

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: STEFANIE A. BROOKOVER	:	Case No. V2002-50668
JIMMY R. BROOKOVER	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred in relation to a January 2000 sexual abuse incident against the victim. On January 3, 2002, the Attorney General issued a Finding of Fact and Decision denying the applicant's claim pursuant to R.C. 2743.60(E)(4) since the applicant was convicted of domestic violence on August 17, 1998. On March 29, 2002, the Attorney General issued a Final Decision denying the claim again solely on the basis that the applicant failed to prove he incurred allowable expense as a result of the criminally injurious conduct. On April 29, 2002, the applicant appealed the Attorney General's Final Decision. On September 4, 2002, a panel of commissioners affirmed the Attorney General's Final Decision. On March 11, 2003, Judge Bettis set aside the panel's decision and remanded the case to the panel to allow the applicant the opportunity to testify and present evidence regarding the applicant's allowable expense claim. On June 12, 2003, the panel held a final determination in abeyance, ordered the Attorney General to file a supplemental memorandum, and continued the hearing. On August 22, 2003, the Attorney General filed a

Supplemental Memorandum which indicated the applicant's calculated wage loss to be \$3,171.26. Hence, this appeal came to be heard before this panel of three commissioners on September 10, 2003 at 10:30 A.M.

{¶2} The applicant, applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony, an exhibit, and oral argument for this panel's consideration. Jimmy Brookover testified that his tenure with Trans Service Logistics ended on August 1, 2001 after being terminated for missing too many days to care for his daughter. Mr. Brookover stated that over the course of that year, he applied for several positions to no avail. Mr. Brookover asserted that none of the job opportunities afforded him the flexibility to care for his daughter. However, Mr. Brookover did note that in September 2001 he briefly babysat for his sister, Jill Brookover, for a nominal fee. Mr. Brookover explained that his babysitting position was short-lived because Washington County Job and Family Services denied his application to become a licensed child care provider, due to his criminal background. Mr. Brookover also denied all allegations that he was ever employed with Burkhart or Prine Trucking companies. Lastly, Mr. Brookover objected to the Attorney General's deduction of Social Security benefits from the work loss calculations.

{¶3} Applicant's counsel argued that, based on the applicant's testimony, the applicant should be granted a wage loss award in the amount of \$23,100.00. However, the Assistant Attorney General asserted that the applicant is only entitled to receive, at this time, a wage loss award in the amount of \$726.75. The Assistant Attorney General noted that she no longer stands by her earlier figure of \$3,171.26, which is listed in the August 22, 2003 Supplemental

Memorandum. The Assistant Attorney General also requested the claim be remanded to the Attorney General for further investigation in light of the applicant's testimony.

{¶4} From review of the file and with full and careful consideration given to the information presented at the hearing, this panel makes the following determination. We find that the applicant has proven, by a preponderance of the evidence, that he incurred wage loss as a result of the criminally injurious conduct and hence the applicant shall be awarded a wage loss award in the amount of \$726.75. Moreover in light of the applicant's testimony, we find that further investigation of the applicant's wage loss is warranted. Therefore, this case shall be continued and the Attorney General is ordered to file a supplemental memorandum addressing the applicant's total economic loss.

{¶5} IT IS THEREFORE ORDERED THAT

{¶6} 1) The March 29, 2002 decision of the Attorney General shall be REVERSED and judgment is rendered in favor of the applicant in the amount of \$726.75;

{¶7} 2) This case is referred to the Attorney General for payment of the award pursuant to R.C. 2743.191;

{¶8} 3) This claim is also continued and the oral hearing on the applicant's notice of appeal shall be reheard on **December 4, 2003 at 10:30 A.M.** at the Court of Claims of Ohio, Capitol Square Office Building, 65 East State Street, Suite 1100, Columbus, Ohio 43215, by a panel of three commissioners;

{¶9} 4) On or before **November 14, 2003**, the Attorney General shall file a supplemental memorandum addressing the applicant's total economic loss;

{¶10} 5) On or before **November 21, 2003**, the applicant shall file a response to the Attorney General's supplemental memorandum;

{¶11} 6) The clerk shall send applicant a copy of this order and a VC-21 (Confirmation of Attendance) postcard;

{¶12} 7) 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