

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

DERRICK A. SANDERS,

Petitioner- Appellant

V.

Case No. 2021AP373

Wisconsin Claims Board,

Respondent- Respondent

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JAN 24 2022

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

PETITIONER'S REPLY BRIEF

NOW COMES, Petitioner, Derrick A. Sanders, pro se, with his Reply Brief, in support of his petition to reverse the Respondent's Feb. 12, 2020, and Mar. 31, 2020 decisions and in response to Respondent's brief filed on December 1, 2021.

ARGUMENT

The Petitioner has no objection to the alleged facts and events described by the Respondent's Introduction section of their brief, the Statement of The Issues, and the Factual and Procedural background (**Resp. Br. pgs. 6- 19**), and in order to be brief, will incorporate them as his own and present any refutations or additional facts in his Reply that will be set forth below.

I. Because The Claims Board determined that the statutory maximum constituted appropriate compensation for Sanders, it did not need to address additional compensation.

Respondent erroneously believes, and advances such belief in its brief, that because the Claims Board awarded Petitioner the statutory maximum amount of \$25,000, it did not need to address additional compensation, such belief is false.

According to the Claims Board rules, a unanimous vote is needed to award the statutory maximum amount of \$25,000, whereas, to make a recommendation to the legislature for additional damages, a unanimous vote is not required. Put another way, before the Board can even address additional compensation, it must first unanimously agree to the statutory amount.

Petitioner brings to this Court's attention the fact that in the instant case the Board, after receiving Petitioner's claim, needed an additional hearing to arrive at its conclusion. During such a hearing, the Board inquired only about Petitioner's additional compensation claim. Such actions are proof that the Board, contrary to what it is now stating, did in fact have concerns and thus addressed Petitioner's additional compensation claim.

Thus, it must be answered, what took place after the Board inquired about Petitioner's additional compensation? Did the Board as required vote on the issue, or did it fail to address it? Because we do not have the answer to such a question, the Court should not assume that a unanimous vote to award the statutory compensation meant the Board did not address the additional compensation claim. Failure to find out if another vote was taken, especially after the Board admits that it needed another hearing to address the additional compensation claim, leaves the Court unaware if proper procedure was followed.

II. Respondent's contention that Petitioner cannot show that the Claims Board engaged in any ex parte communication with the District Attorney's office that prejudiced him is false.

According to Black's Law Dictionary, **Ex parte communication** is defined as: *any material oral or written communication relevant to the merits of an adjudicatory proceeding that was on the record nor on reasonable prior notice to all parties that takes place between: (i) An interested person outside the Board (including such parties counsel); and (ii) The administrative law judge handling that proceeding, a member of the Board, or a decisional employee.*

Respondent erroneously classified the communication between the Board and the District Attorney as the requirement from Wis. Stat. §775.05(2), such communication is not the case.

On April 1, 2019, The Board fulfilled the requirements of Wis. Stat. 775.05(2) when it sent a letter to the District Attorney. The District Attorney replied that "based upon the review of his facts surrounding the crime and Mr. Sanders' petition for compensation, the Milwaukee District Attorney's Office does not oppose his petition." The fact that the District Attorney stated it reviewed all the facts and did not oppose Petitioner's claim, lends no ambiguity and did not need clarification.

Thus, once again, if the Board did not address Petitioner's additional compensation claim, as it said it did not, why did it need to contact the D.A. office to receive 'clarification?'

Petitioner was prejudiced by the fact that when the Board did contact the D.A.'s office, for the second time without Petitioner's knowledge, the D.A.'s response was not only different, but it also contained false facts which the Board relied upon to make its decision.

According to Wis. Stat. 16.007 (2), which reads, "*except as provided in s.901.05 the board shall not be bound by common law or statutory rules of evidence, but shall admit all testimony having reasonable probative value excluding that which is immaterial, irrelevant, or unduly repetitive. The Board may take notice of any generally recognized fact or established technical or scientific fact, but parties shall be notified either before or during hearing or by full reference in preliminary reports, or otherwise, of the facts so noticed, and the parties shall be afforded the opportunity to contest the validity of the official notice.*

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Petitioner's argument is plain and clear, he was not informed about the communication between The Board and the D.A.'s office before or during his hearing. Within such communication, false statements and facts were made and the Board utilized such facts to reach its decision. Petitioner was denied the opportunity to contest such facts. While Petitioner will not rehash what was said, this Court should decide if such communication was required and if Petitioner did in fact have the opportunity to contest the facts within such communication.

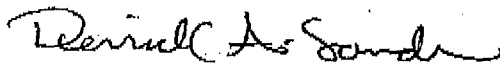
CONCLUSION

Wherefore, the reasons set above, the Petitioner stands by and reasserts his claims raised in The Brief in Chief, and moves this Court to deny the Respondent's brief, and to reverse the Respondent's Feb. 12, 2020 and March 31, 2020 decisions.

Petitioner prays that the Court grants said relief in the interest of justice.

Dated this 12 day of January, 2022

Respectfully Submitted,



Derrick A. Sanders

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JAN 25 2022

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