



CITY OF SACRAMENTO

DEPARTMENT OF LAW
812 TENTH ST. SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

CITY MANAGER'S OFFICE
RECEIVED
MAR 12 1981

15
JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

February 27, 1981

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

RE: LEAVE TO PRESENT LATE CLAIM OF ATHALIA A. TOIVONEN

Members in Session:

Athalia A. Toivonen has applied for leave to present a late claim. We are of the opinion that the application does not fall within those circumstances under which relief must be granted.

BACKGROUND

Athalia A. Toivonen has applied for leave to present a late claim. The claim seeks damages for personal injuries allegedly suffered as a result of a fall caused by a defective sidewalk.

Government Code §911.2 provides that a claim based upon personal injuries shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on May 23, 1980. The 100-day filing period expired on or about August 31, 1980. The claim was presented on February 2, 1981, approximately five months late, followed shortly thereafter by the late claim application.

The basis of the late claim application appears to be the applicant's uncertainty regarding the extent of her injuries and whether to pursue the matter against the City.

ANALYSIS

A person seeking to file a late claim must show both (1) that the application was presented within a reasonable time not to exceed one year after accrual of the cause of action (Government Code §911.4(b)), and (2) that the failure to present 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 applicant acted reasonably under the circumstances. (Roberts vs. State (1974) 39 C.A.3d 844;

MAR 24 1981

Tsingaris vs. State (1979) 91 C.A.3d 312). It appears to us that this standard has not been met.

An accident report was filed on June 30, 1980. At that time applicant realized that she had sustained injuries. Applicant acknowledges that City employees advised her to file a written claim or sue the City if she wished to pursue the matter. It appears that applicant then waited more than seven months before notifying the City of her contention that the City was responsible for her accident and that she wished to pursue the matter. It does not appear that the failure to file a timely claim was the result of a mistake, surprise, inadvertence or excusable neglect of a reasonable person under the circumstances.

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Athalia A. Toivonen for leave to present a late claim be denied.

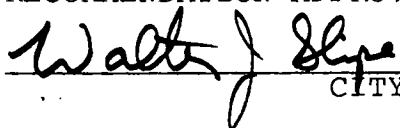
Very truly yours,

JAMES P. JACKSON
City Attorney



STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

SBN:GD

Feb. 11, 1981
Office of the City Clerk
915 I St. Room 203
Sacramento, CA, 95814
Atten: Lorraine Magana

CITY CLERK'S OFFICE
CITY OF SACRAMENTO
REJECTED
FEB 12 8 12 AM '81
OFFICE OF THE
CITY CLERK

Dear Ms. Magana:

In answer to your letter of Feb 9yh and per my phone call to you Feb. 10th, re: the delay in filing a claim for injury sustained on May 23rd 1980 on 9th St. 2 4 1981

1.
I tried to find out about the limitations the following working day for the City. I made many phone calls and explained to each that I had absolutely no feeling in the knee so did not know how badly it had been damaged, but wanted to register that it had happened so if I needed medical help I could seek the proper and fair financial help.

The only response I got was "Sue us", I kept trying to explain I was not sure the extent of injury, as I had no feeling. In fact I asked one of the personnel, "Don't you even want my name so that there is a record I called trying to find out about it"? She said, "No, I don't care what your name is, call your attorney and have him call the City attorney's office".

2. At this time I did not have an attorney and did not feel I wanted to sue anyone. I had no feeling in that knee for several weeks but it did support me and did not turn color so I did not realize the damage done.

3. All of a sudden the feeling returned and WOW. It was excruciating pain one Sunday AM. I put up with it for a day or two then decided I had better see a MD. My MD assured me I had not broken the patella, but I had had sever hemorrhaging inside the knee joint, henceforth no feeling and why it did not turn color. He instructed me to give it heat treatments and exercise. It was decided that the jacuzzie here where I live and a bike would be the proper therapy for it. I wanted to give it time to try to heal naturally.

4. At this time again I decided that I had better get some record of this injury having happened. I spent two days on the phone trying to get someone to file a record of some kind that this was pending. I really got the runaround and arguements, even to the point of one employee saying, "Well, that problem has been fixed".

I finally reached a Mr. Bramble, Supt. of Parks, who told me to call a Mr. Frank Mugartegue in the Finance Dept. if I had any problem. I was told at this time that the call should give me a chance to file for one year from the date of injury at least. -6/30/80

5. On Jan. 29th I decided I had better inquire about recovering my out of pocket money to date, I called the Finance Office. A Ron Peterson took the case for Mr. Mugartegue, he sent me a letter which I recieved Feb.1, 1981 with the claim form enclosed, which your office recieved filled out on Feb. 2, 1981.

I did not mention on the Form that I have a witness as to what happened and as to where.

Please advise.

Sincerely,

Athalia A. Toivonen

Athalia A. Toivonen
202 Selby Ranch Road
Sacramento, CA, 95825
(916) 481-4477

REJECTED
BY THE COUNCIL
OFFICE OF THE
CITY CLERK

MAR 24 1981

CITY OF SACRAMENTO
OFFICE OF THE CITY CLERK
FEB 2 11 02 AM '81

You are hereby notified that (1) Athalia A. Toivonen, whose
Post office address is (2) 202 Selby Ranch Road, Sacramento, CA 95825

claims damages from the City of Sacramento in the amount, computed as of the date of the
presentation of this claim, of (3) \$ 123.00. This claim is based upon: (4)

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

_____, which occurred on or about (5) 5/23/80, in
the vicinity of (6) 9th street close to K Street under the following

circumstances: (7) Square of fluffie sand caught rt. foot causing fall to
left knee and injuring internally to the point of no feeling for
several weeks. Diagnosed as joint hemorrhaging.

The name of the city employee or employees causing the claimant's injury or loss under
the circumstances described is (8) no person, design of eng. of Park Dept, I think
_____ or is unknown to the claimant.

The injury to the claimant, (if any), as far as known at the date of presentation of
the claim consists of (9) pain in left knee, and difficulty in walking at times

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

Damages incurred to date: (Itemized)

(10) Doctor Bill, and Bike for Phys. Therapy Dr. \$ 15.00
used bike \$ 85.00
repair of bike \$ 23.00

Estimated prospective damages as far as known:

(11) No estimate possible \$ _____
\$ _____

(12) Total amount claimed as of date of presentation of claim: \$ 123.00

All notices and communications with regard to this claim should be sent to claimant at
(13) 202 Selby Ranch Road Sacramento 95825

DATE: (14) Feb. 2, 19 81

(15) SIGNED: Athalia A. Toivonen
Claimant or Attorney for Claimant

RECORDED
BY THE CITY CLERK
OFFICE OF THE
CITY CLERK



CITY OF SACRAMENTO INCIDENT/LOSS REPORT

CLAIM NO.

494

For Finance Department Use Only	Dept./Div. No.	Dept./Division
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INSTRUCTIONS FOR FORM COMPLETION —

SECTION I (Front) Whenever a third party (public sustains physical injury while on City property, property damage and/or it appears that the City may be liable, not caused by City-owned vehicle.

SECTION II (Back) Whenever damage or loss involves City property (i.e., fire, theft or inventoried equipment, money or securities vandalism — facilities, property, and equipment).

SECTION 1

- IMPORTANT!**
1. Call Police 449-5471, advising City involvement.
 2. Keep calm and assist third party.
 3. Do not admit fault.
 4. Get name of Injured Party and/or owner of damaged property.
 5. Carefully examine accident.
 6. Do not talk to anyone about accident, except: Your Supervisor, the Police, or City's Adjuster.
 7. If applicable, complete this section of Incident/Loss Report (Form RM3) and distribute as required (below) within 24 hours.

NOTE! In case there appears to be serious injuries, or extensive property damage, telephone the City's Safety Officer at 449-5665 (After normal work hours, call City Operator at 449-5011).

Date & Time of Occurrence 5/23/80 5:15 pm		Location of Occurrence 9th & K on 9th St. side		Time Police Notified:	Police Incident Report No. <input type="checkbox"/> None
Injuries Person(s)	Name & Address Alhalia A. Tiovonen	Age 48	Phone No. 481-4477	Occupation retired wife	Employer unemployed
	Name & Address 202 #3 Selby Ranch Road	Age	Phone No.	Occupation	Employer
The Injury	The Nature & Location of Injury: Hurt left knee			Was Injured person taken to hospital? <u>no</u>	
				Name of Hospital _____ Name of Doctor _____	
Property Damage	Owner & Address			Business Phone	
	List of Property Damaged:			Residence Phone	
Witness(s)	Name, Address & Phone No. Pearl Virgin, 214 Selby Ranch Road, Sacramento, CA 95825 489-4519				
	Name, Address & Phone No.				
	Name, Address Phone No.				
Description of Occurrence	Mrs. Toivonen was trying to get on a bus and fell over some soil in a tree well.				
	The soil had been placed in a basin so the tree could be watered. I was told of injury of 6/30/80.				
Report Filed By	Name John Bramble	Title Asst. Parks Supert	Date 6/30/80	Signature <i>Johnnie W Bramble</i>	
	Dept./Div. No. Community	Dept./Div. Services-Parks Division	Section	Phone No. 449-5385	

(If additional space is required use supplemental sheet of paper and attach hereto.)

DISTRIBUTION:
2 Copies to Finance Admin.
1 copy retained by Dept./Div.

2241

Orgn No.

Dept./Div Signature

Ron Petersen
Finance Reviewer

6/30/80

Date

2-27-81
Date

449-5384

Phone No.

449-5736
Phone No.



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

MEMORANDUM FOR RECORD

SUBJECT: LATE CLAIM APPLICATION OF ATHALIA A. TOIVONEN

DATE: FEBRUARY 17, 1981

On this date, at approximately 10:00 a.m., I contacted Ms. Athalia A. Toivonen at the telephone number provided on her letter of February 11, 1981.

Per instructions received by Mr. Steve Nocita, City Attorney's Office, I inquired of Ms. Toivonen as to whether she wished to have the referenced letter considered as an Application for Leave to Present a Late Claim.

I advised Ms. Toivonen that as such, only the Request for Application to file a late claim would be considered. I instructed her that should she have additional information or material which she might wish to present, that she should do so immediately.

Ms. Toivonen advised me to process the letter of February 11, 1981, as her application for leave to present a late claim.

MM/mm

cc: Steve Nocita



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET

CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 449-5428

LORRAINE MAGANA
CITY CLERK

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MM/mm

cc: Steve Nocita

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

MAR 24 1981

Feb. 11, 1981
Office of the City Clerk
915 I St. Room 203
Sacramento, CA, 95814
Atten: Lorraine Magana

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO

FEB 12 1 25 PM '81

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MAR 24 1981

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202 Selby Ranch Road
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(916) 481-4477

Call 2-12-81 - 12:00 Noon

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
FEB 11 02 PM '81

You are hereby notified that (1) Athalia A. Toivonen, whose
Post Office address is (2) 202 Selby Ranch Road, Sacramento, CA 95825

claims/damages from the City of Sacramento in the amount, computed as of the date of the
presentation of this claim, of (3) \$ 123.00. This claim is based upon: (4)

(X) Personal injury; () Property damage or loss; () Other, specify _____
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<u>used bike</u>	\$	<u>85.00</u>
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REJECTED
BY THE CITY CLERK

Estimated prospective damages as far as known:

(11) No estimate possible \$ _____

MAR 24 1981

(12) Total amount claimed as of date of presentation of claim: \$ 123.00

All notices and communications with regard to this claim should be sent to claimant at
(13) 202 Selby Ranch Road Sacramento 95825

DATED: (14) Feb. 2, 1981

(15) SIGNED: Athalia A. Toivonen
Claimant or Attorney for Claimant

FEB 12 12 27 PM '81
RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO

CLAIM AGAINST THE CITY OF SACRAMENTO

CITY OF SACRAMENTO
FEB 11 02 AM '81

You are hereby notified that (1) Athalia A. Toivonen, whose
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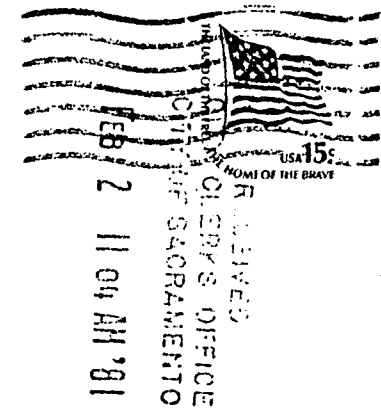
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DATED: (14) Feb. 2, 19 81

(15) SIGNED: Athalia A. Toivonen
Claimant or Attorney for Claimant

ATHALIA A. TOIVONEN
202 Selby Ranch Rd. #2
Sacramento, Calif. 95825

City Clerk
Room 203
City Hall
Sacramento, CA., 95814



RECEIVED
CITY CLERK'S OFFICE
SACRAMENTO

CLAIM AGAINST THE CITY OF SACRAMENTO

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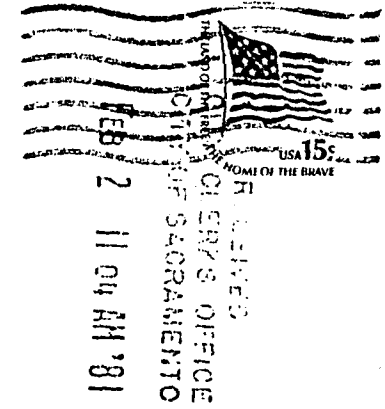
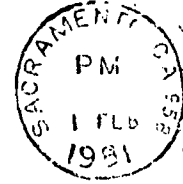
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ATHALIA A. TOIVONEN
202 Selby Ranch Rd. #2
Sacramento, Calif. 95825

City Clerk
Room 203
City Hall
Sacramento, CA., 95814



Feb. 11, 1981
Office of the City Clerk
915 I St. Room 203
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CITY OF SACRAMENTO

FEB 12 1 23 PM '81

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Athalia A. Toivonen
202 Selby Ranch Road
Sacramento, CA, 95825
(916) 481-4477

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Claimant or Attorney for Claimant

FEB 11 02 11 '81
CITY OF SACRAMENTO
DEPT. OF PUBLIC WORKS
DIVISION OF PUBLIC UTILITIES
127 11 80
127 11 80
125 11 80





CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET

CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 449-5428

LORRAINE MAGANA
CITY CLERK

March 25, 1981

Miss Athalia A. Toivonen
202 Selby Ranch Road
Sacramento, CA 95825

RE: APPLICATION TO FILE A LATE CLAIM
DATE OF ALLEGED INCIDENT: May 23, 1980

Dear Miss Toivonen:

You are hereby notified that your application for leave to present a late claim was denied by the Sacramento City Council on March 24, 1981.

The application was reviewed and duly considered. The reasons given for the failure to file a claim within the time period provided by the California Government Code were determined to be insufficient, and did not meet the requirements of the Code for relief from the claim filing requirements.

Accordingly, I must inform you that your application is rejected.

Very truly yours,


Lorraine Magana
City Clerk

LM:sj

cc: City Attorney
Finance Administration (2)

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WARNING

If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.5. Such a petition must be filed with the court within six (6) months of the date your application for leave to present a late claim was denied.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.