

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: SHIRLEY A. HOPSTETTER	:	Case No. V2004-60792
SHIRLEY A. HOPSTETTER	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶ 1} On September 5, 2003, the Attorney General granted the applicant an award of reparations in the amount of \$21,215.48 as reimbursement of expenses incurred as a result of an October 23, 2002 aggravated vehicular assault incident. On September 26, 2003, the applicant filed a supplemental compensation application seeking additional reimbursement. On May 24, 2004, the Attorney General denied the applicant's claim pursuant to R.C. 2743.60(D) contending that all the applicant's economic loss had been or may be recouped from various collateral sources. On May 27, 2004, the applicant filed a request for reconsideration. On July 26, 2004, the Attorney General issued a Final Decision indicating the applicant has \$16,527.36 in collateral source benefits, which must be utilized before any additional reimbursement may be granted. The Attorney General noted that a 75 percent non economic loss percentage was used to arrive at the above figure, after deducting a \$4,467.12 work loss overpayment. On August 18, 2004, the applicant filed a notice of appeal asserting that the Attorney General's economic loss apportionment analysis is incorrect and that a higher percentage (90 percent) should be used to

calculate the applicant's total economic loss, in light of the applicant's injuries. The applicant noted that since the accident she is now restricted to sedentary employment, when she previously performed manual labor. Hence, this matter came to be heard before this panel of three commissioners on November 4, 2004 at 10:30 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 this panel's consideration. Ms. Hopstetter testified that on the day of the criminally injurious conduct she was employed with Smead Manufacturing Company (SMC) as a fastener machine operator. Ms. Hopstetter explained that since the accident she has been unable to return to work, because she is unable to perform the manual tasks required of a fastener position. The applicant stated that she was terminated from SMC one year after the criminally injurious conduct due to her inability to work. Ms. Hopstetter advised the panel that she has been receiving Social Security Disability benefits and widow benefits since May 2004. The applicant explained, due to her injuries, that she is now relegated to performing sedentary work based upon her physician's recommendation. Ms. Hopstetter informed the panel that she had worked for SMC doing manual labor for 18 years and has no other skills; however the applicant stated that she is currently enrolled in a Medical Office Procedures class with the Ohio Department of Jobs and Family Services and should be eligible for employment in the summer of 2005.

{¶ 3} Ms. Hopstetter testified in detail concerning the injuries she sustained and the impact that the accident has had and continues to have upon her daily life. The applicant explained that after the accident she was life-flighted to Grant Medical Center where she was hospitalized for two weeks with a concussion, a broken leg and heel. Ms. Hopstetter stated that

she was bedridden for approximately six months, unable to walk for a long period of time and had to use a wheelchair, but now utilizes a cane to assist with walking. The applicant explained that since the accident she has had to rely upon various individuals for assistance with a number of tasks. Lastly, Dorothy Davis, the applicant's sister, briefly testified concerning the physical and mental changes she has witnessed her sister undergo as a result of the criminally injurious conduct.

{¶ 4} After the presentation of testimony, the Assistant Attorney General conceded to an 80 percent non economic loss figure. However applicant's counsel asserted, in light of the applicant's injuries, that 90 percent of the applicant's insurance settlement should be considered compensation for non economic loss. Counsel stated that he values of the applicant's case at approximately \$750,000.00 in damages and hence the applicant should be permitted to retain a larger portion of the settlements as pain and suffering compensation, since the settlements grossly under compensate the applicant for her loss.

{¶ 5} 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. The applicant bears the burden of proving, by a preponderance of the evidence, what percentage of proceeds received should be considered compensation for non economic loss (pain and suffering). Pursuant to the holding in In re Fout-Craig, V93-27851tc (2-5-99), the apportionment of a victim's non economic loss compensation involving insurance proceeds shall be determined on a case-by-case basis according to the particular facts and circumstances of the case.

{¶ 6} Based upon the Victim's Impact Statement and the testimony presented, we find that the applicant has proven, by a preponderance of the evidence, that she has incurred

additional economic loss as a result of the criminally injurious conduct. We find the applicant's settlement proceeds are insufficient to cover the applicant's total damages and that 90 percent is a reasonable percentage to be attributable to non economic loss considering the degree of the applicant's injuries, the effects that the injuries have had, and continue to have on the applicant.

The applicant's reparations awards shall be calculated in the following manner:

\$50,000.00	gross settlement #1
<u>-16,666.67</u>	attorney fees
\$33,333.33	
<u>- 1,007.24</u>	costs
\$32,326.09	net settlement #1
\$25,000.00	gross settlement #2
<u>- 8,333.33</u>	attorney fees
\$16,666.67	
<u>- 751.81</u>	costs
\$15,914.86	net settlement #2
\$32,326.09	net settlement #1
<u>+15,914.86</u>	net settlement #2
\$48,240.95	total net settlement
\$48,240.95	total net settlement
a.x 10%	% of economic loss
\$ 4,824.09	collateral source

{¶ 7} Therefore, the July 26, 2004 decision of the Attorney General shall be modified and the claim shall be remanded to the Attorney General's office for new economic loss calculations (October 23, 2002 through October 31, 2004) and decision consistent with the panel's findings.

IT IS THEREFORE ORDERED THAT

1) The July 26, 2004 decision of the Attorney General is MODIFIED and judgment is rendered in favor of the applicant;

- 2) The claim is remanded to the Attorney General for economic loss calculations (October 23, 2002 through October 31, 2004) 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

CLARK B. WEAVER, SR.
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

ID #\1-dld-tad-111504

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

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To S.C. Reporter 1-31-2005

