

[Cite as *In re Lammon*, 2004-Ohio-4618.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

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| IN RE: ROBERT M. LAMMON | : | Case No. V2004-60300 |
| ROBERT M. LAMMON | : | <u>ORDER OF A THREE-</u> |
| Applicant | : | <u>COMMISSIONER PANEL</u> |
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{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to an April 20, 2003 assault incident. The applicant alleges he was assaulted while at Arrowhead Trailer Park by Paul Miller, an employee of the trailer park. On December 18, 2003, the Attorney General denied the applicant’s claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove, by a preponderance of the evidence, that he was a victim of criminally injurious conduct. The Attorney General stated that the police were unable to ascertain who was the initial aggressor in the incident and that no charges were pursued against either party based upon the evidence available. On January 12, 2004, the applicant filed a request for reconsideration. On February 25, 2004, the Attorney General denied the claim once again. On March 12, 2004, the applicant filed a notice of appeal to the Attorney General’s February 25, 2004 Final Decision contending that he was assaulted. The notice of

appeal included a statement from Anita Smithfield, the manager of Arrowhead Trailer Park, indicating that Pam Howard, also an employee of Arrowhead, had lied to the police about the applicant starting the fight with Paul Miller. Hence, this matter came to be heard before this panel of three commissioners on June 3, 2004 at 10:20 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 the panel's consideration. Robert Lammon testified that on the afternoon of April 20, 2003 he was assaulted by Paul Miller. Mr. Lammon explained that he was contacted by a family friend, Pat Dehart, who needed some assistance in cleaning-up the damage to her home after her pipes had burst. The applicant stated that sometime later Paul Miller arrived at Mrs. Dehart's home and belligerently told Tim Viers to immediately remove his pick-up truck from the lawn, which soon resulted in an argument between Paul Miller and Tim Viers. Mr. Lammon explained that Mr. Viers was also present at Pat Dehart's home to assist in the clean-up process. The applicant stated that after a short while the matter ended, but was somehow reignited again. Mr. Lammon stated that he said to break it up since he and Mr. Viers were not arguing about anything important. Mr. Lammon explained that while he was walking away Paul Miller verbally attacked him and then struck him in the face. The applicant stated that a minor struggle followed, however he and Mr. Miller were quickly separated by on-lookers. Mr. Lammon testified that the police arrived and statements were made concerning the events that transpired. The applicant explained that he sustained facial injuries as a result of the incident and was transported to the hospital via an ambulance. Mr. Lammon testified that he sought to prosecute Mr. Miller, however the prosecutor was unable to ascertain who initiated the incident, since Pam Howard, an employee of Arrowhead Trailer

Park, informed the police that he had started the fight with Mr. Miller. The applicant advised the panel that Pam Howard and Paul Miller were romantically involved. Mr. Lammon also stated that he believed that Paul Miller had been drinking prior to the incident, since he had never witnessed any type of previous misconduct from Mr. Miller.

{¶3} Janet Lammon, the applicant's mother and eye-witness to the incident, testified concerning the events of April 20, 2003. Mrs. Lammon's testimony essentially corroborated the applicant's version of what transpired that afternoon.

{¶4} Applicant's counsel stated, based upon the evidence proffered, that the applicant's claim should be allowed. Counsel asserted that the applicant was merely attempting to assist a friend and to stop an unfriendly situation when he was abruptly assaulted by Paul Miller. Counsel argued that the applicant's claim should not be denied solely on the basis that the prosecutor failed to pursue charges against Paul Miller. Counsel stated that the applicant has proven, by a preponderance of the evidence, that he qualifies as a victim of criminally injurious conduct.

{¶5} The Assistant Attorney General conceded, in light of the testimony presented, that the applicant qualifies as a victim of criminally injurious conduct. The Assistant Attorney General further noted that she does not believe that the applicant engaged in contributory misconduct with respect to the April 20, 2003 incident, since the evidence presented indicates that the applicant was not the initial aggressor nor did he voluntarily participate in the incident.

{¶6} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, this panel makes the following determination. We find that the applicant qualifies as a victim of criminally injurious conduct. Therefore, the February 25,

2004 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision.

{¶7} IT IS THEREFORE ORDERED THAT

- 1) Alan Lehenbauer shall be added as attorney of record in this case;
- 2) The February 25, 2004 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;
- 3) This claim is remanded to the Attorney General for economic loss calculations and decision based upon the panel's findings;
- 4) 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;
- 5) Costs are assumed by the court of claims victims of crime fund.

CLARK B. WEAVER, SR.
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

STEVEN A. LARSON
Commissioner

ID #\1-dld-tad-062304

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

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To S.C. Reporter 8-26-2004

