



Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center
65 South Front Street, Fourth Floor
Columbus, OH 43215
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IN RE: CHERYL R. PERKINS

Case No. V2009-40048

CHERYL R. PERKINS

Applicant

Commissioners:
Clarence E. Mingo, Presiding
Gregory P. Barwell
Randi Ostry LeHoty

ORDER OF A
THREE-COMMISSIONER PANEL

{¶ 1} On June 3, 2008, the applicant, Cheryl Perkins, filed a compensation application as the result of an incident that occurred on May 18, 2008. On September 30, 2008, the Attorney General issued a finding of fact and decision asserting that the applicant had failed to prove by a preponderance of the evidence that she was a victim of criminally injurious conduct. Furthermore, even if she could establish that she was a victim her claim would still be denied pursuant to R.C. 2743.60(C), since she failed to fully cooperate with law enforcement. On October 27, 2008, the applicant submitted a request for reconsideration. On December 22, 2008, the Attorney General rendered a Final Decision finding no reason to modify its initial decision. On January 20, 2009, the applicant filed a notice of appeal from the December 22, 2008 Final Decision of the Attorney General. Hence, a hearing was held before this panel of commissioners on April 16, 2009 at 10:25 A.M.

{¶ 2} The applicant, Cheryl Perkins and her attorney, Mark Poole, appeared at the hearing, while the state of Ohio was represented by Assistant Attorney General Lyndsay Nash.

{¶ 3} The applicant related that the offender was her ex-spouse. Ms. Perkins' residence adjoins the offender's business. On May 18, 2008, the offender made a death threat against her. Ms. Perkins notified the Licking County Sheriff's Department concerning the threat and when officers appeared on the scene they were notified of the situation. The applicant asserted that she was a victim of criminally injurious conduct, that she reported the incident, and, that she fully cooperated with police.

{¶ 4} The Attorney General contends Ms. Perkins failed to meet her burden of proof with respect to establishing that she was a victim of criminally injurious conduct and, furthermore, she failed to fully cooperate with police.

{¶ 5} Ms. Perkins testified that she had experienced years of domestic abuse at the hands of the offender. According to Ms. Perkins, the offender, a retired Columbus Police officer, always kept a gun and had threatened to use it on her in the past. Ms. Perkins related that on May 18, 2008, the offender placed a lock and a chain on a gate which separated her property from the offender's stable. When the applicant asked the offender to remove the lock from the chain so that she could have access to her horses the offender refused. At that point the offender became angry and threatened to kill Ms. Perkins. She believed the threat was credible based on her past experiences with the offender and the fact that he had possession of a firearm. Accordingly, she immediately contacted the Licking County Sheriff's Department. Ms. Perkins testified that a female deputy, Deputy Nolan, spoke to her and was writing while they talked. However, the deputy told her a written statement was not necessary and the officers from the Licking County Sheriff's Department never spoke with the offender.

{¶ 6} The applicant stated she is currently a Columbus Police officer. She was questioned concerning the procedures she followed as a Columbus Police officer in domestic violence situations. She stated based upon her experience it was unusual that she was not asked to provide a written statement. Finally, she stated as a Columbus Police officer it is always her practice to fully cooperate with other officers and police agencies.

{¶ 7} Upon cross-examination, the applicant stated she provided an oral statement to Deputy Nolan and was under the impression that the officer was memorializing her statement by taking written notes. The applicant conceded that she did not follow up to see that a written report had been made and did not call to provide a written statement. Whereupon, the testimony of Ms. Perkins was concluded.

{¶ 8} In closing the applicant asserted that her testimony proves, by a preponderance of the evidence, that a credible death threat was leveled against her. This conduct constitutes criminally injurious conduct as defined by R.C. 2743.51(C)(1). Furthermore, the seriousness of the threat is evidenced by the fact that the next day Ms. Perkins obtained a civil protection order against the offender. The applicant argued that the successful obtaining of a civil protection order by a domestic relations court should provide some evidence that a crime had been committed.

{¶ 9} With respect to the issue of failure to fully cooperate, the applicant asserted that she did everything she was asked to do. She did nothing to impair or impede an investigation or prosecution. Furthermore, contrary to the Attorney General's argument a victim does not possess the authority to direct law enforcement how to conduct their investigation.

{¶ 10} The Attorney General contends the applicant has provided insufficient evidence to prove she was a victim of criminally injurious conduct. The Attorney General also stated when the applicant realized days later that the police report was not complete, it was her burden to follow up and supplement the initial police report, make additional calls to determine the status of the investigation and pursue charges against the offender. The Attorney General urged the panel to rely on the holding of *In re Warren*, V2008-30014tc (9-5-08) and to find the applicant was not a victim of criminally injurious conduct. Finally, the panel should not consider the issuance of an ex parte restraining order to determine whether the criminally injurious conduct actually occurred.

{¶ 11} R.C. 2743.51(C)(1) in pertinent part states:

{¶ 12} “(C) ‘Criminally injurious conduct’ means one of the following:

{¶ 13} (1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state.”

{¶ 14} R.C. 2743.60(C) states:

{¶ 15} “(C) The attorney general, a panel of commissioners, or a judge of the court of claims, upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny a claim or reconsider and reduce an award of reparations.”

{¶ 16} Black's Law Dictionary Sixth Edition (1990) defines preponderance of the evidence as: "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not."

{¶ 17} Black's Law Dictionary Sixth Edition (1990) defines burden of proof as: "the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court." In order to establish that an applicant is a victim of criminally injurious conduct, the applicant has the burden to prove by a preponderance of the evidence that: 1) the criminal conduct occurred or was attempted; 2) the criminal conduct posed a substantial threat of personal injury or death; and 3) the criminal conduct was punishable by fine, imprisonment or death. *In re Gradison*, V78-3385jud (1-13-82). Furthermore, the uncorroborated statement of the applicant does not constitute sufficient proof, by a preponderance of the evidence, to establish the criminally injurious conduct. *In re Minadeo*, V79-3435jud (10-31-80).

{¶ 18} As a general rule any action, inaction, or inexcusable neglect by an applicant which substantially impedes or impairs investigation or prosecution proceedings which have been initiated by the law enforcement authorities, or which would have been initiated but for the action, inaction, or inexcusable neglect, constitutes a failure to fully cooperate as required by R.C. 2743.60(C). *In re Lewis*, V82-43655sc (5-5-83).

{¶ 19} The failure or refusal to respond to an affirmative request by law enforcement authorities to aid in prosecuting a criminal offender constitutes failure to cooperate. *In re Bolster*, V77-0964jud (5-2-79).

{¶ 20} From review of the file and with full and careful consideration given to the information and testimony presented at the hearing, we reach the following determination. With respect to the issue of criminally injurious conduct, we find that the applicant has met her burden of proof and criminally injurious conduct has been established by a preponderance of the evidence. This panel had the opportunity to observe and judge the demeanor of the applicant under both direct and cross-examination and finds the applicant was a credible witness. This case is distinguished from the holding in *In re Warren*, since in that case the applicant never appeared before a panel of commissioners and the statements in the police report were general. In the case at bar, the applicant clearly indicated the threat the offender made was based upon their history and the offender's possession of a firearm. Therefore, we conclude criminally injurious conduct has been proven.

{¶ 21} We also find that the applicant fully cooperated with law enforcement as required by R.C. 2743.60(C). The applicant's action of filing an ex parte civil protection order the next day evidences that she wanted to pursue an action against the offender to protect her safety. The applicant, a Columbus Police officer, knew the legal steps necessary to effectively protect herself from the offender. Furthermore, we do not find that law enforcement made an affirmative request that the applicant failed to follow. We are unwilling to follow the Attorney General's suggestion that it is the victim's obligation or duty to direct or instruct law enforcement how to best conduct the investigation of a criminal matter. A victim's obligation is to be truthful and to comply with any affirmative requests made by law enforcement.

{¶ 22} Therefore, the December 22, 2008 decision of the Attorney General is reversed.

{¶ 23} IT IS THEREFORE ORDERED THAT

{¶ 24} 1) The December 22, 2008 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;

{¶ 25} 2) This claim is remanded to the Attorney General for total economic loss calculation and decision;

{¶ 26} 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;

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

CLARENCE E. MINGO II
Presiding Commissioner

GREGORY P. BARWELL
Commissioner

RANDI OSTRY LE HOTY
Commissioner

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

Filed 7-1-2009

Jr. Vol. 2272, Pgs. 117-123

To S.C. Reporter 8-14-2009