

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: TODD T. KOHEN	:	Case No. V2002-50323
TODD T. KOHEN	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} On February 11, 2002, the Attorney General issued a Final Decision granting the applicant an award of reparations in the amount of \$21,188.40. However, on February 13, 2002, the Attorney General issued a second Final Decision denying the applicant's claim pursuant to R.C. 2743.60(E)(4) based upon information that the claimant had been convicted of domestic violence within ten years of the criminally injurious conduct or during the pendency of the claim. According to information in the file, the applicant was convicted of domestic violence on August 16, 2001. On February 25, 2002, the applicant appealed the Attorney General's February 13, 2002 Final Decision. On June 28, 2002, the panel of commissioners affirmed the Attorney General's February 13, 2002 Final Decision. On November 18, 2002, a judge of the court of claims set aside the panel's decision and remanded the claim to the panel to allow the presentation of testimony and evidence concerning the applicant's psychological condition. Hence, this appeal came to be reheard before this panel of three commissioners on January 23, 2003 at 10:20 A.M.

{¶2} The applicant, applicant's counsel and an Assistant Attorney General attended the hearing and presented exhibits, testimony and oral argument for this panel's consideration. Todd Kohen briefly explained to the panel the events of July 1, 2000 whereby he sustained serious injury after having been assaulted by Floyd Baxter. Mr. Kohen testified that as a result of the criminally injurious conduct he was eventually diagnosed with PTSD (post traumatic stress disorder) and hence was prescribed a series of psychiatric medications. Mr. Kohen also stated that he was prescribed Oxycontin for the back injury he sustained from the assault. The applicant advised the panel that in July 2001 he went through a series of events that caused him to behave in an unusual manner. For example, the applicant revealed he was hospitalized at a Veterans Hospital for a suicide attempt. The applicant also stated that his physician changed his Oxycontin prescription to another medication and as a result of the change he underwent a form of withdrawal from the Oxycontin. Mr. Kohen explained that on July 27, 2001, the day of the domestic violence incident, he was experiencing a panic attack when his wife, Carol, came home and an argument ensued. The applicant admitted to the panel that during the incident he pushed his wife into a wall, but asserted that the incident was purely the result of the change in his medication.

{¶3} Carol Kohen, the applicant's wife, briefly testified as to the applicant's mental condition as well as to the events that lead to the domestic violence arrest. Mrs. Kohen stated that prior to July 2001 her husband had been taking Oxycontin. However, Mrs. Kohen explained that she did not think he should continue taking that particular medication since her husband would experience frequent mood swings as a result of the PTSD. Mrs. Kohen advised the panel that on the day of the domestic violence arrest she telephoned the police because Todd was

highly agitated and out of control. Mrs. Kohen stated her purpose of contacting the police was to have Todd transported back to the hospital for treatment.

{¶4} Applicant's counsel argued the domestic violence incident and conviction would have never occurred, but for the criminally injurious conduct. Counsel argued the legislative intent of the program is not to prohibit a real victim's participation in the fund based on conduct that ultimately arose as a result of the criminally injurious conduct. Counsel asserted the applicant's psychological disability excuses the applicant's behavior with respect to the domestic violence incident and hence the applicant's claim should be allowed.

{¶5} The Assistant Attorney General maintained that R.C. 2743.60(E)(4) is clear and provides no exceptions or variances and thus the claim must be denied. The Assistant Attorney General stated that the judge merely set aside the panel's decision, which affirmed the Attorney General's denial of the claim, and remanded the claim to the panel in order to allow the applicant to present testimony and other evidence supporting his claim and not as a means to allow the panel to render a different decision based on the applicant's psychological condition.

{¶6} 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. Although we empathize with the applicant in this case, we nevertheless are bound to follow the law. R.C. 2743.60(E)(4) is clear and leaves no room for exceptions or discretion. The applicant was tried and convicted of domestic violence in a criminal proceeding where the burden of proof is significantly higher than the preponderance of evidence standard which applies here. To grant an award to this applicant would essentially overturn the judgment of the criminal court. Therefore, the February 13, 2002 decision of the Attorney General shall be affirmed.

{¶7} IT IS THEREFORE ORDERED THAT

- {¶8} 1) The February 13, 2002 decision of the Attorney General is AFFIRMED;
- {¶9} 2) This claim is DENIED and judgment is entered for the state of Ohio;
- {¶10} 3) Costs are assumed by the court of claims victims of crime fund.

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

JAMES H. HEWITT III
Commissioner