from appealing the decisions of January 17, 2006, and February 21, 2006, because he failed to seek a hearing before the VCCB in accordance with 11 Del. C. § 9008(b). Appellant cannot plead ignorance of the procedure. The notices clearly instructed him on the procedure to follow and he followed that procedure on at least one occasion.

13) Since appellant did not follow the correct procedure for seeking a review of the VCCB awards which he appeals herein, his appeal is barred. Accordingly, the Court dismisses the appeal.

IT IS SO ORDERED THIS \_\_\_\_\_ DAY OF MAY, 2006.

---

JUDGE

cc: Prothonotary's Office  
Anthony White  
Department of Justice

---

<sup>3</sup>In 11 Del. C. § 9005(3), it is provided in pertinent part:

\*\*\* Any claimant who is aggrieved by the Board's decision concerning compensation or any conditions attached to the award of such compensation may appeal to the Superior Court within 30 days following the date the decision of the Board is mailed to the claimant. Any appeal to Superior Court shall not be de novo.