

[Cite as *In re Gilliam*, 2003-Ohio-4995.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: SYLVIA R. GILLIAM	:	Case No. V2003-40143
SYLVIA R. GILLIAM	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} On October 8, 2002, the Attorney General issued a Finding of Fact and Decision denying the applicant’s claim pursuant to R.C. 2743.60(A) contending that the applicant failed to timely report the incident to law enforcement officials. On February 18, 2003, the Attorney General issued a Final Decision denying the claim pursuant to R.C. 2743.60(C) contending that the applicant failed to cooperate with law enforcement by not responding to police requests. The Attorney General also denied the claim pursuant to R.C. 2743.60(A). On February 19, 2003, the applicant filed an appeal of the Attorney General’s Final Decision. On May 2, 2003, the Attorney General filed a Brief which reversed his prior opinion and recommended the applicant be granted a total award of reparations in the amount of \$1,232.26 of which \$290.00 represented allowable expense and \$942.26 represented work loss. On May 29, 2003, this panel of commissioners ordered the Attorney General to file a supplemental memorandum addressing the applicant’s total economic loss and continued the hearing. On July 9, 2003, the Attorney General filed a supplemental memorandum recommending the applicant be granted an award in

the amount of \$1,393.26 of which \$290.00 represents allowable expense and \$942.26 represents work loss incurred from July 2, 2002 through August 4, 2002. Hence, this appeal came to be reheard before this panel of three commissioners on July 23, 2003 at 10:40 A.M.

{¶2} An Assistant Attorney General and *pro se* applicant (via telephone) attended the hearing and presented brief comments for this panel's consideration. The panel chairman informed the applicant concerning her right to legal representation. However, the applicant indicated that she did not wish to retain counsel. The Assistant Attorney General advised the panel that the claim was originally denied for failure to report the incident to the police. The Assistant Attorney General however stated that she later received new information which revealed that the applicant did in fact properly report the matter. Therefore, the main issues before this panel involve the applicant's (1) work loss claim, (2) the number of exemptions indicated on the applicant's payroll form, and (3) the applicant's loss of vacation time.

{¶3} The applicant asserted that she is entitled to work loss from July 2, 2002 through October 28, 2002 as well as 30 hours of lost vacation time. The applicant acknowledged that the Attorney General granted her an award in the amount of \$942.26 for work loss from July 2, 2002 through August 4, 2002. However, the applicant stated that from August 5, 2002 through October 28, 2002 she was physically unable to work and was under her physician's care. The applicant further asserted that had she not been assaulted and was able to work that she would have accrued 30 hours of vacation time. The applicant advised that a letter from United Church Homes confirms her assertion. The applicant also insisted that the number of exemptions stated on her pay stub is incorrect. The applicant stated that she only listed three exemptions and not four as indicated on the form.

{¶4} The Assistant Attorney General asserted that currently the applicant has only proven that she incurred work loss from July 2, 2002 through August 4, 2002. The Assistant Attorney General stated that the applicant was reimbursed until she was able to attend a new nursing class. The Assistant Attorney General further asserted that the applicant has failed to submit any additional disability information confirming that she was unable to work from August 4, 2002 through October 28, 2002. The Assistant Attorney General stated that according to In re Berger (1994), 91 Ohio Misc. 2d 85, where a judge of the court of claims determined that a victim must prove (1) inability to work and (2) monetary loss in order to recover an award for work loss, the applicant's claim for additional work loss must be denied since the applicant failed to prove she was unable to work. The Assistant Attorney General stated that the applicant admitted to daily use of cocaine, entered herself into a drug rehabilitation program from August 15, 2002 through August 26, 2002, and failed to submit any additional disability information as evidence of her inability to work. Accordingly, the Assistant Attorney General stated that the applicant's claim for additional work loss should be denied.

{¶5} From review of the file and with full consideration given to the information presented at the hearing, this panel makes the following determination. We find that the applicant incurred work loss in the amount of \$942.46 from July 2, 2002 through August 4, 2002. We also find, based upon the April 10, 2003 and June 17, 2003 letters from United Church Homes, that the applicant would have accrued approximately 30 hours of vacation had she been consistently employed. However, the applicant failed to prove by a preponderance of the evidence her inability to work from August 5, 2002 through October 28, 2002.

{¶6} This panel notes that the file contains information concerning the applicant's drug use. However, this panel finds that under Amended S.B. 153, victims and applicants who have engaged in non-violent felonious conduct, with the exception of drug trafficking, within ten years of the criminally injurious conduct or during the pendency of the claim are now eligible to participate in the program. Therefore, based upon the reasons set forth above, the February 18, 2003 decision of the Attorney General shall be reversed to award the applicant \$1,232.26 of which \$290.00 represents allowable expense and \$942.26 represents work loss from July 2, 2002 through August 4, 2002. This claim shall also be remanded to the Attorney General for final calculation of the applicant's 30 days of vacation time, decision and payment of the award.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} 1) The February 18, 2003 decision of the Attorney General is REVERSED to render judgment in favor of the applicant in the amount of \$1,232.26;

{¶9} 2) This claim is remanded to the Attorney General for final calculation of the applicant's additional 30 days of vacation time, decision and payment of the award based upon the panel's findings;

{¶10} 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application pursuant to R.C. 2743.68;

{¶11} 4) Costs are assumed by the court of claims victims of crime fund.

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

JAMES H. HEWITT III
Commissioner

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