



Relief from the government claims filing deadlines

The court has broad discretion to grant relief based on disability

BY LILIAN AVEDIAN

Pursuant to the California Tort Claims Act, a lawsuit against a public entity cannot be initiated unless the entity is presented with a written claim. The claim must be presented within six months of the accrual of the cause of action. (Gov. Code, §§ 945.4, 911.2, subd. (a).) If the claim is not presented within the six-month period, an application for leave to present the late claim can be filed to explain the reason for the delay, provided it is made within one year after the cause of action accrues. (Gov. Code, § 911.4, subd. (a)(b).)

However, if the application for leave is denied, there remains one last recourse: petitioning the court for relief. One of the circumstances that may warrant relief is a showing by a preponderance of evidence that the failure to file a timely claim was due to the excusable neglect, as evidenced by physical and/or mental disability and trauma. (Gov. Code, § 911.6, subd. (b).)

“Excusable neglect” due to disability

Excusable neglect is defined as any “neglect which might have been the act of a reasonably prudent person under the same circumstances.” (*Tammen v. San Diego County* (1967) 66 Cal.2d 468, 476.) Generally, a claimant was unable to argue excusable neglect if no action was taken during the initial six-month filing period. At the very least, some effort should have been made to contact an attorney within six months after the cause of action accrued. (*Kinney v. County of Los Angeles* (Cal. Ct. App. Jun. 24, 2008) No. B198452.)

However, the courts have clarified that meeting the requirement for excusable neglect does not specifically mandate making efforts to contact an attorney within the six-month period. Instead, excusable neglect can be established in certain cases involving extreme physical or mental disability, or significant emotional trauma, even if no action was taken during the applicable filing period.

Physical disability

In *Barragan v. County of Los Angeles* (2010) 184 Cal.App.4th, Veronica Barragan, the petitioner, became quadriplegic due to a rollover car accident that occurred on April 12, 2007. Following the accident, she spent

three months in a hospital and seven months confined to a bed. She was finally able to consult an attorney and file her application for leave to present a late claim on April 9, 2008, almost one year after the crash.

Following the County’s denial of her application for leave, she petitioned the court for relief. In considering her petition, the appellate court found that Barragan’s failure to file a timely claim in light of her circumstances was excusable neglect. Specifically, the court noted that because she spent “the first three months in the hospital, and the remainder of the six-month period bedridden in her home, depressed, in pain, and under the influence of medication,” her attention was instead directed toward “relearning the basic tasks of everyday life, such as eating, holding a toothbrush, and controlling her elimination of waste.” (*Id.* at 1385-1386.)

The *Barragan* court determined that if a claimant can demonstrate that a “physical and/or mental disability limited the claimant’s ability to function and seek out counsel such that the failure to seek counsel could itself be considered the act of a reasonably prudent person under the same or similar circumstances,” then excusable neglect is established.

Trauma and/or mental disability

In *Perez v. City of Escondido* (2001) 165 F.Supp.2d, 1111, Ms. Perez witnessed her son Javier get shot by the police. The incident happened on the evening of March 10, 2000, near her home. Her minor daughter also witnessed the shooting. As a result of his injuries, Javier needed brain surgery and suffered a stroke, causing him to sustain permanent neurological and cognitive impairments. He was hospitalized for 45 days and received ongoing inpatient and outpatient treatment. Between March and October, Ms. Perez claimed her attention was solely focused on her son’s survival. Seven months after the shooting, she was finally able to retain an attorney and file her application for leave to present the late claim, which the city subsequently denied.

In considering her petition for relief, the court determined that, in addition to attending to her son’s physical needs, Ms. Perez was also responsible for the emotional well-being of her daughter, who was undergoing counseling from the trauma of witnessing her brother’s

shooting. Additionally, as a single mother, Ms. Perez was working full time to support her family. Therefore, her inability to submit a claim because she was “overwhelmed” and “unable to focus on anything other than her son’s survival and the daily needs of her family” was deemed reasonable and excusable under the circumstances. (*Id.* at 117.)

However, it’s important to note that courts require an “exceptional showing” to show that the alleged psychological disability or emotional trauma reasonably prevented the petitioner from taking necessary steps during the filing period. (*Barragan, supra*, 184 Cal.App.4th at 1385.) An “exceptional showing” is made by establishing that the emotional trauma has “substantially interfered with his [or her] ability to function in daily life, take care of his [or her] personal and business affairs, or seek out legal counsel.” (*People ex rel. Dept. of Transportation v. Superior Court* (2003) 105 Cal.App.4th at 46.) In other words, merely alleging emotional distress due to the underlying incident or physical injury will not meet the “exceptional showing” criteria.

Documentation in support of the petition for relief

The court has broad discretion to grant relief, taking into account the unique circumstances of the case. Typically, courts will require medical evidence of the disability to determine when the disability started and ended, the nature and severity of the disability, and how it may have affected the petitioner’s ability to seek legal counsel within the relevant time period. However, in addition to medical records, affidavits detailing the petitioner’s personal and relevant circumstances can increase the likelihood of obtaining relief. This may include statements from family members, treaters or caregivers with knowledge about the petitioner’s disability and particular circumstances, and how those circumstances affected the petitioner’s ability to comply with the filing requirements.

Lilian Avedian is a Los-Angeles based litigation attorney at Marc J. Bern & Partners. Her practice focuses on medical malpractice, catastrophic personal injury, and wrongful death cases.



Avedian

