

[Cite as *In re Johnson*, 2003-Ohio-5511.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: MICHAEL J. JOHNSON, JR. : Case No. V2003-40038

MICHAEL J. JOHNSON, JR. : DECISION

Applicant : Anderson M. Renick,
Magistrate

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{¶1} This matter came on to be considered upon applicant's appeal from the May 29, 2003, 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 eligible for the Ohio Hospital Care Assistance Program (HCAP).

{¶2} On August 6, 2003, the Attorney General filed a motion to remand this claim for a decision and award because applicant had submitted new documents to show that his application for an HCAP write-off had been denied.

{¶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 his burden.

{¶4} Pursuant to Civ.R. 53, the court appointed the

undersigned magistrate to hear applicant's appeal.

{¶5} 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."

{¶6} Neither applicant nor anyone on his behalf attended the hearing, and applicant did not respond to the Attorney General's motion to remand.

{¶7} 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.

{¶8} However, based upon the recently submitted documentation that was attached to the Attorney General's motion and shows that applicant has been excluded from HCAP eligibility, the magistrate finds that the Attorney General's motion to remand should be granted. Accordingly, the magistrate recommends that the decision of the three-commissioner panel be set aside and that this claim be remanded to the Attorney General for decision.

{¶9} A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and

specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

{¶10} On August 22, 2003, a hearing was held in this matter before a magistrate of this court. On September 4, 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.

{¶11} 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.

{¶12} 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.

{¶13} IT IS HEREBY ORDERED THAT:

{¶14} 1) The September 4, 2003, decision of the magistrate is ADOPTED;

{¶15} 2) The Attorney General's August 6, 2003, motion to remand is GRANTED;

{¶16} 3) The order of May 29, 2003, (Jr. Vol. 2250, Pages 36-37) is set aside;

{¶17} 4) This claim is REMANDED to the Attorney General for decision;

{¶18} 5) Costs assumed by the reparations fund.

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ORDER

Filed 9-25-2003

Jr. Vol. 2251, Pgs. 77-78

To S.C. Reporter 10-16-2003