

[Cite as *In re Gero*, 2004-Ohio-6171.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: ALLEN J. GERO	:	Case No. V2004-60491
ALLEN J. GERO	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
: : : : :		

{¶ 1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to a September 28, 2003 assault incident. On February 9, 2004, the Attorney General denied the claim pursuant to R.C. 2743.60(F) contending that the applicant had engaged in substantial contributory misconduct when he initiated a bar fight. The Attorney General asserted that the applicant inappropriately touched Laura Bailey and pushed Pamela Krzynowek after being told to leave the premise (the applicant was charged with sexual imposition and Daniel Blaine (Laura’s boyfriend), Christopher Krzynowek (Pamela’s husband), and Sarah Martin (bar maid) were all charged with felonious assault). On March 5, 2004, the applicant filed a request for reconsideration asserting that he was not the initial aggressor in the fight. On May 10, 2004, the Attorney General denied the claim once again. On May 18, 2004, the applicant filed a notice of appeal to the Attorney General’s May 10, 2004 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on August 4, 2004 at 1:15 P.M.

{¶ 2} The applicant, applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral argument for the panel's consideration. Allen Gero testified that on September 28, 2003 he was assaulted while at Dailey's Bar. Mr. Gero explained that he, his father and a friend were together at the establishment. However, sometime later his father and his friend left the bar, but he remained at the tavern and shortly thereafter the altercation started. The applicant explained that he was talking to and seated next to Daniel Blaine and Laura Bailey. Mr. Gero stated that Ms. Bailey left to use the restroom and when she returned to her seat, his arm, which was resting on the back of Ms. Bailey's chair, was grazed. The applicant stated that he excused himself to Laura and explained to Daniel that it was merely an accident. Nevertheless, Mr. Gero stated that he was abruptly and severely assaulted by Mr. Blaine and other bar patrons. When questioned about inappropriately touching Ms. Bailey or pushing Mrs. Krzynowek into the bar, Mr. Gero denied any misconduct while at the tavern. Lastly, Mr. Gero noted for the panel that he, himself, was found not guilty of the sexual imposition charge, but stated that Daniel Blaine was convicted of felonious assault.

{¶ 3} Applicant's counsel stated that this claim should be allowed, based on the testimony proffered, which indicates that the applicant did not engage in substantial contributory misconduct. Counsel argued that the witness statements, upon which the Attorney General relies, are inaccurate since the statements were provided six days after the incident, which allowed the witnesses the opportunity to fabricate their stories. Counsel also argued that the sexual imposition charge against the applicant was made a month after the incident and only after certain suspects were charged with felonious assault against Mr. Gero.

{¶ 4} The Assistant Attorney General maintained, based upon the testimony presented, that the applicant engaged in some form of contributory misconduct, albeit not substantial, and hence recommended the claim be reduced by at least 25 percent. The Assistant Attorney General urged the panel to examine and consider, when determining this case, witness statements, the fact that only Daniel Blaine was convicted of felonious assault, and the applicant's credibility.

{¶ 5} R.C. 2743.60(F) states in pertinent part:

{¶ 6} (F) In determining whether to make an award of reparations pursuant to this section, the attorney general or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. The attorney general, a panel of commissioners, or a judge of the court of claims shall reduce an award of reparations or deny a claim for an award of reparations to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or the victim.

{¶ 7} From review of the file and with full and careful consideration given to the information presented at the hearing, this panel makes the following determination. We find that the applicant engaged in contributory misconduct on the day in question. However, we do not find that the applicant engaged in substantial contributory misconduct in order to deny the claim. Therefore, the May 10, 2004 decision of the Attorney General shall be modified to reduce any and all awards of reparations by 15 percent in accordance with R.C. 2743.60(F). This claim shall be remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings.

{¶ 8} IT IS THEREFORE ORDERED THAT

{¶ 9} 1) The May 10, 2004 decision of the Attorney General is MODIFIED to render judgment in favor of the applicant with a 15 percent reduction on all future awards of reparations;

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

{¶ 11} 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;

{¶ 12} 4) Costs are assumed by the court of claims victims of crime fund.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

KARL H. SCHNEIDER
Commissioner

ID #\1-dld-tad-081604

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

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