

[Cite as *In re Harmon*, 2004-Ohio-5491.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: COLLEEN M. HARMON	:	Case No. V2004-60440
COLLEEN M. HARMON	:	<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 with respect to a July 7, 2002 incident. The applicant indicated that she was injured after her neighbor, Theresa Beard, intentionally set off fireworks near her horse startling the animal and causing it to bolt. On February 5, 2004, the Attorney General denied the applicant's claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove she qualified as a victim of criminally injurious conduct. On February 24, 2004, the applicant filed a request for reconsideration. On April 6, 2004, the Attorney General denied the claim once again. On May 3, 2004, the applicant filed a notice of appeal to the Attorney General's April 6, 2004 Final Decision asserting that her neighbor was charged with criminal damaging and possession of fireworks and that she has, as a result of the incident, sustained close to \$50,000.00 in damages. On June 17, 2004, the Attorney General filed a Brief contending that Mrs. Beard's conduct did not rise to the level of criminally injurious conduct. The Attorney General assented that Mrs. Beard harbored no intent to harm the applicant and that prosecutors refused to file assault charges against her. Hence, this matter came to be heard before this panel of three commissioners on July 21, 2004 at 10:10 A.M.

{¶ 2} The applicant (without the assistance of retained counsel) and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and brief comments for the panel's consideration. Colleen Harmon testified that she and her husband, since purchasing the property in 2000, have experienced numerous, ongoing, and unfriendly incidents with the Beards' family (some of which involved the police). Mrs. Harmon explained that on July 7, 2002 she and her husband were attempting to take a buggy ride when Mrs. Beard deliberately threw three sets of fireworks near their horse, which caused the horse to startle and bolt. The applicant stated that just prior to their departure, she had overheard someone say "Here they come." Mrs. Harmon stated that as a result of Mrs. Beard's intentional act, she *now* suffers from neck problems, anxiety, stuttering, and post traumatic stress disorder. Ms. Harmon testified that prior to the July 7, 2002 incident she worked as a registered nurse, but now receives Social Security Disability since she is unable to work in light of the injuries she sustained.

{¶ 3} Daniel J. Harmon, the applicant's husband, also testified concerning the events of July 7, 2002. Mr. Harmon's testimony corroborated the applicant's version of what transpired the day in question.

{¶ 4} Thomas Champine, a Lucas County special deputy and friend of the Harmon family, briefly testified concerning his observance of Mr. Beard's unfriendly and peculiar behavior toward the Harmons.

{¶ 5} The Assistant Attorney General continued to maintain that the claim must be denied because the applicant failed to prove she was a victim of criminally injurious conduct. The Assistant Attorney General argued that Mrs. Beard, based on the police report, demonstrated no intent to harm the applicant or her horse, but was merely playing with the fireworks for

entertainment purposes. The Assistant Attorney General stated that Mrs. Beard was never charged with assault, but only with possession of fireworks. The Assistant Attorney General also argued that there was no proximate cause between the incident and the applicant's medical condition, since the applicant was diagnosed with degenerate neck disease prior to July 7, 2002.

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

{¶ 7} (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.

{¶ 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. We find that the applicant qualifies as a victim of criminally injurious conduct. Mrs. Beard was arrested and charged with criminal damaging and possession of fireworks in Bowling Green Municipal Court (02 CRB 02182 A & B). Mrs. Beard's conduct posed a substantial threat of personal harm to the applicant, which is punishable by fine, death or imprisonment (as noted by the criminal charges). Based upon the testimony presented, we find that Mrs. Beard deliberately threw the fireworks near the applicant's horse and that as a result of the incident the applicant sustained injury. Mrs. Harmon testified that she suffered injury to her neck, stutters, experiences high anxiety, and has been diagnosed with post traumatic stress disorder, all of which is evidenced in the file. Based on the above findings, we therefore find that the April 6, 2004 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision.

IT IS THEREFORE ORDERED THAT

- 1) The April 6, 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;

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.

KARL H. SCHNEIDER
Commissioner

CLARK B. WEAVER, SR.
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

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