

STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on December 13, 2006, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
Richard A. Moeck	Innocent Convict (§ 775.05, Wis. Stats.)	\$40,975.00

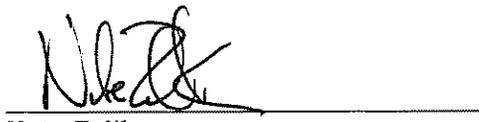
The Board Finds:

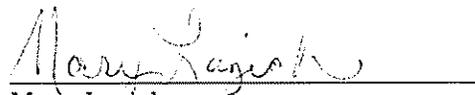
The Claims Board referred this claim to a hearing examiner on December 9, 2005. A hearing was held before Administrative Law Judge Peter C. Anderson of the Division of Hearings and Appeals on June 21, 2006. Judge Anderson has submitted to the Claims Board a Proposed Decision. The Board concludes that the attached Proposed Decision should be adopted as the decision of the Claims Board and that the claim of Richard A. Moeck should be denied.

Dated at Madison, Wisconsin this 27TH day of DECEMBER, 2006.


Robert Hunter, Chair
Representative of the Attorney General


John E. Rothschild, Secretary
Representative of the Secretary of Administration


Nate Zolik
Representative of the Governor


Mary Lazich
Senate Finance Committee


Dan Meyer
Assembly Finance Committee



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Claim of
Richard A. Moeck

Case No. CB-06-0001

PROPOSED DECISION

PRELIMINARY FINDINGS

1. By claim dated November 28, 2005, Richard Moeck requests compensation from the State of Wisconsin through the Wisconsin Claims Board. On January 12, 2006, the Claims Board referred the claim to the Division of Hearings and Appeals for hearing. The matter asserted is that Moeck is entitled to compensation as an innocent person convicted of a crime. Jurisdiction is conferred by Wis. Stat. § 775.05 and § 227.43.

2. Pursuant to Wis. Stat. § 227.47(1), the following persons or entities participated in and are certified as PARTIES to this proceeding:

Richard A. Moeck, *pro se*
2640 Rimrock Road
Madison, WI 53713

The State of Wisconsin (herein, "the state"), by

Scott Horne
La Crosse County District Attorney
333 Vine Street, #1100
La Crosse, WI 54601-3296

3. A hearing was held June 21, 2006, at the Wisconsin Department of Administration, Madison, Wisconsin, Peter C. Anderson, Administrative Law Judge, presiding. District Attorney Horne and witness Christopher Sader attended the hearing by teleconferencing. In addition to the hearing record, the parties agreed to the following portions of the transcript and exhibits from Mr. Moeck's criminal case (La Crosse County Circuit Court Case No. 97-CF-468) being made part of the evidentiary record: First trial (January 15, 1998): the testimony of Christopher Sader and Richard Moeck; Second trial (March 11, 1998): the testimony of Christopher Sader and Richard Moeck; Third trial (March 15, 2000): the testimony of

Christopher Sader and Robert Abraham; Fourth trial (November 1-3, 2000): all exhibits and the testimony of all witnesses; Post-conviction motions hearing (August 29 and September 5, 2002): all exhibits and the testimony of all witnesses. For purposes of this decision, the exhibits from the post-conviction motions hearing were renumbered by adding 100 to the original exhibit number (thus, exhibit 1 became exhibit 101, exhibit 2 became exhibit 102, and so on). Additional exhibits submitted by Moeck (Exs. 201-203) were received at hearing.

4. The claim presents the following issues:
 - a. Whether the evidence is clear and convincing that Richard Moeck was innocent of the crimes for which he was convicted in La Crosse County Circuit Court Case No. 97-CF-468.
 - b. If the evidence is clear and convincing evidence that Moeck was innocent of the crimes for which he was convicted, whether Moeck contributed to bring about the conviction and imprisonment for which he seeks compensation by his act or failure to act.
 - c. If the evidence is clear and convincing that Moeck was innocent of the crime for which was convicted and if he did not contribute to bring about his conviction and imprisonment by his act or failure to act, the amount that will equitably compensate him.

Based on the entire record of the case, the administrative law judge recommends that the Claims Board adopt the following Findings of Fact, Conclusions of Law and Order as the final decision in this matter.

FINDINGS OF FACT

5. On August 2, 1997, Richard Moeck was arrested and subsequently charged with two counts of first degree sexual assault/use of a weapon, false imprisonment, intimidation of a victim through the use or attempted use of force, robbery with use of force, battery, and misdemeanor bail jumping. Moeck was charged on all counts as a repeater or habitual criminal. (CCAP records) The alleged victim was Christopher Sader, a twenty-three year old La Crosse resident.

6. A trial held January 1998 resulted in a hung jury. Moeck was retried in March 1998. This time, he was convicted on all counts and sentenced to two years in prison on the bail jumping and battery counts, seven years on the false imprisonment count, ten years on the victim intimidation count, and forty-eight years on the sexual assault and robbery counts. (CCAP records)

7. The Wisconsin Court of Appeals overturned Moeck's convictions based on the trial court's error in advising the jury that Moeck was being tried as a repeater. *State v. Moeck*, No. 99-0232-CR (Wis. Ct. App., Oct. 21, 1999, unpublished decision) (copy attached to

November 28, 2005, claim). Moeck was tried a third time in March 2000. In his opening statement, defense counsel provided an alternative version of events to that put forward by the prosecution; however, no witness (including Moeck) testified to this alternative version. The prosecution requested a mistrial at the conclusion of the third trial, which the trial court granted. Moeck was tried a fourth time on November 1-3, 2000. Moeck was again convicted on all charges, and given the same prison sentence as before, except that the sentence on the battery conviction appears to have been increased to three years. (CCAP records)

8. Moeck's conviction was subsequently overturned on double jeopardy grounds. *State v. Moeck*, 2004 WI App 47, 270 Wis. 2d 729, 677 N.W.2d 658, *aff'd* 2005 WI 57, 280 Wis. 2d 277, 695 N.W.2d 783, *cert. denied*, 126 S. Ct. 551 (2005). Moeck was released from prison on or about November 3, 2005, having been continuously incarcerated since his arrest on August 2, 1997. Some of Moeck's confinement would have been due to his being held while awaiting trial. Because this would have been credited against his sentence, it is properly treated as part of the period of imprisonment for which compensation is sought.

9. There is no dispute that Christopher Sader was in Richard Moeck's apartment between approximately 3:00 and 7:30 a.m on August 2, 1997. It is also undisputed that the only persons who directly witnessed what occurred were Sader and Moeck. Moeck was nearly 50 in August, 1997, while Sader was 23 years old.

10. While Moeck contends that Sader has been inconsistent in his account, Sader has essentially provided the following description of events. Sader was in downtown La Crosse around bar time on his bicycle, hoping to meet someone he knew. Moeck was on the street on foot and shouted to Sader, "Hey, I know you. You're a pretty good pool player." After speaking with Moeck, Sader went with him to his apartment to attend an informal party that would involve playing pool. Moeck lived on the second floor of an apartment building located above a bar in downtown La Crosse. According to Sader, they accessed the apartment by going up the fire escape and through a fire exit. No one else was in Moeck's apartment when they arrived, and there was no pool table. Sader began watching television. Moeck put a knife to Sader's throat and ordered him first to undress, and then to begin masturbating. Moeck provided Sader with one or more magazines with pictures of naked women to look at. Moeck masturbated while Sader was masturbating. Moeck also performed felatio on Sader. Sader did not ejaculate. Moeck then had Sader stand facing the wall. If Sader looked at Moeck, Moeck would backhand him. Moeck had Sader smoke some marijuana to calm him. While his back was to Moeck, Sader heard the sound of Velcro opening and believed Moeck was opening his wallet. After leaving the apartment, Sader discovered between \$40 and \$60 missing from his wallet. Around 7:00 - 7:30 a.m., Moeck let Sader leave. Sader immediately went to the police, where he provided both a written and oral statement.

11. Moeck provided a much different account. According to Moeck, he and Sader had met at a bar in La Crosse about a month earlier, where they struck up a conversation and ultimately smoked a "joint" or marijuana cigarette in the parking lot. Sader told Moeck he sometimes sold marijuana, and Moeck stated he might be interested in buying some. Moeck told Sader where he lived. Moeck contends he was sleeping in his apartment during the morning of August 2, 1997. He was awakened at 3:09 in the morning by Sader knocking. According to

Moeck, Sader stated he had taken either LSD or ecstasy and had also been drinking. Sader asked to "crash" at Moeck's apartment, and Moeck consented, letting Sader sleep on the mattress. Around 7:00 a.m., Moeck woke up and woke up Sader. Sader produced a bag containing an ounce of marijuana and proceeded to roll a joint. Although Moeck stated he did not want as much marijuana as Sader was selling, he produced \$120, which he placed on the table, to demonstrate his ability to make a purchase. After the two smoked the joint, Moeck went to the bathroom, located in the hallway outside the apartment. When he returned, the \$120 he had left on the table was missing. Moeck confronted Sader about the missing money, and Sader initially denied taking it. Moeck is a large man and larger than Sader. Moeck pushed Sader up against the wall, grabbing him by the collar. Sader admitted taking the money and returned it to Moeck. Moeck forcibly evicted Sader from the building, who exited through the fire door and down the fire escape.

12. While the victims of crimes are often envisioned as innocent, it is not uncommon for victims and their assailants to share similar criminal pasts. In the present case, both Sader and Moeck have lengthy criminal histories. Sader had admitted to lying to the police on other occasions.

13. Sader was not a particularly credible witness. Relying principally on the transcript from the third trial, Moeck identifies several instances in which Sader's testimony was either inconsistent with earlier versions or appeared illogical. The most important instance concerns the timeline. It is hard to envision Moeck forcing Sader to masturbate and to submit to Moeck's felatio for a period of four to four and a half hours. If the assault did not take this long—and Sader seemed to acknowledge that it did not—what else was going on? Sader mentions Moeck having him stand facing the wall, but his description is not one of having to stand in this position for three to three and half hours. It is also hard to understand Sader's not having to use the bathroom, given the length of time he was in Moeck's apartment and the fact that he had just finished drinking three beers. Sader did not mention a need in this regard.

14. There are other significant instances in which Sader gave what appeared to be inconsistent or inherently implausible accounts. One had to do with when Moeck's allegedly performed felatio. The police report has Sader stating that this occurred while Sader was standing, with Moeck holding the knife to Sader's stomach. (Ex. 201) Sader testified that it happened while he was lying on the mattress. A similar instance had to do with the alleged theft from Sader's wallet. The police report indicated that this occurred while Sader was standing, facing the wall, while Sader testified to hearing the sound of Velcro opening while he was on the mattress. Sader also told the police that he thought he had one \$20 bill and two \$10's in his wallet. While \$792 was recovered from Moeck's wallet when he was arrested, his currency did not include any \$10 bills. Moeck also points out that for having just been sexually assaulted at knifepoint, Sader showed unusual slowness in leaving the apartment after Moeck let him go. (See Moeck Br. at 11)

15. This hearing examiner had the opportunity to observe Sader as a witness first-hand. Moeck's cross-examination of Sader was attacking and *ad hominem* and did little to undercut his credibility. Moeck's contention that Sader lied right off the bat by denying that he spoke with anyone about the current proceedings is unconvincing. Sader was in custody at the

time of the hearing, was served with a subpoena by the District Attorney's Office only the day before, attended the hearing in handcuffs, and probably had little understanding of what was going on. That Mr. Horne spent a minute or two explaining why he was attending a hearing involving his alleged assailant, nearly nine years after the alleged assault, was not the kind of discussion of a contested case that one would necessarily understand was being asked about as framed by Moeck's questioning.

16. On the other hand, Sader was unable to answer the straight-forward question of whether Moeck had struck him about the head and shoulders (as set out in the August 2, 1997, police application for a search warrant). Moeck first asked this question, followed by the hearing examiner, with Sader claiming he could not recall, and explaining his lack of memory as due to an attempt to forget the assault. To this hearing examiner, Sader did not appear to be truthful in this response. However, the impression this left was not that Sader's claimed lack of memory indicated that he had not been assaulted, so much as that Sader was unwilling to expend much effort in assisting Moeck, the state, or the hearing examiner in a proceeding that he did not fully comprehend.

17. Other claimed inconsistencies in or illogical aspects to Sader's account that Moeck identifies appears less telling. Whether Sader was walking his bike, as the police report indicates, or riding it, as Sader testified, is the kind of detail that can easily become confused in the second-hand recording of a crime. Moeck points out that when Sader and Officer Abraham returned to the apartment building later in the morning on August 2, 1997, the fire door was closed and locked. However, there is no reason Moeck could not have locked the door, which presumably had been propped open when he and Sader arrived, once Sader had left.

18. Other parts of Sader's story evince a reasonable degree of believability. According to Sader, he happened to hook up with Moeck when Moeck saw him on the street and called out, "Hey, I know you. You're a pretty good pool player." Moeck has a very distinctive manner of speech. It is very easy to hear Moeck using these words to call Sader over. When Sader arrived at the police department, he was shaking and barely able to speak. Sader's story, if made up, was manufactured in a very short period, contained a good deal of detail, and was generally consistent with the limited physical evidence.

19. In contrast to Sader's qualities as a witness, Moeck came across in these proceedings as a man fully convinced of his innocence. Moeck is not highly educated and openly admits to being very angry. Despite these qualities, he comes across as having a reasonably high level of native intelligence and on most occasions was well-mannered towards the undersigned. In both writing and speech, Moeck at times employs colorful language to express complete and utter disdain for Sader, District Attorney Horne, Robert Abraham, the police officer who first investigated the alleged crime, and others. The apparent strength of Moeck's claim of innocence constitutes evidence that he is in fact innocent. At the same time, this office sees many individuals who have committed crimes, and has had the opportunity to hear a number of offenders indignantly proclaim their innocence in the face of evidence clearly indicating otherwise. Expressions of apparent sincerity are better evaluated against standards of internal consistency, objective record evidence, and common sense, than by tone of voice alone. In weighing the evidence, this decision recognizes that some criminals, although guilty, can

come to develop a passionate hatred for those who have accused and prosecuted them, displaying a real sense of grievance at having been convicted. It is possible for Moeck's indignation over being tried four times and sentenced to decades of imprisonment—in apparent violation of the prohibition against double jeopardy—to have become transformed into a claim of outright innocence.

20. Moeck provided his story officially three times--in testimony at his first and second trials, and in testimony at the hearing on the instant claim. The accounts were not lengthy, but appeared to have a level of detail consistent with truthfulness. Moeck's stories exhibited facial plausibility and were largely consistent. The only inconsistency this examiner noted was that Moeck initially said Sader had taken LSD, while he later described Sader as having used the drug Ecstasy. This was not viewed as a significant difference.

21. While these considerations tend to support Moeck's claim of innocence, their import is lessened by Moeck's failure to tell the police his story within a reasonable time after being arrested. It is prudent for a person arrested of a serious crime, although innocent, to await the retention of counsel before discussing the charges with the police. However, it can generally be expected that an innocent person will take the first opportunity after speaking with counsel, if not before, to proclaim his innocence. The record does not indicate this occurring.

22. If Moeck were strongly or unqualifiedly heterosexual, this would be evidence supporting his claim of innocence. That is, it is difficult to conceive of a wholly heterosexual perpetrator engaging in a homosexual assault, with the perpetrator performing felatio on the victim and masturbating while the victim is made to masturbate.

23. The evidence of Moeck's sexual orientation consists of Moeck's testimony denying any homosexual tendency. Moeck testified that he has been married twice, with three children by his second marriage. In and of itself, this does not prove sexual orientation. It would seem possible for Moeck to introduce evidence of a wholly heterosexual orientation--possibly by the testimony of an ex-wife or other sexual partner; more likely through a forensic or psychological expert capable of determining sexual orientation. The absence of evidence of a wholly heterosexual orientation, other than by means of Moeck's testimony, results in a lack of support for Moeck's claim of innocence.

24. This decision does not conclude, as the state suggests that it conclude, that it was implausible for Sader to show up at Moeck's apartment at 3:00 in the morning needing a place to sleep and hoping to sell Moeck marijuana. Sader and Moeck appear to have lived on the margins of society. More unusual things have happened than Sader's remembering Moeck's address one month after what would have been his and Moeck's first and only encounter.

25. Excluding the DNA evidence, the physical evidence, while limited, does not significantly controvert, and may in fact tend to support, Sader's account. Two sizable knives were found in Moeck's apartment (Ex. 8), although Sader did not identify either as being the one held to his throat. At the same time, the ownership of large kitchen knives is fairly common. Magazines with pictures of nude women were recovered from Moeck's apartment (Ex. 7), although this would also tend to buttress Moeck's assertion of heterosexuality.

26. The DNA evidence does not appear to support Moeck's claim of innocence. Six spermatozoa or sperm heads were recovered from an oral swab taken from Moeck six or more hours after the alleged assault. This would have been consistent with the presence of pre-ejaculation seminal fluid, which can contain spermatozoa. The state concluded that there were too few sperm heads to make a DNA match. (4th Trial, Andreas testimony) Following the fourth trial, Moeck retained experts who attempted this match. In an affidavit, Moeck's principal expert, Dr. Friedman, opined that the spermatozoa were consistent with Moeck's DNA but not with Sader's. (Ex. 203) Upon cross-examination, however, Dr. Friedman conceded that what might have been detected in the "sperm sample" were epithelial cells from Moeck's mouth. (*See also* Post-Conviction Mot. Hrg., Andreas testimony) That DNA from epithelial cells from Moeck's mouth was consistent with Moeck's but not Sader's DNA is an unremarkable result with no bearing on the question of guilt or innocence.

27. More significant for purposes of answering the question of guilt or innocence is that spermatozoa were detected in Moeck's mouth at all. Absent the ability to conduct definitive DNA testing, two logical possibilities seem paramount, both of which would be consistent with Moeck's guilt: The spermatozoa were either Moeck's or Sader's. If they were Sader's, then this would have been consistent with Sader's claim that Moeck performed fellatio on him, even though Sader did not ejaculate. If the sperm were Moeck's, then this fact would seem consistent with Sader's claim that Moeck masturbated while forcing Sader to masturbate. In any event, no witness testified that some amount of sperm from Moeck masturbating could not have found their way into Moeck's mouth through, for example, incidental hand-mouth contact.

28. Moeck provided a third explanation for spermatozoa being in his mouth. According to Moeck, he spent the evening of August 1, 1997, with a married woman he was dating by the name of Sue Kleinschmidt. Moeck claimed that Ms. Kleinschmidt performed oral sex on him and then brushed her teeth with his toothbrush. Moeck's sperm made its way into his mouth when he later brushed his teeth with the same toothbrush. According to Moeck, Ms. Kleinschmidt left his apartment by 1:00 in the morning.

29. The problem with this explanation is that there is no evidence of Moeck's mentioning his August 1, 1997, date with Sue Kleinschmidt to anyone until after his experts provided testimony (later qualified upon cross-examination) suggesting that the six spermatozoa were Moeck's. At his first trial, Moeck testified that he had worked a full, hot August day and was tired and that he went to sleep around 11 to 12. It was not simply the authorities who were kept in the dark about Ms. Kleinschmidt. Moeck's original attorney indicated at the post-conviction hearings motion that Moeck had not mentioned his evening date with Ms. Kleinschmidt, although he did mention a relationship with a married woman. (*See* Burgos testimony) Moeck provided a dual explanation for his silence regarding Ms. Kleinschmidt. First, until someone was able to perform DNA testing on the small number of spermatozoa, his relations with Ms. Kleinschmidt were not relevant. Second, Moeck understood that the prosecution would attempt to drag Ms. Kleinschmidt "through the mud" if he disclosed her existence.

30. Unfortunately for Moeck, no one was ever able to locate Sue Kleinschmidt or corroborate her existence. (See Post-Conviction Mot. Hrg., Condon testimony; Claims Bd. Hrg., Moeck testimony)

31. Moeck's explanations for not mentioning Ms. Kleinschmidt earlier are implausible and taken in conjunction with the inability to locate Ms. Kleinschmidt leave this hearing examiner with the belief that Moeck was not truthful regarding his claimed evening encounter with this woman, and that his date with Ms. Kleinschmidt on the evening on August 1, 1997, was fabricated precisely to provide an explanation for the small number of spermatozoa recovered from his oral swab.

32. Moeck is wrong that an evening date with Ms. Kleinschmidt which culminated in her performing oral sex could not have been relevant at his trials. Even without the ability to do DNA testing, this evidence could have explained the presence of spermatozoa in Moeck's oral swab. Moreover, it would have buttressed Moeck's claim that he had been sleeping at 3:00 in the morning to know that he had finished spending an evening and having sexual relations with a woman around two hours earlier. It would have also painted the picture of a man whose heterosexuality would have been inconsistent with the claimed homosexual assault.

33. It is also hard to imagine Richard Moeck refusing to disclose the identity of a woman who could help establish his innocence of crimes for which he might be imprisoned for decades if convicted, out of what were essentially chivalrous motives. Because his communications with counsel would have been confidential, Moeck could be expected to have mentioned his time with Sue Kleinschmidt to his attorney without risking her disclosure, had the claimed evening date actually occurred.

34. The impression that Moeck was not truthful regarding his claimed evening date with Sue Kleinschmidt makes it more difficult to believe Moeck's other testimony.

CONCLUSIONS OF LAW

35. Wisconsin Statutes § 775.05(1)-(4) provides:

Compensation for innocent convicts. (1) The claims board shall hear petitions for the relief of innocent persons who have been convicted of a crime.

(2) Any person who is imprisoned as the result of his or her conviction for a crime in any court of this state, of which crime the person claims to be innocent, and who is released from imprisonment for that crime after March 13, 1980, may petition the claims board for compensation for such imprisonment. Upon receipt of the petition, the claims board shall transmit a copy thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced the petitioner for the conviction which is the subject of the claim, or their successors in office, for the information of these persons.

(3) After hearing the evidence on the petition, the claims board shall find either that the evidence is clear and convincing that the petitioner was innocent of

the crime for which he or she suffered imprisonment, or that the evidence is not clear and convincing that he or she was innocent.

(4) If the claims board finds that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the claims board shall find the amount which will equitably compensate the petitioner, not to exceed \$25,000 and at a rate of compensation not greater than \$5,000 per year for the imprisonment. Compensation awarded by the claims board shall include any amount to which the board finds the petitioner is entitled for attorney fees, costs and disbursements. If the claims board finds that the amount it is able to award is not an adequate compensation it shall submit a report specifying an amount which it considers adequate to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172(2).

36. As was explained to Mr. Moeck on several occasions during these proceedings, an innocent convict claim is not a civil rights claim. Thus, in and of itself, the fact that he was tried and convicted in apparent violation of his right not to be subjected to double jeopardy is not a basis upon which the Board can award compensation.

37. The Board is also not required to choose between Sader's account and Moeck's. It is possible that neither man has been wholly truthful or wholly untruthful and that what really happened on the morning of August 2, 1997, is some combination of the two men's stories, as well as facts not known. For example, it is possible that Sader picked Moeck's apartment to show up at because he was in the vicinity and recalled Moeck's expressing interest in buying some pot. Sader might have "crashed" on Moeck's mattress and in the morning attempted to rip Moeck off after offering to sell him drugs. Moeck might have retaliated by humiliating Sader sexually at knifepoint, such as by having him strip and masturbate. Sader would have a clear motive not to admit to selling drugs, while Moeck would have every reason to deny assaulting Sader.

38. The Board is not required to determine what precisely occurred on the morning of August 2, 1997, except to determine whether it has been clearly and convincingly proven that Moeck was innocent of the crimes for which he was convicted.

39. The burden of proof in this case, while not the exact legal opposite of the beyond the reasonable doubt standard the state is required to meet in a criminal prosecution, requires evidence establishing Moeck's innocence by clear and convincing evidence. This decision does not defer to or rely on the jury verdicts reached in Moeck's criminal cases, but evaluates the evidence presented by the parties *de novo*. Nevertheless, it is fair to ask, if one jury could not decide, and two juries found Moeck guilty (Moeck's third jury did not deliberate), applying a standard that required the prosecution to establish guilt beyond a reasonable doubt, what new evidence has been presented in this proceeding that is capable of persuading a new trier of fact that Moeck was innocent under the clear and convincing standard? The answer is that the only real new evidence consists of the DNA evidence and Moeck's explanation of Sue Kleinschmidt performing oral sex the night before. As the discussion of this additional evidence discloses, it does little to strengthen Moeck's claim of innocence.

40. Weighing all the evidence, including evidence bearing on the credibility of the witnesses, this decision finds that the evidence is not clear and convincing that Moeck was innocent of the crimes for which he was convicted. Accordingly, it is not necessary to reach the issue of whether Moeck contributed to his being convicted or the amount required to compensate him for his period of imprisonment.

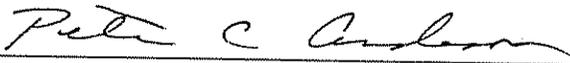
41. There remains significant evidence that Moeck was guilty of the crimes for which he was convicted. Sader went to the police immediately after leaving Moeck's apartment, appeared very shaken, and provided a detailed account that was largely consistent with the physical evidence. Moeck did not protest his innocence when arrested, and later came up with a story about an evening date with a woman no one was ever able to track down, and which story appears to have been fabricated to explain spermatozoa recovered from his oral swab. Moeck's apparent lack of honesty concerning Sue Kleinschmidt undercuts the credibility of his other testimony. Aside from Moeck's denial, the main evidence that he was innocent consists of his attacks on Sader's credibility. While Moeck has succeeded in raising a number of issues concerning Sader's credibility, the attacks on Sader are not sufficient to establish Moeck's innocence under the clear and convincing standard.

PROPOSED DECISION AND ORDER

For the reasons set forth above, IT IS ORDERED that the innocent convict claim of Richard Moeck for compensation for his imprisonment resulting from his conviction in Case No. 97-CF-468 is DENIED.

Dated at Madison, Wisconsin on September 13, 2006.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 
Peter C. Anderson
Administrative Law Judge