

HELPFUL INFORMATION - CONTRIBUTIONS AND DENIALS

The law requires that VCAP determine whether the direct victim because of conduct contributed to the infliction of the injury. In determining the amount of an award, the VCAP will determine whether, due to his/her conduct, the direct victim contributed to the injury. The VCAP shall reduce the amount or deny the claim altogether in accordance with its determination.

How contribution and/or a denial is determined:

Conduct

VCAP, upon review of a claim in its entirety, will make a decision on a case by case basis on whether contribution or denial is warranted. The following factors are taken into consideration:

1. Whether the direct victim initiated, provoked or prolonged a verbal or physical confrontation with the offender.
Note: *Consideration is given when there is a significant escalation of the fight, such as the introduction of a deadly weapon made by a person other than the victim or when a third party becomes involved resulting in more serious injury than the victim could have reasonably expected.*
2. Whether the victim participated in an illegal act that was causally connected to the injury.

Causal Relationship:

Means that the crime would not have occurred without the action of the victim. (A causal relationship exists if the actions of the victim result in a foreseeable injury, play a substantial role in the injury, or directly cause the injury.)

Some questions VCAP will consider:

- Is there substantial evidence to support the finding of causal connection (e.g. independent and credible witness statements, law enforcement information, court transcripts)?
 - Are there neutral and credible witness statements that support the finding of causal connection?
3. Whether the victim acted in a manner that placed himself or herself into a situation likely to result in injury.
 4. Whether the victim sought retaliation against the offender.
 5. Whether the victim entered into a physical altercation by mutual consent.
 6. Whether the victim was charged by law enforcement with criminal conduct as a result of the crime.

7. Whether the victim knowingly and willingly entered a vehicle driven by someone under the influence (25 % reduction). A reasonable person test will be applied in these circumstances. For example, if the driver and the passenger spend several hours drinking together in a bar, the passenger is presumed to know of the driver's inability to drive.
8. Stolen cash claims that are received and are eligible for an award will have a minimum 10 % contribution assessed if they fall under the definition of "pigeon drop" which is defined in the Regulations, as follows:

Pigeon drop: The act of approaching a person and asking that person if he would like to share an amount of "found" money. In order to share the money, the person shows a good faith effort by willingly providing a specified amount of money with the expectation of receiving a part of the "found" money.

9. VCAP will assess an award up to \$5,000 for medical expenses if the victim was injured in a vehicular related crime while driving his or her own vehicle without medical benefit coverage as required by Pennsylvania law. (Excludes motorcycles.)
10. An award may be reduced or denied in vehicle-related crimes when the victim is the driver and does not have a valid license or the victim's driver's license has been revoked or suspended at the time of the crime.

Cooperation:

The law requires that direct victim or claimant fully cooperate with law enforcement agencies and VCAP. A claim may be denied or an award may be reduced if it is found that the victim or claimant has not fully cooperated with law enforcement, prosecutors or VCAP as follows:

1. Failure to cooperate fully with a law enforcement agency in the investigation of the crime on which the claim is based.
2. Failure to cooperate fully in the prosecution of the alleged offender of the crime on which the claim is based.
3. Failure to provide truthful, complete and accurate information to VCAP to determine the eligibility or validity of a claim or amount of an award.
4. In crimes involving stolen or defrauded money, failure to implement personal crime prevention techniques recommended by the local police department, victim service program or crime prevention program at the VCAP request when crimes are similar in nature and repeated.

Failure to cooperate may be considered to be justified if one of the following circumstances exists:

- The direct victim, intervenor or claimant is mentally or physically incapacitated.
- There is a fear of retaliation.
- The victim is a minor.
- Other circumstances where good cause is shown by the claimant and deemed appropriate by the VCAP.

***TIP:** If the claimant that you are working with has failed to cooperate for one of the above reasons, be sure to notify the Program member assigned to the claim of this in writing.*

Exceptions 18 P.S. §11.707(f):

1. By law, if the crime is rape or sexual assault, the conduct of the direct victim shall not be considered.
2. By law, if the crime is related to domestic violence, the conduct of the direct victim shall not be considered unless the direct victim was the primary aggressor. If the direct victim is determined to be the primary aggressor, the claim may be reduced or denied.
3. By law, if the crime involved is a homicide, the conduct of the direct victim shall not be considered for claims received by eligible claimants for counseling.

In cases of domestic violence the VCAP, in determining which party was the primary aggressor, may consider the following **{37 Pa Code §411.15(h)}**:

- Prior acts of domestic violence.
- The relative severity of the injuries inflicted upon the persons involved in those prior acts of domestic violence.
- The likelihood of future injury.
- Whether, during the prior acts, one of the parties acted in self-defense.
- The totality of the circumstances surrounding the crime.

In determining whether the conduct of a victim warrants a denial or reduction of an award, the VCAP may consider evidence indicating that a victim was acting with legal justification or other evidence of mitigation. Refer to the **“APPEALS PROCESS”** if the claimant disagrees with an assessment or contribution.