

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

65 South Front Street, Fourth Floor
Columbus, OH 43215

614.387.9800 or 1.800.624.6263
www.cco.state.oh.us

IN RE: CHAD A. SCHULTZ

Case No. V2008-30260

CHAD A. SCHULTZ

Applicant

Commissioners:
Tim McCormack, Presiding
Karl C. Kerschner
Clarence E. Mingo II

ORDER OF A THREE-
COMMISSIONER PANEL

{¶ 1} On June 4, 2007, the applicant, Chad Schultz, filed a compensation application as the result of an assault which occurred on June 11, 2005. The applicant sought an award for reimbursement of medical expenses and work loss incurred as a result of the incident. On October 1, 2007, the Attorney General issued a Finding of Fact and Decision finding the applicant qualified as a victim of criminally injurious conduct. The Attorney General asserted, however, the award should be reduced by fifty percent since the applicant engaged in contributory misconduct at the time of the criminal incident. The Attorney General noted that the applicant voluntarily engaged in a physical altercation which resulted in serious personal injury and he was subsequently convicted of disorderly conduct. Thus, the Attorney General determined he participated in contributory misconduct though not substantial in nature, resulting in a reduction of the award. Accordingly, the Attorney General granted the applicant an award in the amount of \$599.84, which represented fifty percent of the work loss he incurred.

{¶ 2} On November 6, 2007, the applicant filed a request for reconsideration. The applicant maintained due to the seriousness of his injuries his disability period extended beyond June 12, through July 26, 2005, the period considered in the Attorney General's Finding of Fact and Decision. Furthermore, the applicant contends that he

did not engage in contributory misconduct and his claim should not be reduced by fifty percent. On February 19, 2008, the Attorney General rendered a Final Decision. The Attorney General found no reason to modify the initial decision. Hence, on May 21, 2008 at 10:45 A.M. a hearing was held before this panel of three commissioners.

{¶ 3} Assistant Attorney General Stacy Hannan attended the hearing. The applicant chose not to attend the hearing. Ms. Hannan explained that there were two issues on appeal in this case. First, whether the applicant could prove he incurred additional work loss because of his injuries and, second, whether the Attorney General properly reduced the applicant's claim by fifty percent due to contributory misconduct by the applicant. Assistant Attorney General Hannan stated the applicant did not submit any medical documentation and, further, the Attorney General's office was not able to gather medical evidence which would support the applicant's assertion that he incurred work loss beyond July 26, 2005.

{¶ 4} With respect to the issue of contributory misconduct, Ms. Hannan stated the incident investigation revealed that the applicant mutually engaged in a fight, but it could not be determined who initiated the altercation. The applicant sustained an injury to his hand by being pushed through a plate glass window during the course of the altercation. Consequently, the applicant was convicted of disorderly conduct with respect to this incident and the Attorney General asserted a fifty percent reduction of this claim was reasonable based upon these circumstances.

{¶ 5} Upon questioning by the panel, Assistant Attorney General Hannan related it was her understanding of the incident that all parties were drinking prior to the altercation. All parties voluntarily entered into the fight and due to conflicting stories it was unclear whether the applicant brandished a knife prior to or after being pushed through a plate glass window. The Assistant Attorney General reasoned that there was

sufficient evidence to demonstrate the applicant engaged in unlawful conduct, it was foreseeable that he could have been injured, however due to the seriousness of his injuries and the inability to determine who started the fight a fifty percent reduction of the award was reasonable. Commissioner Kerschner asked Ms. Hannan to explain why a fifty percent determination with regard to contributory misconduct should not result in a total denial of the claim. She responded that the case law was not clear on that issue and would recommend a forty-nine percent reduction if fifty percent would result in total denial of the claim. At that point the hearing was concluded.

{¶ 6} R.C. 2743.51(M) states:

(M) "Contributory misconduct" means any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim.

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

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.

{¶ 8} Contributory misconduct must be based on a specific, unlawful or intentionally tortious act. *In re McGary II*, V91-83761tc (7-29-94) affirmed jud (11-16-94). When determining if the unlawful or intentionally tortious conduct of the victim was causally connected to the criminally injurious conduct, foreseeability is a necessary element. *In re Ewing* (1987), 33 Ohio Misc. 2d 48, 515 N.E. 2d 666. In order to deny rather than reduce an award of reparations on the basis of contributory misconduct, there must be a showing that the victim engaged in substantial contributory misconduct. *In re Spaulding* (1991), 63 Ohio Misc. 2d 39, 619 N.E. 2d 1199. To assist in determining whether the victim's conduct is substantial a panel of commissioners considers the following non-exclusive list of factors:

- (a) Age and corresponding mental capacity of the victim/applicant;
- (b) The victim/applicant's familiarity/relationship with the offender(s);
- (c) The victim's/applicant's *mens rea*;
- (d) Whether the victim/applicant suffered from diminished capacity due to intoxication or other mitigating factors;
- (e) Whether the victim/applicant suffered a disproportionate level of harm compared to the victim/applicant's level of conduct;
- (f) Whether the victim/applicant's degree of misconduct was de minimus or substantial violation of the law; and
- (g) Whether the granting of a reparations award would violate the public policy of the Victim's of Crime Compensation Act.

{¶ 9} *In re Kempton*, V2006-20640tc (4-2-07), 2007-Ohio-2929.

{¶ 10} From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. We find

that the applicant engaged in substantial contributory misconduct and, accordingly, the applicant's claim is denied in its entirety.

{¶ 11} From a review of the police report it appears a mutual fight ensued between the applicant and the offender when they confronted each other in the street. All parties were drinking at the time of the incident. During the altercation, the applicant was pushed into a plate glass window, whereby he sustained lacerations to his left hand, and he also pulled a knife on the offender. There is a dispute between the parties whether the knife was brandished before or after the applicant was pushed into the plate glass window. All parties were charged with assault, and the applicant pleaded guilty to disorderly conduct together with one of the offenders. The other offender was found not guilty at trial. While a trial transcript would have been helpful in determining the order of events leading up to the criminally injurious conduct, it was not provided.

{¶ 12} We believe since the applicant engaged in mutual combat, was intoxicated, armed with a knife, and was convicted of disorderly conduct that he committed substantial contributory misconduct and his claim for an award of reparations is denied. Therefore, we find that the February 19, 2008, decision of the Attorney General is reversed.

{¶ 13} IT IS THEREFORE ORDERED THAT

{¶ 14} 1) The February 19, 2008 decision of the Attorney General is REVERSED;

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

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

[Cite as *In re Schultz*, 2008-Ohio-4269.]

TIM MC CORMACK
Presiding Commissioner

KARL C. KERSCHNER
Commissioner

CLARENCE E. MINGO II
Commissioner

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

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To S.C. Reporter 8-20-2008