

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: HARRY J. GARDNER	:	Case No. V2002-50404
HARRY J. GARDNER	:	<u>ORDER OF A THREE-</u>
Applicant		<u>COMMISSIONER PANEL</u>

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{¶1} On February 9, 2001, the Attorney General granted the applicant an emergency award in the amount of \$2,000.00 based on work loss. On May 7, 2001, the Attorney General denied the applicant's claim pursuant to R.C.2743.60(D) contending that all the applicant's economic loss had been or may be recouped from a collateral source, primarily Health Information Systems. The Attorney General also stated that the applicant's other purported losses were unverifiable. On October 15, 2001, the Attorney General issued a Final Decision indicating that the previous decision would not be modified. On October 23, 2001, the applicant appealed the Attorney General's Final Decision. On June 28, 2002, the panel reversed the Attorney General's Final Decision and granted the applicant a work loss award in the amount of \$109.92 based upon the Attorney General's April 25, 2002 Supplemental Statement in Lieu of Brief. On February 21, 2003, Judge Shoemaker set aside the panel's decision and remanded the claim to the panel in order to allow the applicant the opportunity to testify and present evidence

concerning his work loss claim. Hence, this matter came to be reheard before this panel of three commissioners on May 7, 2003 at 10:00 A.M.

{¶2} The *pro se* applicant and an Assistant Attorney General appeared at the hearing and presented testimony, exhibits and oral argument for the panel's consideration. At the beginning of the hearing, the panel chairman advised the applicant concerning his right to counsel but the applicant stated that he wished to proceed without legal representation. Mr. Gardner briefly testified that over the years he earned a substantial income averaging between \$75,000.00 and \$50,000.00 annually until 2000. The applicant stated that in 2000 he moved from New Jersey to Toledo, his home-town, in order to be closer to his sons. Mr. Gardner asserted that he previously worked for Health Information Systems until approximately the summer of 2000. However, he advised that he had no documentation concerning his ending salary from Health Information Systems and stated that he was unable at this time to provide a general dollar amount for the panel. Upon his return to Toledo, the applicant informed the panel that he sought part-time employment at BP in November of 2000. Mr. Gardner however testified that shortly thereafter he was assaulted and since then has not been physically able to return to work. The applicant noted that the disability period of December 9, 2000 thru April 1, 2001 was merely an estimate at the time. Mr. Gardner stated that his work loss award should be calculated based on his previous earnings and not purely on his BP salary. Lastly, the applicant requested an award in the amount of \$4,800.00 (\$800 x 6 months) based on his current financial situation.

{¶3} The Assistant Attorney General maintained that the only work loss award the applicant is entitled to receive is the \$109.92 award noted in the panel's previous decision that was not paid due to the applicant's judicial appeal. The Assistant Attorney General argued that

awarding the applicant any additional work loss awards based on his *alleged* previous earnings is purely speculative and incorrect since the applicant has failed to produce any evidence that he was receiving income other than his BP salary at the time of the criminally injurious conduct. The Assistant Attorney General stated that, under this program, a victim's work loss claim is calculated based upon his/her earnings at the time of the criminally injurious conduct.

{¶4} 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. Based upon Mr. Gardner's own testimony and admission, we find that the applicant failed to prove by a preponderance of the evidence that he incurred additional work loss over the amount of \$109.92. Therefore, based on the greater weight of the evidence, the October 15, 2001 decision of the Attorney General shall be reversed and the applicant shall be awarded \$109.92 as unreimbursed work loss.

{¶5} IT IS THEREFORE ORDERED THAT

{¶6} 1) The October 15, 2001 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant in the amount of \$109.92;

{¶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 reparations 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

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