



CITY OF SACRAMENTO

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SUITE 201 TELEPHONE (916) 449-5346

July 13, 1981

Honorable City Council
Council Chamber
City Hall
Sacramento, CA 95814

RE: APPLICATION OF MICHAEL SCHMIDT FOR LEAVE
TO PRESENT A LATE CLAIM

Members in Session:

SUMMARY

Michael Schmidt has applied for leave to present a late claim. We are of the opinion that the application falls within those circumstances under which relief must be granted.

BACKGROUND

Mr. Schmidt has applied for leave to present a late claim. The claim seeks damages for injury to personal property allegedly caused by a City vehicle.

Government Code §911.2 provides that a claim based upon injury to personal property shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on March 10, 1981. The 100-day filing period expired on June 18, 1981. The claim was presented on June 19, 1981, one day late. The reason given for the failure to file a timely claim is that applicant miscalculated the 100-day filing period.

ANALYSIS

A person seeking to file a late claim must show that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect (Government Code §911.6(b)). In order to obtain relief on any of these grounds it must appear that the applicant acted reasonably under the circumstances (Roberts vs. State (1971) 39 Cal.App.3d 844; El Dorado Irrigation Dist. v. Superior Court (1979) 98 Cal.App.3d 57).

APPROVED
BY THE CITY COUNCIL

JUL 21 1981

OFFICE OF THE
CITY CLERK

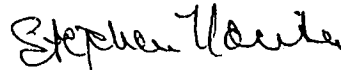
July 13, 1981

The courts have, generally speaking, held that calendaring and clerical errors within the law firm handling a claimant's case will constitute excusable neglect sufficient to allow the filing of a late claim (e.g., Lane v. Grayhound (1947) 30 C.2d 914; Nilsson v. City of Los Angeles (1967) 249 Cal.App.2d 976; Flores vs. Board of Supervisors (1970) 13 Cal.App.3d 480; Segal vs. So. Cal. Rapid Transit District (1970) 12 Cal.App.3d 509). The courts are more lenient with claimants acting on their own behalf who are inexperienced in legal matters. (Segal, supra; Syzemore v. County of Sacramento (1976) 55 Cal.App. 3d 517). In our view the facts supporting the present application fall within the scope of these cases and compel granting the late claim application.

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Michael Schmidt for leave to present a late claim be granted, and the claim itself referred to the City's claim adjuster for evaluation and recommendation.

Very truly yours,

JAMES P. JACKSON
City AttorneySTEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

SBN:MB

Attachment

CLAIM AGAINST THE CITY OF SACRAMENTO

City of Sacramento
JUN 15 5 02 PM '81

You are hereby notified that (1) MICHAEL SCHMIDT, whose Post Office address is (2) 9845 BEXLEY DR SACO 95827 claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) \$ 203.97. This claim is based upon (4).

() Personal injury; Property damage or loss; () Other, specify _____

_____ which occurred on or about (5) 03/10/81, in the vicinity of (6) 12th AVE ON HIGHWAY 99 under the following circumstances: (7) A ROCK WAS THROWN FROM THE LEFT REAR TIRE OF A CITY WATER TRUCK. 184696 IS THE LICENSE

The name of the City employee or employees causing the claimant's injury or loss under the circumstances described is (8) DINO WAS THE DRIVER AT THE TIME

_____ or is unknown to the claimant.

The injuries to the claimant, (if any), as far as known at the date of presentation of the claim consists of (9) 1 - BROKEN WINDSHIELD
2 - HOURS OF WORK LOST

The amount of damages claimed as of the date of this claim is computed as follows:

Damages incurred to date (Itemized):
(10) WINDSHIELD \$ 173.97
LOST TIME \$ 30

Estimate prospective damages as far as known:
(11) _____ \$ _____
_____ \$ _____

(12) TOTAL AMOUNT CLAIMED as of presentation date of claim \$ 203.97

All notices and communications with regard to this claim should be sent to claimant at (13) _____

DATED: (14) _____, 19 _____

(15) SIGNED: [Signature]
Claimant, or
Attorney for Claimant

City of Sacramento
JUN 25 5 37 PM '81

Late Claim Application

July 8, 1981

To whom it may concern -

Once again I am forced to take time from work to take care of my broken windshield. Because I am human, I made the mistake in calculating the number of days in which I had to file a claim. I missed it by 24 hours.

I am employed by H & H Properties as a Construction Superintendent of a 50 Unit motel rehabilitation, in charge of 12 employees. At the same time I have to co-ordinate the cleaning and repair of some 40 houses. Consequently I have a lot on my mind at all times.

Regardless of these facts the city truck that broke my windshield is still at fault and I would like it fixed.

Michael Schmidt

JUL 9 2 34 PM '81

CITY OF SACRAMENTO
OFFICE OF THE CLERK
COURT HOUSE