

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: WILLIAM C. EARNEST	:	Case No. V2002-52024
WILLIAM C. EARNEST	:	<u>ORDER 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 March 20, 2003 at 11:10 A.M. upon the applicant's December 30, 2002 appeal from the December 2, 2002 Final Decision of the Attorney General.

{¶2} Originally, the Attorney General denied the applicant's claim for an award of reparations contending that the applicant failed to qualify as a victim of criminally injurious conduct. On reconsideration, the Attorney General denied the claim contending that the applicant had engaged in substantial contributory misconduct. The Attorney General stated that the applicant had voluntarily engaged in a fight with the offender. The applicant appealed the Attorney General's Final Decision.

{¶3} The *pro se* applicant and an Assistant Attorney General appeared at the hearing and presented testimony, an exhibit, and oral argument for this panel's consideration. William Earnest testified that on March 14, 2002 he was assaulted while at the County Line Bar & Grill. Mr. Earnest explained that he and two female friends entered the bar to celebrate one of their

member's birthday. While there, the applicant stated that Tim Snyder came over to their table and began to accost and assault them. The applicant insisted that he and his friends did nothing to provoke the attack. Mr. Earnest explained that he later discovered that the offender was a friend of his ex-wife, who was also present at the bar that night. After the incident, the applicant explained that he and his friend, Carol Starcher, went to the hospital for treatment. Lastly, the applicant advised the panel that all parties were charged with disorderly conduct however, all charges were later dismissed.

{¶4} Carol Starcher briefly testified as to the events of March 14, 2002. Ms. Starcher's testimony essentially corroborated the applicant's version of what transpired that evening.

{¶5} After hearing the applicant's and Ms. Starcher's testimony, the Assistant Attorney General moved to introduce Exhibit A, the affidavit of Cindy Kelly, an employee of the County Line Bar & Grill. The Assistant Attorney General stated that Ms. Kelly's affidavit endorses the testimony presented and thus requested the panel reverse the Attorney General's Final Decision and remand the claim for economic loss calculations.

{¶6} From review of the file and with full consideration given to all the information presented at the hearing, this panel makes the following determination. First, we find that the applicant qualifies as a victim of criminally injurious conduct. Mr. Earnest was clearly the victim of an assault. Second, we find that the applicant did not engage in contributory misconduct based upon the evidence presented. Therefore, the December 2, 2002 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} 1) The December 2, 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 economic loss calculations and decision;

{¶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.

KARL H. SCHNEIDER
Commissioner

JAMES H. HEWITT III
Commissioner

STEVEN A. LARSON
Commissioner