

[Cite as *In re Ward*, 2005-Ohio-4231.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

www.cco.state.oh.us

IN RE: KEVIN A. WARD : Case No. V2004-61136

KEVIN A. WARD : DECISION

Applicant : Judge J. Craig Wright

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{¶ 1} This matter came on to be considered upon applicant's appeal from the April 8, 2005, order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based upon a finding that applicant's economic loss had been, or could have been recouped from Medicaid.

{¶ 2} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The panel found, upon review of the evidence, that applicant failed to present sufficient evidence to meet his burden. Specifically, the panel determined that applicant failed to qualify as a victim of criminally injurious conduct under the motor vehicle exceptions set forth in R.C. 2743.51(C)(1).

{¶ 3} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides

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in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final."

{¶4} At the judicial hearing, applicant presented oral argument via telephone and described the serious injuries he sustained when his motor vehicle was struck by another vehicle. The police report contained in the claim file shows that the vehicle that caused the collision turned left into approaching traffic and that the unknown offender fled the scene of the accident.

{¶5} The Attorney General asserts that the offender's actions in causing the accident and leaving the scene of the crash would "lead a reasonable person to conclude by a preponderance of the evidence that more likely than not, the driver was impaired" and that he acted in a manner that constituted an OMVI violation and a violation of R.C. 2903.08, aggravated vehicular assault.

{¶6} The court notes that the panel considered applicant's testimony and concluded that he failed to prove that the offender had been operating the vehicle while under the influence of alcohol or drugs. The panel also determined that there is no authority to support the Attorney General's assertion that persons who are injured in a motor vehicle collision involving a hit skip motorist qualify as victims of criminally injurious conduct. The court agrees.

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{¶ 7} As the panel noted in its decision, there is no evidence to show that the offender engaged in any of the conduct that must be proven for applicant to qualify as a victim of criminally injurious conduct under the exceptions to the motor vehicle exclusion contained in R.C. 2743.51(C)(1). Specifically, applicant failed to show that the driver of the vehicle that caused the collision: 1) intended to cause personal injury or death; 2) used the vehicle to flee immediately after committing a felony; 3) used the vehicle in a manner that constitutes an OMVI violation; or, 4) used the vehicle in a reckless manner that constituted aggravated vehicular assault pursuant to R.C. 2903.08.

{¶ 8} The Attorney General's assertion that the offender in this case was under the influence of drugs or alcohol is not persuasive because the driver was never apprehended. Furthermore, for applicant to establish his eligibility for an award of reparations pursuant to R.C. 2743.51(C)(1)(d) and 2903.08, it is necessary for him to show that the offender acted with an "absence of care or an absolute perverse indifference to the safety of others." *In re Calhoun* (1994), 66 Ohio Misc.2d 159, quoting *Roszman v. Sammett* (1971), 26 Ohio St.2d 94 at 98.

{¶ 9} Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicant did not show by a preponderance of the evidence that he was entitled to an award of reparations.

{¶ 10} Based on the evidence and R.C. 2743.61, it is the court's opinion that the decision of the panel of commissioners

was reasonable and lawful. Therefore, this court affirms the decision of the three-commissioner panel, and hereby denies applicant's claim.

J. CRAIG WRIGHT
Judge

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KEVIN A. WARD : ORDER

Applicant : Judge J. Craig Wright

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Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and applicant's appeal must be denied.

IT IS HEREBY ORDERED THAT:

- 1) The order of April 8, 2005, (Jr. Vol. 2256, Page 175) is approved, affirmed and adopted;
- 2) This claim is DENIED and judgment entered for the State of Ohio;
- 3) Costs assumed by the reparations fund.

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J. CRAIG WRIGHT
Judge

AMR/cmd

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

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To S.C. Reporter 8-12-2005