

[Cite as *In re Smith*, 2003-Ohio-2502.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: SEAN SMITH: Case No. V2002-51982

SEAN SMITH	:	<u>OPINION OF A THREE-</u>
		<u>COMMISSIONER PANEL</u>
Applicant	:	
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{¶1} This appeal came to be heard before this panel of three commissioners on March 6, 2003 at 11:30 A.M. upon the applicant's December 16, 2002 appeal from the December 6, 2002 Final Decision of the Attorney General.

{¶2} Originally, the Attorney General granted the applicant an award of reparations in the amount of \$309.12 for unreimbursed work loss incurred from March 11, 2002 through March 28, 2002. On reconsideration, the Attorney General determined that no modification of the previous decision was warranted. The applicant appealed the Attorney General's Final Decision asserting that he is owed additional work loss.

{¶3} Neither the applicant nor anyone on his behalf appeared at the hearing. An Assistant Attorney General attended the hearing and presented oral argument for this panel's consideration. The appeal concerns work loss reimbursement for subpoenas issued to the applicant, a police officer, during the time period of March 8, 2002 through April 4, 2002. The

Assistant Attorney General stated that the applicant's assertion that he is owed \$848.88 with respect to the subpoenas is inaccurate since there is no way of knowing whether the applicant would have actually appeared for the hearings or even if the hearings would have occurred. The Assistant Attorney General argued that the applicant's work loss recommendation is based upon pure speculation and not actual work loss. The Assistant Attorney General asserted that his method of calculation more accurately reflects how many hearings the applicant would have most likely attended during the time period in question. Hence, the Assistant Attorney General argued that the applicant is only entitled to a work loss award totaling \$419.52 which includes the \$309.12 that was previously granted.

{¶4} From review of the file and with full consideration given to the oral argument presented at the hearing, this panel makes the following determination. We find that the applicant incurred additional work loss in the amount of \$848.88 (9 subpoenas x 4.5 hours = 40.50 x 20.96 wages = \$848.88). We find the Attorney General's method of calculation, with respect to this claim, to be arbitrary and unreasonable. The applicant has submitted nine subpoenas to establish his claim for work loss. The Assistant Attorney General's argument that the applicant must *actually* prove that he would have attended all nine subpoenas in order to receive reimbursement is not well-taken, since it would be virtually impossible for the applicant or anyone to prove this point. Therefore, the December 6, 2002 decision of the Attorney General shall be reversed and this claim shall be referred to the Attorney General for payment of the \$848.88.

{¶5} IT IS THEREFORE ORDERED THAT

{¶6} 1) The December 6, 2002 decision of the Attorney General is REVERSED and judgment is entered for the applicant in the amount of \$848.88;

{¶7} 2) This claim is referred to the Attorney General pursuant to R.C. 2743.191 for payment of the award;

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

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

DALE A. THOMPSON
Commissioner

CLARK B. WEAVER, SR.
Commissioner

ASHER W. SWEENEY
Commissioner