



COMPLIANCE REVIEW REPORT

CALIFORNIA VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

Compliance Review Unit
State Personnel Board
June 30, 2015

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Victim Compensation and Government Claims Board (VCGCB) personnel practices in the areas of examinations, appointments, EEO, and PSC's from July 1, 2013, through March 31, 2014. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Job Analyses Were Not Developed or Used for the Examination Process	Very Serious
Examinations	Examination Documentation Was Not Kept For the Appropriate Amount of Time	Serious
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Serious
Appointments	Applications Were Not Date Stamped	Non-serious or Technical

Area	Finding	Severity
Equal Employment Opportunity	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contracts Complied With Procedural Requirements	In Compliance

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The VCGCB administers two programs. The first is the California Victim Compensation Program (CalVCP), which provides eligible victims of violent crime with reimbursement for many crime-related expenses. CalVCP funding comes from restitution paid by criminal offenders through fines, orders, penalty assessments, and federal matching funds. The second program administered by the VCGCB is the Government Claims Program (GCP) which resolves claims against the state. In most cases, a person who is considering suing the state is required to first seek an administrative remedy with the GCP. The GCP is supported by a \$25 filing fee and a surcharge paid by state agencies on approved claims.

The VCGCB was first established in 1911, and was known as the Board of Control. It was responsible for supervising the business affairs of all state departments, hospitals, prisons, reformatories, boards, commissions, bureaus, and the Department of Public Accounting. In 1927, its oversight role ended. Thereafter, its duties included the adoptions of rules and regulations governing the presentation and audit of contract or tort claims. Its duties were expanded in 1963 with the enactment of the Torts Claims Act, which the VCGCB administers on behalf of the state. In 1965, California created the nation's first Victim Compensation Program. Responsibility for this program was transferred to the VCGCB in 1967 and has since become its largest program.

Today the VCGCB has 270 positions and is also responsible for handling bid protests, handling claims of erroneously convicted felons, administering the California State Employees Charitable Campaign, setting rates for travel expenses for elected state

officials and the judiciary, establishing per diem rates for members of the Legislature, and administering both the Good Samaritan Act and the Missing Children Reward Program.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing VCGCB's examinations, appointments, EEO program, and PSC's from July 1, 2013, through March 31, 2014. The primary objective of the review was to determine if the VCGCB personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of VCGCB examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the VCGCB provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action forms, vacancy postings, application, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the VCGCB EEO program included examining written EEO policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate VCGCB staff.

VCGCB PSC's were also reviewed. The VCGCB contracted for IT Consulting, and a Trauma Recovery Center.¹ It was beyond the scope of the compliance review to make conclusions as to whether VCGCB justifications for the contracts were legally sufficient. The review was limited to whether VCGCB practices, policies, and procedures relative to PSC's complied with procedural requirements.

On May 21, 2015, an exit conference was held with the VCGCB to explain and discuss the CRU's initial findings and recommendations. The VCGCB was given until June 18, 2015 to submit a written response to the CRU's draft report. On June 18, 2015, the

¹If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

CRU received and carefully reviewed the response, which is attached to this final compliance report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed in the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the VCGCB conducted three examinations. The CRU reviewed three of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Accounting Officer (Specialist)	Departmental Promotional	Education & Experience (E&E) ²	7/26/2013	4

² In an education and experience (E&E) examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Associate Personnel Analyst	Departmental Promotional	E&E	8/22/2013	6
Staff Services Analyst	Transfer	Written ³	9/10/2013	8

FINDING NO. 1 – Job Analyses Were Not Developed or Used for the Examination Process

Summary: A job analysis is required for all of the civil service examinations. Out of three of the examinations reviewed, two examinations were administered without job analyses. Specifically, both E & E examinations were conducted without a job analyses; whereas, the written examination was administered with a job analysis. Without copies of the job analyses to review, the CRU is unable to determine if the civil service examinations were administered utilizing job-related examination procedures as required by the Merit Selection Manual (MSM). The two examinations without a job analyses are listed below:

Classification	List Active Date	List Expiration Date	No. of Eligibles
Accounting Officer (Specialist)	7/31/2013	7/31/2014	2
Associate Personnel Analyst	8/28/2013	8/28/2014	1

Criteria: The Merit Selection Manual (MSM), which is incorporated in California Code of Regulations, title 2, § 50, mandates the development and use of a job analysis for the examination process. A “job analysis shall serve as the primary basis for demonstrating and documenting the job-relatedness of examination processes conducted for the establishment of eligible lists within the State’s civil service.” (MSM (Oct. 2003), § 2200, p. 2.) The MSM requires that job analyses adhere to the legal and professional standards

³ A written examination is a testing procedure in which candidates’ job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

outlined in the job analysis section of the MSM, and that certain elements must be included in the job analysis studies. (*Ibid.*) Those requirements include the following: (1) that the job analysis be performed for the job for which the subsequent selection procedure is developed and used; (2) the methodology utilized be described and documented; (3) the job analytic data be collected from a variety of current sources; (4) job tasks be specified in terms of importance or criticality, and their frequency of performance; (5) and job tasks must be sufficiently detailed to derive the requisite knowledge, skills, abilities (KSAs), and personal characteristics that are required to perform the essential tasks and functions of the job classification. (MSM, § 2200, pp. 2-3.)

Severity: Very Serious. The examinations may not have been job-related or legally defensible. However, since the lists have already expired and the appointments are more than a year old, nothing further needs to be done with respect to these two examinations.

Cause: The VCGCB states, “we were under the assumption that a full job analysis was not required for Education and Experience examinations. In the future, we will ensure job analyses are completed regardless of the type of examination, and that appropriate documentation is maintained in accordance with the Merit Selection Manual.”

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the VCGCB submit to the CRU a written corrective action plan that the department will implement to ensure that each examination is created and developed based upon a job analysis that meets the requirements of the MSM. Furthermore, the CRU finds the appointments that were made from the examinations that were administered without a job analysis were made in good faith, were not the fault of the appointed employees, and did not merit being voided.

FINDING NO. 2 – Examination Documentation Was Not Kept For the Appropriate Amount of Time

Summary: The VCGCB failed to retain examination materials for the mandated two-year retention period as outlined in Government Code, section 12946. Specifically, for the Accounting Officer (Specialist) and Associate Personnel Analyst examinations, the VCGCB failed to retain exam security documents and signed rating sheets.

Criteria: In relevant part, civil service laws require that the employment procedures of each state agency shall conform to the federal and state laws governing employment practices. (Gov. Code, § 18720.) State agencies are required to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received. (Gov. Code, § 12946.) State agencies are also required to retain personnel files of applicants or terminated employees for a minimum period of two years after the date the employment action is taken. (*Ibid.*) In addition, all applications for a state civil service position must be maintained and preserved on file for at least two years. (Cal. Code Reg., tit. 2, §174.)

Severity: Serious. Without documentation, the CRU could not verify if examinations were properly conducted.

Cause: The VCGCB states, “we will ensure all required documentation is maintained for the appropriate time-frame for all examinations in accordance with applicable state laws. We are now using information from the SPB’s Material Request Form as our checklist to ensure compliance.”

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the VCGCB submit to the CRU a written corrective action plan that the department will implement to ensure conformity with maintaining personnel records of incumbents for a minimum of two year.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the VCGCB made 64 appointments. The CRU reviewed 35 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	4
Associate Information Systems Analyst	Certification List	Permanent	Full Time	1
Attorney	Certification List	Limited Term	Full Time	1
Data Processing Manager II	Certification List	Permanent	Full Time	2
Information Officer II	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	4
Staff Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	1
Staff Programmer Analyst	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	9
Associate Governmental Program Analyst	Reinstatement	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	3
Office Technician (Typing)	Transfer	Permanent	Full Time	1
Staff Programmer Analyst	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	5

FINDING NO. 3 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: The VCGCB failed to retain personnel records such as VPOS bulletins for all of the reviewed appointments. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.) Specifically, of the 35 appointments reviewed, the VCGCB did not retain 6 VPOS bulletins.

Criteria: In relevant part, civil service laws require that the employment procedures of each state agency shall conform to the federal and state laws governing employment practices. (Gov. Code, § 18720.) State agencies are required to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received. (Gov. Code, § 12946.) State agencies are also required to retain personnel files of applicants or terminated employees for a minimum period of two years after the date the employment action is taken. (Ibid.)

Severity: Serious. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The VCGCB states, “we were not aware that the documentation listed was required as part of the file. We will retain all required

documentation in accordance with applicable laws and regulations using information from the SPB's Material Request Form.”

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the VCGCB submit to the CRU a written corrective action plan that the department will implement to ensure conformity with maintaining personnel records of incumbents for a minimum of two year.

FINDING NO. 4 – Applications Were Not Date Stamped

Summary: The VCGCB accepted and processed 2,028 out of 2,095 applications that were not date stamped by the department.

Criteria: California Code of Regulations, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement. Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the department's offices (or appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due to verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of promotional examination. (Cal. Code Reg., tit. 2, § 174, subs. (a), (b), (c), & (d).) The same final filing date procedures are applied to the selection process used to fill a job vacancy.

Severity: Non-serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for a job vacancy and to set a deadline for the recruitment. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications will not impact the results of the job vacancy selection.

Cause: The VCGCB states, “our practice has been informal and only date stamped applications received after the final file date. We have changed this practice and date stamp all applications regardless of when or how they are submitted.”

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the VCGCB submit to the CRU a written corrective action plan that the department will implement to ensure conformity with Rule 174. Copies of any relevant documentation should be included with the plan.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department’s EEO program. (Gov. Code, § 19795.) In a state agency with less than 500 employees, like the VCGCB, the EEO officer may be the personnel officer. (*Ibid.*)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation

from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed VCGCB's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate VCGCB staff.

FINDING NO. 5 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the VCGCB EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the director of the VCGCB. In addition, the VCGCB has an established DAC that reports to the director on issues affecting persons with a disability. The VCGCB also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily

performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the VCGCB had three PSC's that were in effect. All three were subject to Department of General Services (DGS) approval and thus our procedural review, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Sufficient Justification
Kiefer Consulting, Inc.	IT Services	12/01/2013-6/30/2014	\$610,425.00	Yes
Regents of the University of California	Trauma Recovery Center	7/01/2014-6/30/2016	\$854,027.37	Yes
Special Service for Groups	Trauma Recovery Center	3/01/2014-6/30/2015	\$611,392.00	Yes

FINDING NO. 6 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total amount of all the PSCs reviewed was \$2,075,844.37. It was beyond the scope of the review to make conclusions as to whether VCGCB's justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the VCGCB provided specific and detailed factual information in the written justifications as to how each of the three contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, VCGCB PSC's complied with procedural requirements.

DEPARTMENTAL RESPONSE

The SPB's closure letter from our first compliance review in 2012 indicated the compliance review team "...found no deficiencies in the review of the VCGCB's administration of examinations and appointments." No additional information was provided which indicated subsequent reviews would take into account other documentation that had not previously been included in our recruitment and examination files, therefore, no changes were made to our practices or procedures. We did, however, implement and train our managers on a new Hiring Process Guide which covered many of the finding areas identified. Also, we were apprised by the compliance review team that we could use their Material Request Form as a guide for items to maintain in the recruitment and examination files. Therefore, we have created a checklist using these forms. We are confident that future compliance reviews will show vast improvements in our recordkeeping.

SPB REPLY

Based upon the VCGCB's written response, the VCGCB will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

It is further recommended that the VCGCB comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.