

[Cite as *In re Hall*, 2004-Ohio-3236.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: RODNEY L. HALL	:	Case No. V2003-40950
RODNEY L. HALL	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
<hr/>		
	: : : : :	

{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred in relation to a January 20, 2003 assault. On June 18, 2003, the Attorney General granted the applicant an award of reparations in the amount of \$5,109.00 for unreimbursed allowable expense. However, the Attorney General denied reimbursement for the University Hospital expense, work loss, and property loss. On July 11, 2003, the applicant filed a request for reconsideration. On September 3, 2003, the Attorney General determined that no modification of the previous decision was warranted. On October 1, 2003, the applicant filed a notice of appeal to the Attorney General's September 3, 2003 decision. Hence, this matter came to be heard before this panel of three commissioners on February 25, 2004 at 10:55 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. Rodney Hall testified that on January 20, 2003 he was severely assaulted and underwent surgery for a fractured skull and arm, broken jaw, and a stab wound to his head. Mr. Hall stated that as a result of the incident he incurred work loss and was unable to return to work until August 2003. Mr. Hall explained that he is a union electrician who is restricted from accepting any non-union job opportunities. Mr. Hall advised the panel that prior to the criminally injurious conduct, he

had received unemployment benefits during his 2002 lay-off. However, Mr. Hall stated that those benefits had terminated before he was assaulted in January. Lastly, Mr. Hall indicated that he incurred approximately \$5,000.00 to \$10,000.00 in unreimbursed work loss as a result of the criminally injurious conduct.

{¶3} Rick Kremer, a reference agent for the applicant's local union, testified by telephone that he has known the applicant since July 2002. Mr. Kremer stated that his job is to process requests from area contractors for electricians. Mr. Kremer briefly explained the union's process for placement of electricians: (1) a contractor makes a request for a specific type of electrician along with certain requirements (drug test) if any; (2) the request is logged and dispatched via their internal notification system to all available electricians on their daily seniority list; (3) a qualified electrician listens to the request; (4) the next day the requests are read aloud in the presence of any available and qualified electrician; and (5) then electricians are selected for the position in order of seniority (the list is updated daily), if they desire the said job. Mr. Kremer testified that the applicant would have been required to accept only three positions during his disability period, which was from January 2003 through August 2003. Mr. Kremer stated that an electrician has the option of passing on a particular assignment based upon certain factors such as: (1) location; (2) length of assignment; and (3) salary. Mr. Kremer explained that once an electrician accepts a job, his name may be placed at the bottom of the seniority list for other available positions. Mr. Kremer noted that this selection process often deters an electrician from accepting a certain position. Mr. Kremer stated that it is common practice for an electrician to pass on a particular job in order to await a better assignment. Mr. Kremer stated that there are approximately 1,100 electricians in the same classification as the applicant.

{¶4} Applicant's counsel stated, based on the testimony presented, the applicant's claim for a work loss award should be allowed. Counsel argued that the applicant would have been required to accept three positions from the union had he been able to work from January 2003 through August 2003. Counsel asserted that based on the applicant's prior work history he did accept job opportunities when available. Counsel also contended that the applicant should not be penalized for passing on a particular assignment when a better position most likely awaited him in the near future.

{¶5} The Assistant Attorney General maintained that the applicant's claim must be denied since he failed to prove by a preponderance of the evidence that he incurred work loss. The Assistant Attorney General argued that calculating a work loss award for the applicant is purely speculative since: (1) the applicant had been laid off from October 2002 through January 2003; (2) no one really knows whether the applicant would have accepted the three required positions from January through August 2003 had he not been injured; and (3) the applicant's work history, as noted in Exhibit A, demonstrates that the applicant had a limited work history in 2002 since he only earned \$8,051.22. Accordingly the Assistant Attorney General stated that the claim should be denied.

{¶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 at least \$5,000.00 in unreimbursed work loss from January 2003 through August 2003. Therefore, the September 3, 2003 decision of the Attorney General shall be reversed to award \$5,000.00 to the applicant as unreimbursed work loss.

{¶7} IT IS THEREFORE ORDERED THAT:

{¶8} 1) The September 3, 2003 decision of the Attorney General is REVERSED to render judgment in favor of the applicant in the amount of \$5,000.00;

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

{¶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.

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

STEVEN A. LARSON
Commissioner

ID #\6-dld-tad-030404

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

Filed 4-21-2004
Jr. Vol. 2253, Pgs. 95-98
To S.C. Reporter 6-21-2004