

[Cite as *In re Budd*, 2003-Ohio-2679.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: STEVEN A. BUDD : Claim No. V2002-51109

STEVEN A. BUDD : DECISION

Applicant : Anderson M. Renick,  
Magistrate

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{¶1} This matter came on to be considered upon applicant's appeal from the December 12, 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 failed to prove by a preponderance of the evidence that he qualifies as a victim of criminally injurious conduct under the motor vehicle exception.

{¶2} 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 his burden.

{¶3} Pursuant to Civ.R. 53, the court appointed the undersigned magistrate to hear applicant's appeal.

{¶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} Applicant asserts that the panel's decision was unreasonable and unlawful because the driver of the car that struck applicant's vehicle was driving erratically at the time of the collision and because "hit and run drivers almost universally flee the scene to avoid being cited for driving while under the influence of alcohol or drugs." A review of the transcript of the proceedings before the panel reveals that the only witness to the collision testified that the vehicle that struck applicant was traveling at a high rate of speed. Based upon this testimony, applicant asserts that the offender was driving in a reckless manner, in violation of R.C. 2903.08. However, for applicant to establish his eligibility for an award of reparations pursuant to R.C. 2743.51(C)(1)(d) and 2903.08, it is necessary for him to show that the offender acted with an "absence of care or an absolute perverse indifference to the safety of others." *In re Calhoun* (1994), 66 Ohio Misc.2d 159, quoting *Roszman v. Sammett* (1971), 26 Ohio St.2d 94 at 98.

{¶6} Upon review of the file in this matter, the magistrate finds that the panel of commissioners was not arbitrary in finding that applicant did not show by a preponderance of the evidence that he was entitled to an award of reparations.

{¶7} Based on the evidence and R.C. 2743.61, it is the magistrate's opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, it is recommended that the decision of the three-commissioner panel, be affirmed and applicant's claim be denied.

{¶8} On March 21, 2003, a hearing was held in this matter before a magistrate of this court. On April 2, 2003, the magistrate issued a decision wherein he found that applicant failed to prove by a preponderance of the evidence that he was entitled to an award of reparations.

{¶9} Civ.R. 53 states that: "[a] party may, within fourteen days of the filing of the decision, serve and file written objections to the magistrate's decision." To date, applicant has not filed an objection to the magistrate's decision.

{¶10} Upon review of the claim file, and the magistrate's decision, it is the court's finding that the magistrate was correct in his analysis of the issues and application of the law. Accordingly, this court adopts the magistrate's decision and recommendation as its own.

{¶11} IT IS HEREBY ORDERED THAT:

{¶12} 1) The April 2, 2003, decision of the magistrate is ADOPTED;

{¶13} 2) The order of December 12, 2002, (Jr. Vol. 2248, Pages 65-66) is approved, affirmed and adopted;

{¶14} 3) This claim is DENIED and judgment entered for the State of Ohio;

{¶15} 4) Costs assumed by the reparations fund.

JUDGE

Claim No. V2002-51109

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ORDER

Filed 4-25-2003  
Jr. Vol. 2249, pgs. 186-187  
To S.C. Reporter on 5-23-2003