

[Cite as *In re Young*, 2005-Ohio-4236.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

www.cco.state.oh.us

IN RE: CHARLES R. YOUNG : Case No. V2005-80215
CHARLES R. YOUNG : OPINION OF A THREE-
 : COMMISSIONER PANEL
Applicant :

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{¶ 1} On July 2, 2004, the applicant filed a reparations application seeking reimbursement of expenses incurred with respect to a January 10, 2004 assault and robbery incident. On August 30, 2004, the Attorney General granted the applicant an award of reparations in the amount of \$1,208.00 for unreimbursed allowable expense. However, the Attorney General denied the applicant's claim for work loss and reimbursement of the St. Vincent's Charity Hospital's bill. On September 24, 2004, the applicant filed a request for reconsideration. On March 22, 2005, the Attorney General determined that no modification of the previous decision was warranted. On April 8, 2005, the applicant filed a notice of appeal to the Attorney General's March 22, 2005 Final Decision asserting that he sustained additional economic loss. Hence, this matter came to be heard

before this panel of three commissioners on June 8, 2005 at 11:00 A.M.

{¶ 2} The applicant, applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony, an exhibit, and oral argument for this panel's consideration. Charles Young testified that for the last 30 years he had been setting up pool tables for a living. Mr. Young explained that the job required heavy lifting, which sometimes aggravated his back, but noted that he has never incurred any significant work loss or sought any extensive treatment for his back as a result of setting up pool tables.

{¶ 3} The applicant indicated that on January 2, 2004 he suffered a minor back injury while working. Mr. Young stated that he sought care at the Cleveland Clinic and returned to work a few days later. However, Mr. Young explained that his back was severely injured on January 10, 2004 when he was robbed and assaulted at his home. Mr. Young testified that two young men forced their way into his apartment, tied him up, and repeatedly struck him. Mr. Young stated that initially he attempted to fight back, but was unable to do so successfully. The applicant explained that he sustained several facial lacerations requiring stitches and a back and shoulder injury. Mr. Young also noted

that he suffers from nightmares, difficulty sleeping, and depression as a result of the assault. The applicant stated that he attempted to return to work a week after the assault, but was unable to perform his job duties due to his back injury. Mr. Young explained that he sought treatment with his primary physician, Dr. Labastille, as a result of his back pain.

{¶ 4} Moreover, Mr. Young further testified that he has not installed any pool tables since the assault. However, the applicant stated that within the last month he has worked setting up the bumper railings for pool tables. Mr. Young acknowledged that he had been previously diagnosed in 1995 with arthritis and degenerative disc disease, but explained that since the criminally injurious conduct he now suffers from a sciatic nerve injury, a condition which he did not have prior to the criminally injurious conduct.

{¶ 5} Applicant's counsel stated, based upon the testimony proffered, that the applicant's claim for additional economic loss should be allowed. Counsel argued, despite the applicant's minor back injury on January 2, 2004, that the applicant nevertheless on January 10, 2004 sustained a severe and aggravating injury to his back during the assault and robbery, which ultimately resulted in a loss of work for the applicant.

{¶ 6} The Assistant Attorney General maintained that the applicant failed to prove that his back was injured during the 2004 criminally injurious conduct incident. The Assistant Attorney General asserted that the applicant had a pre-existing back injury that occurred on January 2, 2004 while helping a friend move furniture as noted in the medical records. The Assistant Attorney General also insisted that none of Mr. Young's medical records support the applicant's contention that his back was injured during the assault and robbery on January 10, 2004, since the medical records are silent as to any back injury. The Assistant Attorney General also noted that no mention of a back injury was contained in the January 10, 2005 applicant's EMS report.

{¶ 7} From review of the file and with full consideration given to the evidence presented at the hearing, this panel makes the following determination. We find that the applicant sustained a back injury during the January 10, 2004 assault and robbery incident. We find the applicant's testimony to be credible concerning the details of his January 2004 back injuries. Mr. Young testified that, prior to the criminally injurious conduct, he had not sought any significant treatment

for his back since 1995, despite his back injury on January 2, 2004 after which he returned to work in three days.

{¶ 8} Moreover, we also find that the Bureau of Workers' Compensation would not be a collateral source in this case, since the applicant was not injured while working, but as a result of the assault. We find it reasonable that the applicant's back injury may have taken a backseat to reporting the applicant's more serious injuries resulting from the assault. Furthermore, we also understand that back injuries do not always readily present themselves at the time of the injury, but may be delayed for a few days especially after an assault. Therefore, based upon the above, the March 22, 2005 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

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LLOYD PIERRE-LOUIS
Commissioner

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IN RE: CHARLES R. YOUNG	:	Case No. V2005-80215
CHARLES R. YOUNG	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>

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IT IS THEREFORE ORDERED THAT

- 1) The March 22, 2005 decision of the Attorney General is REVERSED and judgment is rendered for the applicant;
- 2) This claim is remanded to the Attorney General for economic loss calculations and decision;
- 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;

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ORDER

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ORDER

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 #\3-dld-ad-061505

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

Filed 7-29-2005
Jr. Vol. 2257, Pgs. 184-185
To S.C. Reporter 8-12-2005

