

[Cite as *In re Kashmiry*, 2003-Ohio-6137.]

**IN THE COURT OF CLAIMS OF OHIO**  
**VICTIMS OF CRIME DIVISION**

IN RE: KAREEM KASHMIRY	:	Case No. V2003-40585
KAREEM KASHMIRY	:	<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 August 21, 2003 at 10:45 A.M. upon the applicant’s June 10, 2003 appeal from the May 28, 2003 Final Decision of the Attorney General.

{¶2} The applicant, a police officer, filed a reparations application seeking reimbursement for work loss incurred with respect to a September 12, 2002 incident. The Attorney General denied the applicant’s claim for an award of reparations contending that the applicant failed to prove he was a victim of criminally injurious conduct. The Attorney General asserted that the incident which gave rise to the claim did not pose a substantial threat of personal injury or death to the applicant. The Attorney General stated that the applicant was attempting to apprehend a suspect, after a license plate check revealed that the owner of the vehicle was wanted for failure to appear for a drug trafficking charge. The Attorney General asserted that the applicant had no physical contact with the alleged offender prior to his injury

and that the act of fleeing, in and of itself, does not constitute criminally injurious conduct. The applicant appealed the Attorney General's Final Decision.

{¶3} The applicant, applicant's counsel and an Assistant Attorney General appeared at the hearing and presented testimony and oral argument for the panel's consideration. Kareem Kashmiry briefly testified concerning the events of September 12, 2002. Officer Kashmiry stated that he and his partner observed a male subject pumping gasoline who fit the description of a suspect he recently saw on a wanted poster. Officer Kashmiry explained that a license check on the vehicle revealed that the owner of the vehicle was wanted for a felony probation violation. The check also noted that the subject was known to be armed and dangerous. Officer Kashmiry stated that he and his partner approached the individual when the suspect suddenly fled. Officer Kashmiry explained that, as the chase ensued, he fell and dislocated his shoulder. However, after repositioning his shoulder, Officer Kashmiry stated that he gave chase again and later apprehended the suspect after administering a few knee strikes to the resistant suspect. Officer Kashmiry noted for the panel that the subject kept one hand inside the waistband of his pants while he fled. Officer Kashmiry further stated that, as a result of the incident, he had to undergo surgery for damaged ligaments and a torn rotator cuff. Officer Kashmiry informed the panel that the Bureau of Workers' Compensation found him to be 5 percent disabled and thus he seeks reimbursement of his private duty work loss.

{¶4} Applicant's counsel argued, based on the applicant's testimony concerning the nature and actions of the suspect, that the applicant is a victim of criminally injurious conduct and hence is entitled to recovery of his private duty work loss. Counsel asserted that the case of In re Madhat, V00-02372tc (3-16-01), although factually distinguishable, supports his assertion.

In Madhat, supra, the applicant attempted to stop a thief from stealing her vehicle when she fell steps away from coming into direct physical contact with the offender; nevertheless, the court determined that the “confrontation” presented a risk of personal injury to the applicant. Lastly counsel contended, despite the Madhat, supra, decision, that this claim has merit to stand on its own.

{¶5} However, the Assistant Attorney General maintained that based on the facts of this case the applicant fails to qualify as a victim of criminally injurious conduct. The Assistant Attorney General argued that the alleged offender’s conduct failed to pose a substantial threat of personal harm or death to the applicant, since Officer Kashmiry sustained injury prior to any physical contact with the arrested. The Assistant Attorney General also insisted that the applicant had no way of knowing that the suspect would be combative once apprehended. The Assistant Attorney General also argued that fleeing, in and of itself, does not constitute criminally injurious conduct. The Assistant Attorney General cited In re Conway, V92-95682sc (8-4-93) and In re Rudin, V02-51923tc (4-17-03) as relevant case law.

{¶6} R.C. 2743.51(C)(1) states in pertinent part:

“(C) ‘Criminally injurious conduct’ means one of the following:

“(1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state.”

{¶7} 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. We find that the applicant has proven, by a preponderance of the evidence, that he was a victim of criminally

injurious conduct on September 12, 2002. We find the following facts to be compelling: (1) the applicant was injured while attempting to apprehend a subject in violation of his parole, (2) the suspect was also known to be armed and dangerous, (3) the suspect ran with his hand inside the waistband of his pants suggesting a possible weapon, and (4) the suspect fled at the mere approach of the officers. We find this information to be sufficient evidence that the suspect's conduct posed a substantial threat of personal injury or death to the applicant. Based upon the above reasons, we find the May 28, 2003 decision of the Attorney General shall be reversed. This claim shall also be remanded to the Attorney General for economic loss calculations and decision.

{¶8} IT IS THEREFORE ORDERED THAT

{¶9} 1) The May 28, 2003 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;

{¶10} 2) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings;

{¶11} 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application pursuant to R.C. 2743.68;

{¶12} 4) Costs are assumed by the court of claims victims of crime fund.

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JAMES H. HEWITT III  
Commissioner

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LEO P. MORLEY  
Commissioner

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KARL H. SCHNEIDER  
Commissioner

ID #\1-dld-tad-091503  
Filed 10-16-2003  
Jr. Vol. 2251, Pgs. 129-133  
To S.C. 11-19-2003