

[Cite as *In re Henry*, 2005-Ohio-4235.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

www.cco.state.oh.us

IN RE: MARVIN E. HENRY : Case No. V2002-50676
MARVIN E. HENRY : OPINION OF A THREE-
Applicant : COMMISSIONER PANEL
(1987-86506) :
: : : : :

{¶ 1} On June 29, 2004, the applicant filed a supplemental compensation application seeking additional economic loss as a result of an August 19, 1987 assault incident. On December 1, 2004, the Attorney General denied the applicant's claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove that he incurred additional economic loss as a result of the criminally injurious conduct. On December 27, 2004, the applicant filed a request for reconsideration. On March 7, 2005, the Attorney General denied the claim once again contending that the applicant failed to prove that his 2001 medical treatment is related to the 1987 criminally injurious conduct. On March 21, 2005, the applicant filed a notice of appeal to the Attorney General's March 7, 2005 Final Decision.

Hence, this matter came to be heard before this panel of three commissioners on June 8, 2005 at 10:30 A.M.

{¶ 2} The *pro se* applicant, via telephone, and an Assistant Attorney General attended the hearing and presented oral argument for this panel's consideration. Marvin Henry testified that he incurred additional medical expenses in 2001 while seeking treatment for his back, which resulted from the criminally injurious conduct. Mr. Henry noted that prior to 1987 he had no previous back treatments. However the applicant noted that, after the criminally injurious conduct, he suffered from an abnormality in his spine area and experienced pain in various areas of his back. Mr. Henry explained that he had consulted with and sought treatment from Dr. Jefferies, his primary care physician, prior to being referred to the pain clinic for evaluation and treatment. The applicant informed the panel that in 1999 he began treatment with pain specialists Dr. Wolfe and Dr. Hatfield. Mr. Henry contended that Dr. Wolfe, in an August 23, 2001 Medical Information Report, indicated that his back pain was related to the criminally injurious conduct. Lastly, Mr. Henry stated that he was refused further treatment because he was unable to pay treatment costs.

{¶ 3} The Assistant Attorney General, after hearing the applicant's testimony, continued to maintain that the applicant

failed to sufficiently prove that he incurred additional economic loss as a result of the criminally injurious conduct. The Assistant Attorney General acknowledged that the applicant may have and may still be experiencing back pain, but contended that the applicant's 2001 treatment concerning his back was not a result of the criminally injurious conduct and therefore is not compensable. The Assistant Attorney General stated that the applicant has yet to submit any medical documentation that certifies his 2001 back treatment is related to the criminally injurious conduct. The Assistant Attorney General argued that the August 23, 2001 Medical Information Report by Dr. Wolfe does not state that the applicant's back pain is related to the 1987 assault, but merely indicates what the applicant told Dr. Wolfe about his condition. The Assistant Attorney General asserted that Dr. Wolfe failed to provide a medical diagnosis concerning whether the applicant's back condition was related to the criminally injurious conduct, but noted that Dr. Wolfe specifically stated that the cause of the applicant's injury is unknown.

{¶ 4} After careful review of the file and in full consideration of the evidence presented at the hearing, we make the following determination. We find that the applicant has failed to prove by a preponderance of the evidence that his 2001

medical treatment is related to the 1987 criminally injurious conduct. A determination concerning whether a victim of criminally injurious conduct is entitled to an award for economic loss requires application of principles of traditional proximate cause standards. The quantum of evidence required is a preponderance of competent, material, and relevant evidence of record on that issue. Furthermore, there is a long standing requirement in the law of evidence in Ohio that damages for claimed personal injuries are recoverable only for injuries directly resulting from and as a natural consequence of the injury sustained. The evidence must tend to show that reasonable certainty of such a result exists. See *In re Toney*, V79-3029jud (9-4-81), *In re Saylor* (1982), 1 Ohio Misc. 2d 1, and *In re Bailey*, V78-3484jud (8-23-82).

{¶ 5} In this case, Mr. Henry has failed to present sufficient medical documentation from any of his physicians indicating that his persistent back pain stems from the 1987 assault incident. Should the applicant obtain such information that would be an appropriate basis for filing a supplemental compensation application. Therefore, the March 7, 2005 decision of the Attorney General shall be affirmed.

[Cite as *In re Henry*, 2005-Ohio-4235.]

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

LLOYD PIERRE-LOUIS
Commissioner

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: MARVIN E. HENRY : Case No. V2002-50676
MARVIN E. HENRY : ORDER OF A THREE-
Applicant : COMMISSIONER PANEL
(1987-86506) :
: : : : :

IT IS THEREFORE ORDERED THAT

1) The March 7, 2005 decision of the Attorney General is hereby AFFIRMED;

2) The claim is DENIED and judgment is rendered in favor of the state of Ohio;

3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

4) Costs are assumed by the court
of claims victims of crime fund.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

LLOYD PIERRE-LOUIS
Commissioner

ID #\5-dld-tad-061305

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Crawford County Prosecuting Attorney and to:

Filed 7-29-2005
Jr. Vol. 2257, Pgs. 182-183
To S.C. Reporter 8-12-2005

