

psychological injury as a result of the e-mailer's conduct. The Attorney General also found that tuition costs do not qualify as allowable expense in this case.

{¶ 2} On February 12, 2004, the applicant filed a request for reconsideration. On April 12, 2004, the Attorney General denied the applicant's claim once again pursuant to R.C. 2743.52(A). On April 27, 2004, the applicant filed a notice of appeal to the Attorney General's April 12, 2004 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on August 18, 2004 at 11:15 A.M.

{¶ 3} Katelyn Masetta, Jodi Greene, applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. Katelyn Masetta, the injured party, testified that she was in the 8th grade at Twinsburg Middle School when the incident occurred. Ms. Masetta explained that Daniel Doyle, a former fellow classmate, made advances toward her that she rejected and sometime later he created and distributed a pornographic e-mail with her face attached to the body of a nude woman. Ms. Masetta asserted that prior to the incident, she had no problems with students at Twinsburg Middle School. However, Ms. Masetta stated that after the e-mail circulated throughout the school, fellow students began to harass, name call, and physically threaten her as a result of the e-mail and her parents pursuit of criminal charges against Daniel Doyle. Ms. Masetta explained that she missed one week of school and returned to class, however the menacing and threats continued. Ms. Masetta testified that she was afraid to return to Twinsburg Middle School and, shortly thereafter, she stated that her parents transferred her to Nordonia Middle School, where she finished the remainder of the school year.

{¶ 4} While at Nordonia Middle School, Ms. Masetta stated that she continued to experience threats and harassment from Daniel Doyle's friends, some of whom also attended Nordonia Middle School, even though Daniel Doyle never personally threatened her. After completing the school year at Nordonia Middle School, Ms. Masetta explained that she was enrolled at Gilmour Academy the following year in an attempt to end the constant menacing. Ms. Masetta testified that she loves Gilmour Academy and that she has yet to experience any type of backlash from the February 11, 2003 incident.

{¶ 5} Ms. Masetta further testified that she sought therapy with counselors at Twinsburg Middle School, Nordonia Middle School, and at her church with respect to the incident. Ms. Masetta explained that her parents, at the time, were unable to afford a private counselor. However, now she attends private therapy sessions. Ms. Masetta asserted that as a result of the incident she has experienced a lack of faith and trust, has trouble sleeping, is fearful, has difficulty making new friends, and suffers from depression.

{¶ 6} When questioned about an unrelated 2002 e-mail she received from Gabriella Shelton, a former fellow student at Twinsburg Middle School, Ms. Masetta acknowledged that Gabriella sent her a threatening e-mail, but stated that she did not feel threatened by the e-mail because she knew it was a joke. Ms. Masetta noted for the panel that she and Gabriella are currently friends.

{¶ 7} Andrew Masetta, the injured party's father, testified that prior to February 11, 2003 his daughter never experienced any problems while attending Twinsburg Middle School. Mr. Masetta explained that Katelyn was a popular cheerleader and a honor student. Mr. Masetta

asserted that after the incident, Katelyn received threats at school and anonymous telephone threats at home. Mr. Masetta stated that Katelyn suffered serious emotional harm as a result of the incident. Mr. Masetta indicated that he was previously unable to afford private counseling, however noted that Katelyn recently began private therapy sessions in August 2004. Mr. Masetta asserted that a Nordonia Middle School counselor advised him that returning Katelyn to Twinsburg Middle School was not in her best interest. Lastly, when questioned about the unrelated 2002 e-mail from Gabriella Shelton, Mr. Masetta stated that the incident was a prank and that no criminal charges were pursued against Gabriella since she and Katelyn are friends.

{¶ 8} Applicant's counsel stated, based on the testimony presented, that the applicant's claim should be allowed since there is ample evidence that Katelyn qualifies as a victim of criminally injurious conduct. Counsel argued that Katelyn was continually menaced and physically threatened while attending two different schools by students who supported the offender, Daniel Doyle. Counsel contended that the applicant had no choice but to enroll Katelyn into Gilmour Academy in order for Katelyn to escape continued harassment and threats from students who knew and supported Daniel Doyle. Counsel also stated, in light of Mr. Masetta's and Katelyn's testimony, that no medical evidence is needed to substantiate that Katelyn suffered psychological injury as a result of Daniel Doyle's misconduct. Counsel further noted that Katelyn has attended therapy sessions since the incident and that she continues to seek private counseling.

{¶ 9} The Assistant Attorney General adamantly continued to maintain that the claim should be denied, since the applicant failed to prove that Katelyn qualifies as a victim of

criminally injurious conduct. The Assistant Attorney General argued that Daniel Doyle's, albeit inappropriate, e-mail posed no substantial threat of personal harm or death to Katelyn. The Assistant Attorney General noted that the applicant failed to present any medical evidence to substantiate her claim that Katelyn suffered psychological trauma as a result of Daniel's conduct or that the claimed injury warranted transferring Katelyn to Gilmour Academy.

{¶ 10} After the hearing, Katelyn's medical counselor, Dr. Deborah Koricke, supplied the panel with documentation concerning Katelyn's condition. Dr. Koricke determined that Katelyn had experienced psychological injury because of the February 11, 2003 incident. Dr. Koricke also indicated that Ms. Masetta had not experienced any emotional distress prior to this incident.

{¶ 11} The issue in this matter is whether Katelyn Masetta is a victim of criminally injurious conduct within the statutory definition of R.C. 2743.51(C)(1) and R.C. 2743.51(L).

{¶ 12} R.C. 2743.51(C)(1) states in pertinent part:

(C) "Criminally injurious conduct" means one of the following:

- (1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:

{¶ 13} R.C. 2743.51(L) states:

(L) "Victim" means a person who suffers personal injury or death as a result of any of the following:

- (1) Criminally injurious conduct;
- (2) The good faith effort of any person to prevent criminally injurious conduct;
- (3) The good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

{¶ 14} After review of the file and with full and careful consideration of all the evidence presented, this panel makes the following determination. We find that the applicant has proven, by a preponderance of the evidence, that Katelyn qualifies as a victim of criminally injurious conduct. Katelyn was the specific target of Daniel Doyle's crime which constituted the Dissemination of Matter Harmful to Juveniles in plain and unarguable contravention of R.C. 2907.31. Moreover, we also find that Dr. Koricke's September 9, 2004 letter clearly substantiates the applicant's claim that Katelyn suffered emotional injury as a result of the February 11, 2003 incident.

{¶ 15} Nevertheless, despite Dr. Koricke's letter certifying Katelyn's emotional distress, we are unable to find that Ms. Greene has substantiated her claim to grant an award for tuition reimbursement due to the lack of medical documentation probative of the necessity to have enrolled Katelyn into Gilmour Academy for rehabilitation and treatment. Dr. Koricke, in her September 9, 2004 letter, stated that she supports Katelyn's attendance at Gilmour, but did not state, within a reasonable degree of medical certainty, whether Katelyn's placement at Gilmour was necessary for her rehabilitation, treatment, and care. Therefore, the April 12, 2004 decision of the Attorney General shall be reversed and this claim shall be remanded to the Attorney General for economic loss calculations and decision consistent with the panel's finding.

KARL H. SCHNEIDER
Commissioner

JAMES H. HEWITT III
Commissioner

GREGORY BARWELL
Commissioner

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: KATELYN MASETTA : Case No. V2004-60431
 JODI L. GREENE : ORDER

Applicant:

: : : : :

IT IS THEREFORE ORDERED THAT

- 1) The April 12, 2004 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;

2) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings;

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;

4) Costs are assumed by the court of claims victims of crime fund.

KARL H. SCHNEIDER
Commissioner

JAMES H. HEWITT III
Commissioner

GREGORY BARWELL
Commissioner

ID #V2004-60431.doc\3-tad-092004

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

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