

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ANN CAMERON,)
)
 Claimant-Appellant,)
) C.A. No. 07A-02-002 MMJ
)
 v.)
)
 DELAWARE VIOLENT CRIMES)
 COMPENSATION BOARD,)
)
 Appellee.)

Submitted: April 10, 2008
Decided: May 20, 2008

On Claimant Ann Cameron's Appeal from an Order of the Delaware Violent
Crimes Compensation Board. **DENIED.**

MEMORANDUM OPINION

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Attorney for Appellant

Ralph K. Durstein, III, Esquire, Deputy Attorney General, Department of
Justice, Wilmington, DE, Attorney for the Board

JOHNSTON, J.

PROCEDURAL CONTEXT

On January 19, 2006, Ann Cameron filed a claim with the Delaware Violent Crimes Compensation Board. Cameron's son, Joseph, was beaten to death. Claimant sought reimbursement for her son's funeral and related expenses. On November 22, 2006, the Board denied Claimant's claim. The Board found that Joseph was engaged in illegal activity at the time of his death. Thus, Claimant was barred from recovery under 11 *Del. C.* § 9006(a)(1) and (7).

On January 9, 2007, Claimant made a request for a live hearing before the Board. A hearing was held and the Board upheld its previous decision, denying compensation.

Claimant filed a Notice of Appeal in the Superior Court pursuant to Rule 72.¹ This Court dismissed the Notice of Appeal, for failure to provide a substantive basis upon which relief can be granted. Claimant amended her Notice of Appeal and filed a Motion to Reconsider Dismissal of Notice of Appeal. The Court granted the Motion. On March 6, 2008, Claimant filed an appeal. On March 27, 2008, the Board filed an answering brief. On April 10, 2008, Claimant filed a reply brief.

¹ Super. Ct. Civ. R. 72.

Claimant asserts that the Board’s decision should be overturned because: (1) the decision was based on hearsay statements of the perpetrators; (2) the hearsay evidence presented to the Board was not sufficient to determine that the victim, Joseph Cameron, was engaged in drug related activity; (3) the Board erred in placing the burden on Claimant to disprove that the victim was not involved in criminal activity; and (4) 11 *Del. C. § 9006(a)(1)* cannot be a basis for denying a non-victim claimants claim for compensation.

DISCUSSION

A claimant may appeal a Board decision to the Superior Court within 30 days.² The Court will not re-try the facts or re-weigh the evidence.³ The appeal is not *de novo*.⁴ The Court will review the factual findings of the Board and determine “whether the Board has abused its discretion or has committed an error of law.”⁵

² *Liberto v. Delaware Violent Crimes Compensation Board*, 1992 WL 52193, at *1 (Del. Super.).

³ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁴ *Morris v. Delaware Violent Crimes Compensation Board*, 2004 WL 1172895, at *1 (Del. Super.).

⁵ *Id.*

The Board has a significant amount of discretion to determine if a claimant is eligible for compensation.⁶ The Board “is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed.”⁷ Pursuant to 11 *Del. C.* § 9006(b) the Board may consider circumstances it deems relevant in determining the amount of any award, including “the behavior of the victim which directly or indirectly contributed to his injury or death.” The Board may deny compensation altogether if it finds that the victim, through negligence or unlawful conduct, provoked or aggravated the incident which gave rise to the injury.⁸

Ground (i). Claimant argues that the only evidence before the Board was the “self serving statements of the perpetrator,” Dante Williams. Further, the Board only reached its conclusion by mischaracterizing Detective Taylor’s testimony, who was merely recounting the statements of Dante Williams.

During the hearing before the Board, Detective Taylor testified regarding the Delaware State Police Department’s investigation into Cameron’s death. The investigation included interviews with Trooper

⁶ *Newman v. Delaware Violent Crimes Compensation Board*, 1993 WL 54447, at *2 (Del. Super.).

⁷ *Id.* at 1.

⁸ 11 *Del. C.* § 9006(c).

Kristen Carroll, Patrol Sergeant Gallagher, Lieutenant Evans, Dante Williams, Master Corporal Jones, Kellyann Anastasi, Corey Johnson, Ann Cameron, Ryan Cameron, and Susan Drummond. Corey Johnson, the victim's companion on the night of the beating, told police that a prostitute, named Susan Drummond, agreed to have sex with Joseph Cameron at the Hollywood Motel in return for \$20.00 and a small bag of cocaine. From this and other testimony, the police concluded that Susan Drummond took the money and drugs and disappeared into a Hollywood Motel room. When Cameron knocked on the hotel room door, Dante Williams answered. An altercation ensued among Cameron, Johnson, Williams and Fabian Lloyd. Cameron sustained the injuries which ultimately led to his death.

Claimant contends that this evidence is not sufficient because Detective Taylor refused to testify that Johnson's statement to the police was truthful. Instead, Taylor stated he was recounting "the information I received from interviews." Claimant argues that "the most reasonable interpretation of Detective Taylor's response to the question of was the perpetrators' story the truth is that there were not other witnesses to the beating so I do not know whether it is the truth or not and all I can tell you is that this was what the perpetrators stated."

The Board has the sole authority to determine the credibility of witnesses.⁹ The Board heard testimony from Detective Taylor. The testimony was based on the findings of the Delaware State Police after conducting several interviews. Detective Taylor's testimony confirmed the initial Board ruling. Claimant did not present evidence contradicting the testimony of Detective Taylor. The Court finds the Board did not abuse its discretion. Instead, the Board heard and considered relevant testimony and decided Claimant was not entitled to compensation due to the victim's behavior on the day of his death.

Ground (ii). Claimant asserts that the hearsay statements of the perpetrators, standing alone, are not sufficient evidence upon which the Board could determine that Cameron was engaged in criminal activity. Claimant argues the statements made by the perpetrators cannot be trusted.

As previously discussed, Detective Taylor's testimony was based on the statements not only of the perpetrators, but of Corey Johnson, who was a voluntary companion of Cameron. Johnson told police that he witnessed Cameron give Drummond \$20.00 and a small bag of cocaine. Johnson had no apparent incentive to fabricate a self-incriminating story.

⁹ *Flood v. Violent Crimes Compensation Board*, 2001 WL 659826, at *1 (Del. Super.).

Claimant speculates that Johnson was in league with others, who planned to lure Cameron to the hotel for the purpose of robbing and assaulting Cameron. This theory is simply conjecture. Had the police found merit to this hypothesis, Johnson undoubtedly would have been criminally charged. Additionally, Johnson's statements corroborate the statements of Dante Williams and Fabian Lloyd, who attacked Cameron. The Board is permitted to consider hearsay statements along with other competent evidence.¹⁰ The Board heard the testimony of Detective Taylor and examined the police report and notes of those interviewed. The Court finds Ground (ii) is not supported by the record.

Ground (iii). Claimant alleges Board error in placing the burden upon Claimant to disprove that the victim was not involved in criminal activity. Claimant highlights the following statement from the Board:

Okay, we understand your giving us information on his reputation. We want to know what happened the night of the crime. Do you have any evidence saying it was a non-drug related crime? Any evidence showing us that [Cameron] was not involved in a drug related activity. We need to have evidence. We're not going just on reputation.

¹⁰ *Filanowski v. Port Contractors, Inc.*, 2007 WL 64758, at *4 (Del.Super.).

Cameron argues this statement is evidence that the Board placed the burden of proof on Claimant to show the victim was not involved in criminal activity.

Claimant mischaracterizes the statement of the Board. During the hearing Claimant was entitled to cross-examine witnesses and provide evidence to refute the presented testimony.¹¹ However, instead of providing testimony, Claimant questioned the findings of the Board. Claimant's own statement corroborated a portion of the Board's conclusions:

My son patronized the prostitute. I have it here in writing. But yet in the paper I got denied from you guys here, that they said that my son was illegal drug activity. So that's what I'm saying. Is it a prostitute or is it illegal drugs?

The Board explained to Claimant that instead of asking questions, this was her opportunity to explain "why you do not like our decision." Sean Flattery, Claimant's boyfriend, attempted to clarify Claimant's concerns. However, Flattery only provided character evidence. The Board did not shift the burden to Claimant. Instead, it appears the Board merely was informing Claimant what type of testimony, if offered, would best support her appeal.

¹¹ *Mitchell v. Delaware Alcoholic Beverage Control Comm'n*, 193 A.2d 294, 305 (Del. 1963.).

Cameron was given an ample opportunity to present evidence during the hearing to rebut the findings of Detective Taylor. The Board did not shift the burden to Cameron, but merely asked her to present her understanding of the events which took place on the night in question. The Court finds the Board did not abuse its discretion or commit an error of law during the hearing.

Ground (iv). Cameron claims 11 *Del. C.* § 9006(a)(1) cannot be a basis for denying a non-victim claimant's claim for compensation. Specifically, Ann Cameron did not participate in criminal activity, thus she cannot be denied compensation.

Section 9006(a) provides in part:

The Board shall deny payment of a claim for the following reasons:

- (1) Where the claimant was the perpetrator of the crime on which the claim is based, or was a principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred;
- (7) Where the victim has sustained injuries during a drug-related crime in which the victim was an illegal participant.

It is clear the intent of § 9006(a)(1) is to deny compensation for a victim who sustained injuries while engaged in criminal activity.¹² In section 9006, the terms “claimant” and “victim” are used interchangeably. If the victim is deceased, and the claim must be asserted by another person, the bar to recovery still applies. Although, Ann Cameron herself did not commit a crime, she is barred from recovery through the actions of her son, the victim. It is inconsistent with the intent of the statute to consider the conduct of Ann Cameron as determinative of recovery.

CONCLUSION

Claimant has not demonstrated that the Board abused its discretion or committed reversible error. The Court must give deference to the Board’s decision to deny compensation. **THEREFORE**, the Court affirms the decision of the Board.

IT IS SO ORDERED.

The Honorable Mary M. Johnston

¹² See 11 Del. C. § 9001 (one purpose of the act is to meet hardships imposed upon the families as victims of crimes); *Application of Keddie*, 1990 WL 96595, at *3 (Del. Super.).