

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: JAMES WILSON	:	Case No. V2004-60709
JAMES WILSON	:	<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 in relation to an August 10, 2003 assault incident. On May 13, 2004, the Attorney General granted the applicant an award of reparations in the amount of \$483.93 for unreimbursed allowable expense (\$423.10) and work loss (\$60.83). However, the Attorney General denied reimbursement for certain expenses pursuant to R.C. 2743.60(D) asserting that the applicant had Anthem as a collateral source. On May 19, 2004, the applicant filed a request for reconsideration. On July 8, 2004, the Attorney General issued a Final Decision indicating that the previous decision warranted no modification. On July 16, 2004, the applicant filed a notice of appeal to the Attorney General’s July 8, 2004 Final Decision asserting that he is owed additional work loss. Hence, this matter came to be heard before this panel of three commissioners on October 6, 2004 at 10:45 A.M.

{¶ 2} Applicant’s counsel and an Assistant Attorney General attended the hearing and presented oral argument for the panel’s consideration. Applicant’s counsel contended that the Attorney General’s method of calculating work loss, in this case, is incorrect, since Mr. Wilson,

a car salesman, would have earned higher wages from August 2003 through November 2003, which are considered the best months for car sales. Counsel offered two different methods of calculating the victim's work loss, which are noted in his September 16, 2004 Brief, in order to achieve a more accurate work loss figure for Mr. Wilson.

{¶ 3} The Assistant Attorney General argued, pursuant to her calculations based upon In re Caminiti (1984), 17 Ohio Misc. 2d 9, that Mr. Wilson failed to incur any additional work loss because he would have incurred a higher salary in August 2003 than he incurred the three months prior to the criminally injurious conduct.

{¶ 4} 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. The Attorney General's argument that simply because a victim earned a higher salary during his disability period that he is not entitled to work loss he would have earned had he been able to work is not well-taken by this panel. See In re Calderon, V02-51320tc (12-12-02). Moreover, we also note that In re Caminiti, supra, concerned future work loss calculations. Based upon the above, we find that the applicant incurred additional work loss from August 10, 2003 through August 17, 2003 (\$4,135.88 (July 2003 gross) divided by 4 (number of weeks in a month) = \$1,033.97 less the standard deductions and taxes). Therefore, the July 8, 2004 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for net work loss calculations and decision consistent with the panel's findings.

IT IS THEREFORE ORDERED THAT

- 1) The July 8, 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 net work 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.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

KARL H. SCHNEIDER
Commissioner

ID #\1-dld-tad-41013

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

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