

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: MARTIN J. RUDIN	:	Case No. V2002-51923
MARTIN J. RUDIN	:	<u>OPINION OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} This appeal came to be heard before this panel of three commissioners on February 19, 2003 at 10:55 A.M. upon the applicant's December 4, 2002 appeal from the November 4, 2002 Final Decision of the Attorney General.

{¶2} The Attorney General denied the applicant an award of reparations contending that the applicant failed to qualify as a victim of criminally injurious conduct. The Attorney General stated that even though the applicant, a police officer, was injured while leaping over a vehicle in order to pursue the suspect there is insufficient evidence that the suspect had engaged in criminally injurious conduct, since the suspect had only been stopped because of his failure to display a front license plate. The applicant appealed the Attorney General's Final Decision.

{¶3} Neither the applicant nor anyone on his behalf appeared at the hearing. An Assistant Attorney General attended the hearing and informed the panel that she rests on her

December 31, 2002 Brief pending any questions from the panel. After a brief discussion of the claim, the panel chairman concluded the hearing.

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

“(C) "Criminally injurious conduct" means one of the following:

“(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.

{¶5} 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. We find the applicant qualifies as a victim of criminally injurious conduct. At the hearing, the Assistant Attorney General asserted that the applicant failed to qualify as a victim of criminally injurious conduct because the suspect's conduct did not rise to the level of criminally injurious conduct. The Assistant Attorney General argued that the suspect's failure to display a front license plate did not pose a substantial threat of personal injury or death to the applicant. In furtherance of her argument, the Assistant Attorney General cited In re Conway, V92-95682sc (8-4-93) as relevant case law. In Conway, supra, the single commissioner granted the applicant, a police officer, an award of reparations after having determined that the officer sustained personal injury while chasing a fleeing suspect. As in Conway, supra, this suspect was initially stopped as a result of a traffic offense. However, before stopping the vehicle the present suspect swerved left of center, ran a red light and sped into a driveway. After exiting the vehicle, the suspect fled on foot until captured after which he became combative with the applicant until handcuffed.

{¶6} Based on the above information as well as the police report, we believe the suspect's failure to display a front license plate did not pose a substantial threat of injury or death

to the applicant. However, we do find the suspect's unwarranted fleeing did rise to the level of criminally injurious conduct to which Officer Rudin appropriately responded by giving chase. Nevertheless, this determination shall not be construed to render fleeing, in and of itself, to be criminally injurious conduct. As usual, criminally injurious conduct shall be determined on a case by case basis. Therefore, the November 4, 2002 decision of the Attorney General shall be reversed and the case shall be remanded to the Attorney General for work loss calculations and decision based on the above findings.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} 1) The November 4, 2002 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;

{¶9} 2) This claim is remanded to the Attorney General for work loss calculations and decision based on the above findings;

{¶10} 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application pursuant to R.C. 2743.68;

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

JAMES H. HEWITT III
Commissioner

LEO P. MORLEY
Commissioner

KARL H. SCHNEIDER
Commissioner

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