

[Cite as *In re Young*, 2005-Ohio-6648.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: CHARLES R. YOUNG : Case No. V2005-80215

CHARLES R. YOUNG : DECISION

Applicant : Judge John W. McCormac

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{¶ 1} This matter came on to be considered upon the Attorney General's appeal from the July 29, 2005, order issued by the panel of commissioners. The panel's determination reversed the final decision of the Attorney General, which denied applicant's claim for work loss based upon the finding that there was insufficient medical documentation to prove that applicant's work loss was related to the criminally injurious conduct.

{¶ 2} The panel found applicant's testimony to be credible concerning his back injury and its relation to the criminally injurious conduct.

{¶ 3} 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 presented sufficient evidence to meet his burden of showing that his back injury was related to the criminally injurious conduct.

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

{¶ 5} The Attorney General asserts that the panel's decision was unreasonable and unlawful because it relied on applicant's testimony rather than medical evidence to show that applicant's injury was related to the criminally injurious conduct. Specifically, the Attorney General contends that the panel's finding that applicant's back injury was related to the January 2004 robbery was not supported by competent medical evidence and, for that reason, its determination was inconsistent with this court's previous decisions in *In re Bailey*, V78-3484jud (8-23-82) and *In re Toney*, V79-3029jud (9-4-81).

{¶ 6} In *In re Toney*, the court found that "a determination of whether a Victim of Crimes claimant is entitled to an award of reparations for economic loss arising from criminally injurious conduct requires application of principles of traditional proximate cause standards. The trier of fact, at a minimum, must be provided with evidence that a result is more likely to have been caused by an act, in the absence of any intervening cause. The quantum of evidence required is a preponderance of competent, material and relevant evidence of record on that issue."

{¶ 7} A review of the claim file reveals that it contains evidence to support the panel's determination that applicant sustained a back injury as a result of the criminally injurious conduct. Applicant's testimony that his back was injured during the robbery is supported by both a victim impact statement that

was submitted prior to the offender's sentencing and by statements that applicant made in his reparations application that was filed on January 26, 2004, one day before he was examined by his physician. The physician's examination confirmed applicant's back injury.

{¶ 8} As noted above, the panel found credible applicant's testimony that his back was injured as a result of an assault and robbery that occurred at his residence. The credibility of applicant's testimony and the issue of whether his injury was caused by the criminally injurious involves a factual determination by the panel of commissioners. The court finds that the panel's decision contains sufficient findings of fact to support its conclusion. On appeal from a determination of fact, a court is not permitted to substitute its judgment for that of the trier of the fact. *In re Saylor* (1982) 1 Ohio Misc.2d 1.

{¶ 9} At the judicial hearing, the Attorney General asserted that the panel's decision would allow applicant to receive reimbursement for economic loss without providing any medical evidence to show that loss was related to his back injury. The court disagrees.

{¶ 10} Although the panel determined that applicant's back injury was related to the criminally injurious conduct, it did not find that applicant was entitled to an award of reparations. Rather, the panel remanded applicant's claim to the Attorney General for economic loss calculations and decision. Applicant still has the burden to prove that any claim for allowable expense or work loss was related to the injury that he sustained as a result of the criminally injurious conduct. The evidence in the claim file shows that applicant had a history of back pain that may have been aggravated by the criminally injurious

conduct. This court has previously observed that 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." *In re Bailey*, supra. In order to prevail on his claim for economic loss, applicant must establish both the requisite medical evidence of a causal connection to the criminally injurious conduct and that his injury resulted in unreimbursed allowable expense or work loss. *Id.*

{¶ 11} Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicant had shown by a preponderance of the evidence that his injury was related to the criminally injurious conduct.

{¶ 12} 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 applicant's claim shall be remanded to the Attorney General for further investigation and decision.

JOHN W. MCCORMAC

Judge

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CHARLES R. YOUNG : ORDER

Applicant : Judge John W. McCormac

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Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed.

IT IS HEREBY ORDERED THAT:

- 1) The order of July 29, 2005, (Jr. Vol. 2257, Pages 184-185) is approved, affirmed and adopted;
- 2) This claim is remanded to the Attorney General for economic loss calculations and decision;
- 3) Costs assumed by the reparations fund.

JOHN W. MCCORMAC
Judge

AMR/cmd

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