

[Cite as *In re Gardner*, 2004-Ohio-5080.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: ROBYNE K. GARDNER	:	Case No. V2003-40909
ROBYNE K. GARDNER	:	<u>ORDER OF A THREE-</u> <u>COMMISSIONER PANEL</u>
Applicant	:	
(1990-45114)	:	
	: : : : :	

{¶ 1} On July 7, 2003, the applicant filed a supplemental compensation application seeking additional reimbursement for expenses incurred with respect to a March 25, 1990 assault incident. On August 5, 2003, the Attorney General denied the applicant's claim pursuant to R.C. 2743.68 contending that the applicant failed to file a supplemental compensation application within five years of the court's last order, which was dated May 29, 1998. On August 11, 2003, the applicant filed a request for reconsideration. On August 28, 2003, the Attorney General denied the claim once again. On September 12, 2003, the applicant filed an appeal of the Attorney General's Final Decision asserting that she was not aware that she had to contact the court directly within five years of the court's last order. The applicant also stated that she contacted her attorney with respect to filing a supplemental compensation application prior to the expiration period. On February 5, 2004 and May 7, 2004, a panel of commissioners held a final determination in abeyance, ordered the Attorney General to file a supplemental memorandum calculating the applicant's economic loss with regard to the applicant's diagnosis of post

traumatic stress disorder, and continued the matter. On June 7, 2004, the Attorney General filed a Supplemental Memorandum recommending the Final Decision be affirmed since the applicant has failed to submit medical documentation supporting her alleged inability to file a timely supplemental application because she suffers from post traumatic stress disorder. Hence, this matter came to be reheard before this panel of three commissioners on June 16, 2004 at 10:20 A.M.

{¶ 2} The applicant, applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. Dr. James Girvin, the applicant's psychiatrist, testified that he treated the applicant from January 21, 2003 through June 14, 2004. Dr. Girvin stated that the applicant suffers from post traumatic stress disorder and recurrent major depression. Dr. Girvin indicated that this work primarily focused on treating the applicant's symptoms through numerous prescribed medications, and therapy sessions to help the applicant function and cope with life so that she may successfully re-enter the work force. Dr. Girvin explained that the applicant experiences frequent episodes of nightmares, impaired concentration, lack of focus, low motivation, excessive anxiety, overwhelmed feelings, difficulty sleeping, and fearfulness as a result of her condition. Dr. Girvin stated that the applicant also experiences intrusive images that relate to the criminally injurious conduct, which causes the applicant to re-experience the 1999 ordeal all over again. Dr. Girvin asserted that the applicant is often fearful and tends to avoid any circumstances which would trigger memories of the assault. Lastly, Dr. Girvin testified that he is unable to provide an opinion, within a reasonable degree of medical certainty, that the applicant's diagnosis of post

traumatic stress disorder and recurrent major depression prevented the applicant from handling personal affairs on a daily basis.

{¶ 3} Applicant's counsel stated, based on the testimony presented, that the applicant's claim should be allowed. Counsel stated that the applicant suffers from a mental condition which prohibited her from filing a timely supplemental compensation application. Counsel asserted that the panel has the equitable discretion to toll the statute of limitations under R.C. 2743.68.

{¶ 4} The Assistant Attorney General conceded that the applicant suffers from post traumatic stress disorder and major depression stemming from the criminally injurious conduct. Nevertheless, the Assistant Attorney General contended that the applicant has failed to show that she suffers from a mental condition, which would prevent her from handling her personal affairs such as filing a timely supplemental compensation application. The Assistant Attorney General argued that despite the applicant's diagnosis of post traumatic stress disorder and major depression she still managed to file disability applications with the Social Security Administration in 2000, 2002, and 2003. The Assistant Attorney General noted that Ms. Gardner stated, on her appeal form, that she was not aware that she had to contact the court directly within five years of the court's last order in order for her case to remain open and active. The Assistant Attorney General also noted that the applicant indicated that she had contacted her attorney with respect to filing a supplemental compensation application prior to the expiration period. Accordingly, the Assistant Attorney General asserted that this claim should be denied pursuant to R.C. 2743.68.

{¶ 5} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. We find that the applicant has failed to prove, within a reasonable degree of medical certainty, that her diagnosis of post traumatic stress disorder and recurrent major depression prevented her from filing a timely supplemental compensation application, which would allow the statute of limitations to be tolled. We note that the applicant stated in her appeal that she had contacted her attorney in order to file a supplemental compensation application and that the applicant filed annual Social Security disability applications from 2000 through 2003. Therefore, the August 28, 2003 decision of the Attorney General shall be affirmed pursuant to R.C. 2743.68.

IT IS THEREFORE ORDERED THAT

- 1) The August 28, 2003 decision of the Attorney General is AFFIRMED;
- 2) This claim is DENIED and judgment is rendered in favor of the state;
- 3) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

LEO P. MORLEY
Commissioner

KARL H. SCHNEIDER
Commissioner

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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Jr. Vol. 2254, Pgs 132-135
o S.C. Reporter 9-23-2004