

[Cite as *In re Ross*, 2007-Ohio-4690.]

Court of Claims of Ohio

Victims of Crime Division

The Ohio Judicial Center
65 South Front Street, Fourth Floor
Columbus, OH 43215
614.387.9860 or 1.800.824.8263
www.cco.state.oh.us

IN RE: THOMAS J. ROSS

Case No. V2006-20062

THOMAS J. ROSS

DECISION

Applicant

Judge Clark B. Weaver Sr.

This matter came on to be considered upon applicant's appeal from the April 2, 2007 order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based upon the finding that all of applicant's economic loss either had been or may have been recouped from a collateral source, the American Family Life Assurance Company (AFLAC).

R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The panel found, upon review of the evidence, that applicant failed to present sufficient evidence to meet his burden.

The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of

the court of claims is final.”

Based upon the evidence, the panel determined that AFLAC issues insurance policies that are designed “to help with those out-of-pocket expenses not covered by existing primary insurance.” The panel noted in its decision that applicant had submitted a claim to AFLAC but that a final determination on the claim had not been made at the time of the hearing.

Applicant asserts that the insurance benefits that he was entitled to receive from AFLAC do not qualify as a collateral source under R.C. 2743.51(B). According to applicant, an insurance policy issued by AFLAC “does not directly compensate an individual for lost wages and medical expenses incurred after an injury.” Applicant maintains that AFLAC is an “event policy” that pays benefits upon the occurrence of certain events such as receiving physical therapy or medical treatment. The Attorney General contends that pursuant to R.C. 2743.51(B)(7), any benefits that applicant receives from AFLAC must be considered a collateral source.

R.C. 2743.51 provides in pertinent part:

“(B) ‘Collateral source’ means a source of benefits or advantages for economic loss otherwise reparable that the victim or claimant has received, or that is readily available to the victim or claimant, from any of the following sources:

“* * *

“(7) Proceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct; * * *”

Although applicant characterizes AFLAC as an “event policy,” it is undisputed that the events at issue occurred as a result of the criminally injurious conduct. Applicant, a police officer for the city of Cleveland, was injured while apprehending an individual suspected of felony drug abuse. Applicant seeks reimbursement for work loss that he incurred when his injuries prevented him from performing “private duty” work.

The court has previously held that “[w]hen the victim or applicant receives benefits, from whatever source, after the criminally injurious conduct, that they were not receiving prior to the incident, the receipt of those benefits offsets lost wages and are deemed collateral sources.” *In re Martin* (1993), 63 Ohio Misc.2d 82, 84.

In this case, any benefits that applicant was entitled to receive from AFLAC were

due as a consequence of events that transpired as a result of the criminally injurious conduct. The court finds that the panel of commissioners was correct in its determination that any benefits that may be available to applicant from AFLAC constitute “[p]roceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct.”

Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicant did not show by a preponderance of the evidence that he was entitled to an award of reparations.

Based on the evidence and R.C. 2743.61, it is the court’s opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, this court affirms the decision of the three-commissioner panel, and hereby denies applicant’s claim.

CLARK B. WEAVER, SR.

Judge



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DECISION

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ORDER

Applicant

Judge Clark B. Weaver Sr.

{¶1} Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and applicant's appeal must be denied.

{¶2} IT IS HEREBY ORDERED THAT:

{¶3} 1) The order of April 2, 2007, (Jr. Vol. 2264, Pages 1-9) is approved, affirmed and adopted;

{¶4} 2) This claim is DENIED and judgment entered for the State of Ohio;

{¶5} 3) This order is entered without prejudice to applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

{¶6} 4) Costs assumed by the reparations fund.

Judge

AMR/cmd

A copy of the foregoing was personally served upon the Attorney General

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