

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: JANET L. WHITMER : Claim No. V2002-50781

JANET L. WHITMER : DECISION

Applicant : Judge Fred J. Shoemaker

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{¶1} This matter came on to be considered upon applicant's appeal from the December 27, 2002, order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based upon the finding that applicant was convicted of a felony within ten years of the criminally injurious conduct.

{¶2} On January 27, 2003, the same date that applicant filed her appeal, she filed a "motion for relief from order" wherein she requested that this matter be remanded to the panel of commissioners for a hearing. On March 17, 2003, the court issued an order which held applicant's January 27, 2003, motion in abeyance pending the April 11, 2003, judicial hearing.

{¶3} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The panel found, upon review of the evidence, that applicant failed to present sufficient evidence to meet her burden.

{¶4} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final."

{¶5} At the hearing, applicant's counsel explained that he had received notice that the hearing before the panel of commissioners had been rescheduled, but that neither he nor applicant attended the panel hearing due to an inadvertent scheduling error that was made by either counsel or his staff. Applicant urged the court to remand this case to the panel of commissioners to allow a hearing on the merits of the claim. The Assistant Attorney General assigned to this claim was not opposed to applicant's motion to remand.

{¶6} Upon review, applicant's January 27, 2003, motion to remand is GRANTED. Accordingly, the decision of the three-commissioner panel is set aside and this claim will be remanded to the panel to allow testimony and evidence.

{¶7} Upon review of the evidence, the court finds the order of the panel of commissioners must be set aside.

{¶8} IT IS HEREBY ORDERED THAT:

{¶9} 1) The order of December 27, 2002, (Jr. Vol. 2248, Pages 103-104) is set aside;

{¶10} 2) This claim is REMANDED to the panel of commissioners for a hearing to allow testimony and evidence;

{¶11} 3) Costs assumed by the reparations fund.

FRED J. SHOEMAKER
Judge

Claim No. V2002-50781

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DECISION

AMR/cmd

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