

[Cite as *In re Monfort*, 2005-Ohio-1453.]

**IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION**

IN RE: MARK O. MONFORT	:	Case No. V2004-60806
MARK O. MONFORT	:	<u>ORDER OF A THREE-</u>
	:	<u>COMMISSIONER PANEL</u>
Applicant	:	
(1997-66133)	:	
	: : : : :	

{¶ 1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to an April 19, 1997 assault, whereby he sustained a broken leg and ankle. To date, the applicant has been granted awards of reparations totaling \$27,093.22. On January 15, 2004, the applicant filed a supplemental reparations application seeking additional economic loss due to the 1997 criminally injurious conduct. On May 12, 2004, the Attorney General denied the applicant’s claim pursuant to R.C. 2743.60(D) asserting that all the applicant’s economic loss has been or may be recouped from a collateral source, namely Social Security. On May 13, 2004, the applicant filed a request for reconsideration contending that Social Security is not a readily available collateral source. On August 11, 2004, the Attorney General denied the applicant’s claim pursuant to R.C. 2743.52(A) asserting that the applicant failed to prove, by a preponderance of the evidence, that he incurred additional economic loss as a result of the 1997 assault. On August 20, 2004, the applicant filed a notice of appeal to the Attorney General’s August 11, 2004 Final Decision. Hence, this matter came to be heard by this three commissioner panel on December 15, 2004 at 11:45 A.M.

{¶ 2} The applicant, applicant’s counsel, and an Assistant Attorney General appeared at the hearing and presented testimony and oral argument for the panel’s consideration. Mark

Monfort testified that he sustained a crushed right leg as a result of the 1997 assault for which he has undergone a number of surgeries. The applicant indicated that his last surgery was performed by Dr. Turner in 2003, who removed deteriorating hardware from his injured leg. Mr. Monfort stated, despite numerous attempts to return permanently to work after the assault, he has been unable to consistently work and was advised by Dr. Turner not to work between July 1, 2003 through June 7, 2004. Moreover, the applicant stated that he only has vision in his left eye (injury unrelated to the assault) which limits his ability to perform certain tasks. Mr. Monfort testified that he previously worked manual labor jobs, since he only has an eleventh grade education and is currently not skilled in any profession. The applicant stated that Dr. Turner suggested that he apply for entry into the Social Security Administration's vocational program as well as apply for disability benefits. The applicant explained that he was denied disability benefits and enrollment into the Social Security Administration's vocational program. After the denial of his Social Security application, Mr. Monfort testified that he did not re-file for disability benefits, even though Dr. Turner advised him not to work between July 1, 2003 through June 7, 2004 (the applicant noted that he filed his Social Security application *pro se*). Lastly, Mr. Monfort testified that he currently experiences a high degree of leg pain and is seeing Dr. Griffin for treatment.

{¶ 3} Applicant's counsel stated, based upon Mr. Monfort's testimony and Dr. Turner's January 9, 2004 letter, that the applicant's claim should be allowed. Counsel asserted that the applicant attempted to work after his 2003 surgery, however stated that Mr. Monfort was unable to continue working due to his severe leg pain. Counsel also asserted that Mr. Monfort's limited vision, inability to stand for long periods of time, and lack of skills prevents him from engaging

in various forms of employment. Counsel argued that Dr. Turner's letter verifies the applicant's inability to work between July 1, 2003 through June 7, 2004 and hence requested the applicant be reimbursed \$19,012.00 in work loss.

{¶ 4} The Assistant Attorney General maintained that Mr. Monfort's claim should be denied since he has failed to prove, by a preponderance of the evidence, that he incurred additional work loss as a result of the criminally injurious conduct. The Assistant Attorney General argued that the Social Security Administration determined that the applicant is not permanently disabled and that he is able to engage in a different form of employment. The Assistant Attorney General also stated that the applicant may now be eligible for Social Security disability benefits, since Dr. Turner approved his release from work between July 1, 2003 through June 7, 2004, but noted that the applicant failed to re-file for such benefits. The Assistant Attorney General also asserted that the applicant unreasonably failed to undertake available substitute employment.

R.C. 2743.51(G) states:

(G) "Work loss" means loss of income from work that the injured person would have performed if the person had not been injured and expenses reasonably incurred by the person to obtain services in lieu of those the person would have performed for income, reduced by any income from *substitute work* actually performed by the person, or by income the person would have earned in *available appropriate substitute work* that the person *was capable of performing but unreasonably failed to undertake*. Emphasis added.

{¶ 5} Following the review of the file and with full and careful consideration of all the evidence proffered at the hearing, this panel makes the following determination. We find that the applicant has proven, by a preponderance of the evidence, that he incurred additional work loss. Mr. Monfort testified that he was assaulted on April 19, 1997 and that he sustained a debilitating leg injury which has left him, according to Dr. Turner's January 9, 2004 letter, essentially restricted to sedentary employment. Mr. Monfort further testified that he is a 31 year old male, who has only worked manual labor jobs because he is not skilled in any profession. The applicant stated that, due to the persistent pain in his leg, he is unable to successfully perform manual labor since the assault. Mr. Monfort also testified that he applied for Social Security disability benefits based upon Dr. Turner's recommendation with hopes of being able to enroll into the Social Security Administration's vocational program. The applicant indicated that he wished to resume employment in a different field, which does not require substantial standing. However, Mr. Monfort testified that unfortunately he was denied Social Security disability benefits and enrollment into the vocational program. The applicant also noted that he attempted on numerous occasions to resume full time employment to no avail. Based upon the above information, we believe it is clear that Mr. Monfort attempted to engage in gainful employment since the criminally injurious conduct, but was incapable of performing certain tasks due to his leg injury, his lack of training, and limited vision.

{¶ 6} Moreover, we believe that available appropriate substitute work is the same or similar work that the applicant was capable of performing prior to the criminally injurious conduct. Mr. Monfort testified that he is only skilled in manual labor and that he only has sight in one eye, which collectively limits his ability to engage in various types of employment. We

recognize that often victims of crime are injured to the point that they are no longer able to engage in their former employment and therefore must seek a different form of employment in order to make ends meet. Over the years we have reimbursed victims, who have sustained work loss, the difference between replacement work (a completely different field of work) and substitute work (same and similar type work as the victim's previous job) and we believe this case is no different. Hence, we find that there is sufficient medical documentation from Dr. Turner concerning the applicant's inability to work between July 1, 2003 through June 7, 2004. We further note that the applicant has no other readily available collateral sources at this time, since Mr. Monfort was denied Social Security disability benefits. Accordingly, the applicant should be compensated for the work loss he incurred as a result of the 1997 assault. Therefore, the August 11, 2004 decision of the Attorney General shall be reversed to grant the applicant an award of reparations in the amount of \$19,012.00 for unreimbursed work loss incurred between July 1, 2003 through June 7, 2004.

IT IS THEREFORE ORDERED THAT

{¶ 7} 1) The August 11, 2004 decision of the Attorney General is REVERSED to render judgment in favor of the applicant in the amount of \$19,012.00;

{¶ 8} 2) This claim is referred to the Attorney General pursuant to R.C. 2743.191 for payment of the award;

{¶ 9} 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;

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

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JAMES H. HEWITT III
Commissioner

KARL H. SCHNEIDER
Commissioner

GREGORY P. BARWELL
Commissioner

ID #\2-dld-tad-010505

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

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