

[Cite as *In re Hall*, 2004-Ohio-4600.]

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

IN RE: TIMOTHY R. HALL	:	Case No. V2002-51800
TIMOTHY R. HALL	:	<u>OPINION 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 with respect to a December 12, 2001 assault incident involving his former employer, Keith Taylor. On April 18, 2002, the Attorney General granted the applicant an award of reparations in the amount of \$403.98 for unreimbursed work loss incurred from December 13, 2001 through March 6, 2002. On July 1, 2002, the applicant filed a supplemental compensation application seeking reimbursement for attorney fees. On July 31, 2002, the Attorney General denied the claim pursuant to R.C. 2743.52(A) contending that the applicant's purported attorney fees do not relate to his reparations application, but concerned his Bureau of Workers' Compensation claim. The Attorney General also denied the applicant's claim for additional work loss. On August 7, 2002, the applicant filed a request for reconsideration. On October 15, 2002, the Attorney General denied the claim pursuant to R.C. 2743.60(F) contending, based

upon the testimony offered at the Bureau of Workers' Compensation hearing, that the applicant engaged in substantial contributory misconduct on December 12, 2001, since there is evidence that he was the initial aggressor in the incident. On November 7, 2002, the applicant filed a notice of appeal to the Attorney General's October 15, 2002 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on May 5, 2004 at 11:10 A.M.

{¶2} The applicant, applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. Timothy Hall testified that on December 12, 2001 he was working at Keith Taylor Trucking when he was assaulted by his former employer. Mr. Hall explained that over the course of two years he and Mr. Taylor would have occasional disputes, however this was the first time physical contact was ever made between the two parties. The applicant stated that he arrived at the office prior to quitting time that day and that Mr. Taylor started cursing at him and ordered him to haul another load. Mr. Hall stated that Mr. Taylor went inside and that he followed soon after. Mr. Hall indicated that he felt he was being singled out and went inside to ask Mr. Taylor if he had told anyone else to haul another load so late in the day. The applicant stated that words were exchanged and he was pushed by Mr. Taylor into a desk. Mr. Hall explained that Brian Thompson shortly thereafter separated them. Mr. Hall explained that an ambulance was called and he was transported to Good Samaritan Hospital. The applicant stated that no criminal charges were filed because Keith Taylor left the scene before the police arrived. Mr. Hall stated that he never threatened to harm Keith Taylor that day.

{¶3} Attorney Timothy Chasser briefly testified via telephone that he represented the employer, Keith Taylor, in the Bureau of Workers' Compensation case. Attorney Chasser stated

that some of Keith Taylor's employees prepared affidavits while at his office one Saturday morning for the Bureau of Workers' Compensation hearing. Attorney Chasser explained that each witness hand wrote their statements, which was then typed by his secretary, read again by each witness, signed and notarized by Jim Sullivan.

{¶4} Keith Taylor, the applicant's former employer, testified that on December 12, 2001 he told the applicant he had time to pick up another load. Mr. Taylor stated he went inside the office and that the applicant soon followed and asked him why he was being singled-out. Mr. Taylor explained that the applicant and Brian Thompson returned early enough in the day to haul another load. Mr. Taylor stated that the applicant became loud and words were exchanged. Mr. Taylor stated that the applicant started at him when he put his hands up to stop him and a small fight ensued. Mr. Taylor explained that Brian Thompson stepped in the middle and separated them. Mr. Taylor indicated that he felt threatened by the applicant's aggressive conduct and was only trying to defend himself. Mr. Taylor stated that the applicant gave no indication he was injured after they were separated.

{¶5} Ronald Smith, Sr., Mike Reynolds, Ronald Smith, Jr., all eye-witnesses and employees of Keith Taylor Trucking, essentially corroborated Keith Taylor's testimony. Nancy Hall, the applicant's wife, and Kenneth Speck, a former employee of Keith Taylor's, briefly testified on behalf of the applicant.

{¶6} Applicant's counsel stated, based on the testimony presented, that the applicant's claim should be allowed. Counsel stated there are two issues that need to be addressed and resolved with respect to this case, which are: 1) the applicant's eligibility to participate in the program and 2) the panel's jurisdiction to hear an issue not directly on appeal. Counsel asserted

that the Attorney General cannot argue that the applicant does not qualify as a victim of criminally injurious conduct since the Attorney General had already determined such and that the issue is not on direct appeal. Counsel stated that if the Attorney General is permitted to continually redetermine eligibility as to criminally injurious conduct, then the issue is always open for reevaluation on a supplemental claim and hence no final determination is ever reached. Counsel stated that Mr. Hall was a victim of assault on December 12, 2001 and that he did not engage in substantial contributory misconduct, in light of the testimony presented.

{¶7} The Assistant Attorney General maintained that the claim must be denied since the applicant was not a victim of criminally injurious conduct or he engaged in substantial contributory misconduct. The Assistant Attorney General asserted that the information presented indicates that Mr. Hall assaulted Keith Taylor and that Mr. Taylor merely put his hands up to protect himself from the applicant. The Assistant Attorney General contended that the Attorney General has the responsibility of continually investigating claims to ensure that an applicant is eligible to participate in the program. The Assistant Attorney General stated that she received new information that was not previously known, which prompted further investigation and reevaluation of the incident with respect to R.C. 2743.60(F) and now R.C. 2743.52. The Assistant Attorney General stated that the panel is allowed to hear all issues and evidence, since panel hearings are de novo proceedings.

{¶8} R.C. 2743.53 states:

(A) A court of claims panel of commissioners shall hear and determine all matters relating to appeals from decisions of the attorney general pursuant to sections 2743.51 to 2743.72 of the Revised Code.

(B) A judge of the court of claims shall hear and determine all matters relating to appeals from decisions or orders of a panel of commissioners of the court of claims.

{¶9} R.C. 2743.51(C)(1) states:

(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. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:

(a) The person engaging in the conduct intended to cause personal injury or death;

(b) The person engaging in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a felony but for the fact that the person engaging in the conduct lacked the capacity to commit the felony under the laws of this state;

(c) The person engaging in the conduct was using the vehicle in a manner that constitutes an OMVI violation;

(d) The conduct occurred on or after July 25, 1990, and the person engaging in the conduct was using the vehicle in a manner that constitutes a violation of section 2903.08 of the Revised Code.

{¶10} R.C. 2743.60(F) states:

(F) In determining whether to make an award of reparations pursuant to this section, the attorney general or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. The attorney general, a panel of commissioners, or a judge of the court of claims shall reduce an award of reparations or deny a claim for an award of reparations to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or the victim.

When the attorney general decides whether a claim should be denied because of an allegation of contributory misconduct, the burden of proof on the issue of that alleged contributory misconduct shall be upon the claimant, if either of the following apply:

(1) The victim was convicted of a felony more than ten years prior to the criminally injurious conduct that is the subject of the claim or has a record of felony arrests under the laws of this state, another state, or the United States.

(2) There is good cause to believe that the victim engaged in an ongoing course of criminal conduct within five years or less of the criminally injurious conduct that is the subject of the claim.

For purposes of this section, if it is proven by a preponderance of the evidence that the victim engaged in conduct at the time of the criminally injurious conduct that was a felony violation of section 2925.11 of the Revised Code, the conduct shall be presumed to have contributed to the criminally injurious conduct and shall result in a complete denial of the claim.

{¶11} 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. First, we shall address the panel's authority to hear and determine whether the applicant qualifies as a victim of criminally injurious conduct. We agree with the panel in In re Parkins, V02-51168tc (1-16-03), which stated that "the Attorney General's function with respect to this program is purely administrative in nature since the Attorney General's new role as initial determiner of

eligibility was simply implemented to provide a more efficient manner of processing the huge number of claims. Moreover, we note that the Attorney General is unable to afford applicants *any* hearing rights as due process requires. The panel of commissioner level is the first instance whereby applicants are given the opportunity to have a de novo, unbiased, independent, and judicial review of their claim. We believe that the panel of commissioner and judge sections of the program were designed to ensure that due process rights are extended to all applicants.” Based on the above and due to changes in the administration of the Victims’ Program, we believe that the panel serves in a quasi judicial function.

{¶12} Moreover, R.C. 2743.53 states that the panel shall hear and determine all matters relating to appeals from decisions of the Attorney General. Also, the holding in In re Martin (1988), 61 Ohio Misc. 2d 280, indicates that new evidence may be submitted and new issues may be raised at the panel level since panel hearings are de novo. Based on the above, we find that the panel has the jurisdiction to hear and determine all matters pertaining to appeals, whether or not the matter has been raised on direct appeal. Furthermore, we interpret the panel’s statement in In re West, V03-40208tc (8-1-03), to concern R.C. 2743.60(A) only in terms of satisfying the reporting requirement and not with respect to whether criminally injurious conduct has been established.

{¶13} Second, we shall address whether the applicant qualifies as a victim of criminally injurious conduct. We find that no criminally injurious conduct occurred based on the testimony offered, since we believe the matter was a mutual fight, where both parties lost their tempers and physical contact ensued. The applicant has failed to sustain his burden of proof, based on the totality of the circumstances and the testimony presented.

{¶14} Furthermore, we find that the Attorney General conducted a full investigation under R.C. 2743.59 when it was initially determined that the applicant qualified as a victim of criminally injurious conduct. The Attorney General made a good faith effort when he granted the April 18, 2002 award of reparations. Therefore, this panel hopes the Attorney General seriously considers not seeking recovery of those funds. Based on the above findings and rationale, the October 15, 2002 decision of the Attorney General shall be affirmed pursuant to R.C. 2743.52(A).

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CLARK B. WEAVER, SR.  
Commissioner

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ROBERT B. BELZ  
Commissioner

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JAMES H. HEWITT III  
Commissioner



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IN RE: TIMOTHY R. HALL	:	Case No. V2002-51800
TIMOTHY R. HALL	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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IT IS THEREFORE ORDERED THAT

- 1) The October 15, 2002 decision of the Attorney General is AFFIRMED pursuant to R.C. 2743.52(A);
- 2) This claim is DENIED and judgment is rendered in favor of the state of Ohio;
- 3) Costs are assumed by the court of claims victims of crime fund.

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CLARK B. WEAVER, SR.  
Commissioner

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ROBERT B. BELZ  
Commissioner

Filed 7-1-2004

Jr. Vol. 2254, Pg. 45

To S.C. Reporter 8-26-2004

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JAMES H. HEWITT III  
Commissioner

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