

[Cite as *In re Rust*, 2004-Ohio-1097.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: RACHEL A. RUST	:	Case No. V2003-40275
RACHEL A. RUST	:	<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 November 4, 2001 assault whereby she sustained multiple facial injuries. On January 2, 2003, the Attorney General issued a Finding of Fact and Decision granting the applicant an award in the amount of \$147.36 for unreimbursed allowable expense. However, the Attorney General denied certain expenses pursuant to R.C. 2743.60(D) contending that the applicant had insurance coverage with Blue Cross/Blue Shield. The Attorney General also denied the applicant's claim for work loss asserting that the applicant was not employed at the time of the criminally injurious conduct. On January 6, 2003, the applicant filed a request for reconsideration. On March 3, 2003, the Attorney General issued a Final Decision indicating that the previous decision warranted no modification. The Attorney General stated that the applicant failed to provide medical documentation to support her purported loss. The Attorney General also stated that the applicant's employer indicated that Ms. Rust was laid off due to the nature of his business and not as a result of the criminally injurious conduct. On April 2, 2003, the

applicant filed an appeal of the Attorney General's Final Decision. Hence, this matter came to be heard before this panel of three commissioners on December 18, 2003 at 11:45 A.M.

{¶2} The applicant, applicant's counsel, and an Assistant Attorney General appeared at the hearing and presented testimony, exhibits, and oral argument for this panel's consideration. Rachel Rust testified that she was stabbed in the face on November 4, 2001 and underwent immediate plastic surgery. Ms. Rust explained that she attempted to contact her employer, Wayne Duncan of Wayne's Tastee Freeze, to inform him of the assault and her inability to work, but was unable to reach him. However, Ms. Rust stated that she was able to contact a co-worker who relayed the message to Mr. Duncan. Ms. Rust asserted that eventually Mr. Duncan told her to take the next two weeks off work, which ultimately extended until December 25, 2001, when she was officially told she was being laid off. Ms. Rust advised the panel that prior to the assault, she typically worked Monday through Friday. Ms. Rust asserted that she was replaced by a fellow co-worker and Mrs. Duncan until April 2002 when she returned to work. Ms. Rust stated that she believes the reason she was not allowed to return to work sooner was because her employer did not want customers asking questions about what happened to her, in light of her appearance. Lastly, Ms. Rust asserted that the work loss incurred from November 4, 2001 through April 3, 2002 should be reimbursed to her, since the loss was incurred as a result of the facial injuries she sustained in the assault.

{¶3} Wayne Duncan, the applicant's former employer, testified that he has owned and managed Wayne's Tastee Freeze for 51 years. Mr. Duncan explained that he typically employs approximately 12 employees year round. Mr. Duncan stated that Rachel worked for him in 2001 until she was assaulted. Mr. Duncan explained that due to the nature of his business, he

generally lays off employees during times of inclement weather. Mr. Duncan further added that during the time Rachel was off work, she received unemployment benefits. Mr. Duncan also noted for the panel that he did not seek replacement personnel for Rachel, but relied on his current employees to meet his staffing needs. Lastly, Mr. Duncan explained that Rachel returned to work for him on April 3, 2002 and worked until December 25, 2002, at which time she was laid off again.

{¶4} Applicant's counsel stated that based on the testimony presented, the applicant's claim for work loss from November 4, 2001 through April 3, 2002, less the difference of the unemployment benefits she received, should be allowed. Counsel argued that the real reason Ms. Rust was not allowed to work was due to her appearance and had she not been assaulted she would not have incurred any work loss. Counsel also introduced Exhibit 1, Ms. Rust's employment records, and Exhibit 2, a photograph of Ms. Rust shortly after the assault.

{¶5} The Assistant Attorney General stated that the applicant failed to present sufficient evidence that her injury caused work loss from November 13, 2001 through April 2002. The Assistant Attorney General argued that based on the nature of Mr. Duncan's business the applicant was subject to being laid off and incurring work loss absent any criminally injurious conduct.

{¶6} 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 reasonably incurred work loss from November 4, 2001 through December 25, 2001 (less the difference in unemployment benefits) as a result of her appearance stemming from the

assault. Therefore, the March 3, 2003 decision of the Attorney General shall be reversed and this claim shall be remanded to the Attorney General for economic loss calculations and decision.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} 1) The March 3, 2003 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;

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

{¶10} 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

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

JAMES H. HEWITT III
Commissioner

LEO P. MORLEY
Commissioner

KARL H. SCHNEIDER
Commissioner

ID #|8-dld-tad-122203

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Coshocton County Prosecuting Attorney and to:

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