

[Cite as *In re Duvall*, 2004-Ohio-5489.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

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| IN RE: AARON DUVALL | : | Case No. V2004-60199 |
| AARON & STACY DUVALL | : | <u>ORDER OF A THREE-</u> |
| Applicants | : | <u>COMMISSIONER PANEL</u> |
| (1999-87111) | : | |
| | : : : : : | |

{¶ 1} On November 17, 1999, the applicants filed a reparations application seeking reimbursement of expenses incurred with respect to a July 27, 1999 assault incident. On August 4, 2003, the applicants filed a supplemental compensation application seeking additional reimbursement. On November 17, 2003, the Attorney General denied the applicants’ claim pursuant to R.C. 2743.52(A) contending that the applicants failed to prove they incurred additional economic loss. On December 17, 2003, the applicants filed a request for reconsideration. On February 17, 2004, the Attorney General denied the applicants’ claim once again. On February 25, 2004, the applicants filed a notice of appeal to the Attorney General’s February 17, 2004 Final Decision. On April 7, 2004, the Attorney General filed a Brief recommending the Final Decision be affirmed because the victim earned more income in 2001 (\$29,023.56) than he earned the year of the criminally injurious conduct (\$25,006.80) and hence he did not sustain any additional work loss. On April 12, 2004, the applicants filed a Brief recommending the Final Decision be reversed because the victim incurred “under-employment” work loss from August 2002 through April 2003, as a result of the vision problems he sustained

due to the 1999 assault incident. Hence, this matter came to be heard before this panel of three commissioners on July 21, 2004 at 12:35 P.M.

{¶ 2} The victim, victim's counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. Aaron Duvall testified that prior to the assault he held a commercial driver's license (CDL) and drove trucks for a living in Columbus, Ohio. The victim explained that after the criminally injurious conduct, he lost 75 percent of his sight in his right eye, which prevents him from driving at night. Mr. Duvall further testified that in 2000 his wife, Stacy, received her Ph.D. from The Ohio State University and that soon after she received a job offer in North Carolina earning a salary of \$52,000.00 annually. The victim testified that he and his family moved to North Carolina and that he performed odd jobs until he was eventually hired by Harley Davidson as a mechanic in 2001 (the victim also held a motorcycle mechanic's degree), earning approximately the same salary as he had earned prior to the criminally injurious conduct.

{¶ 3} However, Mr. Duvall explained that due to the economic effects of September 11, 2001, Stacy lost her job in December 2001. The victim stated that Stacy received unemployment benefits for awhile, but in August 2002 Stacy was offered a job in Ohio with a salary of \$26,000.00 per year and hence his family relocated to Columbus. Mr. Duvall testified that he was hired by On the Border restaurant in October 2002 and that he worked there until December 2002. The victim stated that he worked a few menial jobs from December 2002 through April 2003, but was eventually rehired by Harley Davidson in April 2003 earning a comparable salary to his previous Harley Davidson job. Mr. Duvall explained that he had allowed his Ohio CDL to expire because of his prior rejections by trucking companies due to his inability to drive at night.

The victim stated that, but for the criminally injurious conduct, he would have remained employed in the trucking industry and currently would be earning a higher salary with his former employer. Mr. Duvall noted for the panel that his former trucking job allowed him the flexibility to relocate to any state and continue working, if he had been able to drive at night.

{¶ 4} Victim's counsel argued that the claim for work loss should be allowed based upon the victim's testimony. Counsel contended that Mr. Duvall attempted to obtain another trucking job, however he was unable to do so solely because of his vision impairment and not because he did not renew his CDL. Counsel stated that the victim also attempted to mitigate his damages by performing non trucking jobs until he obtained a job with Harley Davidson. Counsel further asserted that the victim's inability to secure a trucking position was not a result of the poor economic conditions after September 11, 2001, since he could have worked anywhere in the country had he been able to drive at night. Lastly, counsel contended that the victim incurred approximately \$12,000.00 - \$13,000.00 in gross work loss from August 2002 through April 2003.

{¶ 5} The Assistant Attorney General maintained that the claim should be denied since the victim failed to prove he incurred work loss. The Assistant Attorney General argued that granting the victim an additional award for work loss is speculative since: 1) there is no evidence that the victim would have remained in the trucking industry until April 2003, in light of the economic effects of September 11, 2001 and 2) that there is no evidence that the victim would have earned a higher salary by April 2003. The Assistant Attorney General further argued that the real reason the victim was unable to secure a trucking position was because he failed to renew his CDL and not as a result of his impaired sight. The Assistant Attorney General also

noted that the victim has two trades that would have allowed him the opportunity to seek other comparable employment outside of the trucking industry. Lastly, the Assistant Attorney General asserted that the victim eventually found a job earning a comparable salary as his 1999 trucking job and hence he did not lose any additional income.

{¶ 6} R.C. 2743.51(G) states:

{¶ 7} (G) "Work loss" means loss of income from work that the injured person would have performed if the person had not been injured and expenses reasonably incurred by the person to obtain services in lieu of those the person would have performed for income, reduced by any income from substitute work actually performed by the person, or by income the person would have earned in available appropriate substitute work that the person was capable of performing but unreasonably failed to undertake.

{¶ 8} 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. The victim testified that: 1) the effects of September 11, 2001 would not have negatively impacted his prior trucking position and his ability to earn a higher salary since he could have performed his job anywhere in the country and 2) he repeatedly attempted to secure another trucking job, but was rejected due to his vision problems stemming from the criminally injurious conduct. We find this information to be compelling evidence that the victim incurred work loss from October 2002 through April 2003. The fact that the victim earned a higher salary after the criminally injurious conduct does not negate the fact that the victim nevertheless lost additional income he could have earned had he been able to work as a truck driver. See In re Calderon, V2002-51320tc (12-12-02). Therefore, this panel finds the February 17, 2004 decision of the Attorney General shall be reversed and this claim shall be remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings.

IT IS THEREFORE ORDERED THAT

- 1) The February 17, 2004 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;
- 2) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings;
- 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;
- 4) Costs are assumed by the court of claims victims of crime fund.

CLARK B. WEAVER, SR.
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

ID #\3-dld-tad-072904

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

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To S.C. Reporter 10-14-2004