



Joint House/Senate Subcommittee on Claims

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To: Rep. Mary Murphy

From: Jason F. Kuenle, Subcommittee Legal Counsel

Date: April 4, 2022

Re: Summary of 2022 claims amendment

The annual claims bill for 2022 was introduced in the Senate as S.F. 4339, and in the House as H.F. 4670. After the subcommittee meeting on March 29, 2022, identical author's amendments have been prepared for each body.

The 2022 claims bill appropriates a total of \$954,773.38. The subcommittee approved three claims under the Imprisonment and Exoneration Remedies Act (Minnesota Statutes sections 611.362 to 611.368).

- \$ 165,103 to **Bryan Alan Bemboom**. Mr. Bemboom was convicted of second, third, and fifth degree controlled substances crimes based on drugs that a passenger in his vehicle had hidden on her. Minnesota Court of Appeals reversed his conviction holding that the evidence was insufficient to support the conviction. The claimant's conviction was vacated. Mr. Peterson served 23 months in prison.
- \$423,212.32 to **Benjamin Joseph Hill**. Mr. Hill was found guilty of two count of possession of a firearm by an ineligible person and he was sentenced to 60 months. Five and a half years later, the district court found "by a preponderance of evidence that the DNA was planted in this case". Based on this, the district court granted the claimant's motion for a new trial. On December 10, 2018, the state dismissed the complaint. Mr. Hill served five years in a combination of incarceration and supervised release.
- \$225,000 to **Joseph Z. Livingston**. Mr. Livingston pleaded guilty to operating a motor vehicle while knowingly under the influence of a hazardous substance. Livingston's blood had tested positive for 1,1-Difluoroethane. Claimant was sentenced to 62 months. In 2017, the Minnesota Supreme Court held that 1,1-Difluoroethane was not a hazardous substance under Minnesota's impaired driving statute. Under that precedent, claimant filed a postconviction relief petition. Claimant's conviction was vacated. Mr. Livingston served two years and seven days in prison.

The remaining claims in the bill relate to personal injury claims against the Minnesota Department of Corrections.

- \$ 2,446.98 to reimburse the DOC for claims under \$7000 and other claims already paid by the department between February of 2021 and March of 2022 for injuries under the

community work service or sentence-to-service programs. There were 3 of these claims.

- \$ 3940 to **Nicholas Edwards** for permanent injuries to his right index finger while performing assigned duties at MCF – Moose Lake. Mr. Edwards had a portion of the finger crushed by a grommet machine. He was rushed to the hospital, where the hospital staff determined that the proper treatment was a partial amputation. The amputation equals a 5% worker's compensation rating, or \$ 3940.
- \$ 520.08 to **Jeron Falkner** for permanent injuries to his left thumb while performing assigned duties at MCF – Stillwater. Mr. Falkner was splitting and stacking firewood when his thumb was crushed by a wood splitter. Medical records show that claimant's thumb healed well, but with some permanent loss of flexion. The function loss equals a .66% workers compensation rating or \$520.08.
- \$ 85,751 to **Steven Kulkay** for permanent injuries to his left hand while performing assigned duties at MCF – Faribault and compensation for loss of wages. Mr. Kulkay's left middle, ring, and little finger were amputated and significant damage to his index finger was sustained when the fingers were cut by a beam saw. The amputations and damage to his index finger equal a 26.56% worker's compensation rating, or \$28,581. Because of the lack of documentation regarding Mr. Kulkay's pre-injury work history, the subcommittee used a multiplier of the injury amount to compensate for the loss of wages resulting from the injury. The final recommendation was for a total of three times the injury rating or \$85,743. His \$8 claim fee is also reimbursed for a total of \$85,751.
- \$ 5600 to **Michael Schmidt** for permanent injuries to his back sustained while performing assigned duties at MCF – Rush City. Mr. Schmidt was mowing the facility football field when he stepped into a hole and felt two pops as he fell. Mr. Schmidt suffered a L3 compression fracture and a L2 anterior-inferior corner fracture. The fractures equal a 7% workers compensation rating, or \$5600.
- \$ 43,200 to **James Vandevender** for permanent brain injuries sustained while performing assigned duties at MCF – Rush City. Mr. Vandevender was assaulted by another offender with a wooden board. Claimant sustained a traumatic brain injury. Rating brain injuries under workers compensation requires a combination of medical evaluations and functional performance. Given the controlled nature of a correctional facility some of these functional performance questions, specifically those relating to levels of required supervision and employability, are currently difficult to observe. At a minimum, claimant has mild impairment of complex cerebral function demonstrated by psychometric testing and able to live independently but requiring supervision with executive function. Claimant also has mild emotional disturbance present at all times but can live independently and relate to others. Combined, these equal a 36% workers compensation rating, or \$43,200. Unlike the usual recommendation from the subcommittee, this is not a recommendation for full and final payment, but one for the minimum ascertainable disability amount. Any future recommendation for full and final payment will have this amount subtracted from it.

The injury claims of Nicholas Edwards, Steven Kulkay, Michael Schmidt, and James Vandevender were approved by the Claims Subcommittee and amended into the claims bill in 2021. Last year, during the House floor debate on the 2021 claims bill, a member questioned the propriety of compensating the

injury of a claimant who had committed a heinous crime. The bill was tabled and returned to Ways and Means where all the individual injury claims were removed from the bill. The bill was ultimately enacted in that form. At this year's hearing, counsel provided background for the subcommittee's jurisdiction over injury claims and the history of the subcommittee's use of workers compensation principles and schedules when recommending compensation for these claims. The claims were reapproved this year by the subcommittee by unanimous vote of the members in attendance at the time.

Under Minnesota Statutes 270A.03, Subd. 7, payments made in the annual claims bill are subject to revenue recapture (i.e. for debts to the state and other governmental entities, and for restitution).