

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: SHUKRI MASSRI : Case No. V2004-60334

SHUKRI MASSRI : DECISION

Applicant : Judge Fred J. Shoemaker

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{¶ 1} This matter came on to be considered upon the Attorney General's appeal from the August 11, 2004, order issued by the panel of commissioners. The panel's determination modified the June 16, 2004, order of the panel of commissioners which granted applicant an award of reparations in the amount of \$15,033.77. The award granted by the panel was based upon the Attorney General's July 26, 2004, supplemental memorandum recommending that applicant be granted an award in the amount of \$12,367.13 for work loss in addition to \$2,666.64 that the Attorney General had recommended in a brief filed on May 17, 2004.

{¶ 2} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The panel found, upon review of the evidence, that applicant had presented sufficient evidence to meet his burden.

[Cite as *In re Massri*, 2004-Ohio-7264.]

{¶ 3} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final."

{¶ 4} At the judicial hearing, the Attorney General asserted that the panel's August 11, 2004, decision was unreasonable and unlawful because applicant may be eligible for Social Security Disability benefits. The Attorney General's assertion is based upon applicant's testimony before the panel of commissioners that he had tried to return to work on March 10, 2004, but soon realized that he was medically unable to continue working. The Attorney General argued that the recommendation for the \$12,367.13 award was no longer pending because applicant's economic loss may be recouped from a collateral source.

{¶ 5} R.C. 2743.60(D) provides the following:

{¶ 6} "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 that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is recouped from other persons, including collateral sources. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim

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shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If the award or denial is conditioned upon the recoupment of the claimant's economic loss from a collateral source and it is determined that the claimant did not unreasonably fail to present a timely claim to the collateral source and will not receive all or part of the expected recoupment, the claim may be reopened and an award may be made in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source.

{¶ 7} "If the claimant recoups all or part of the economic loss upon which the claim is based from any other person or entity, including a collateral source, the attorney general may recover pursuant to section 2743.72 of the Revised Code the part of the award that represents the economic loss for which the claimant received the recoupment from the other person or entity."

{¶ 8} R.C. 2743.60(D) clearly provides the Attorney General, a panel of commissioners, or a judge of the Court of Claims the discretion to determine whether to grant an award of reparations to an applicant who has not received benefits from a collateral source, even though applicant may have a right to appeal or request reconsideration upon a denial of benefits. In this case, applicant had not received Social Security Disability benefits at the time of the panel hearing and the panel determined that applicant had incurred work loss from August 26, 2002, through March 9, 2004. The court notes that on November 5, 2004, applicant filed a document from the Social Security Administration dated August 27, 2004, that states that

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his request for reconsideration regarding disability benefits had indeed been denied.

{¶ 9} Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicant had shown by a preponderance of the evidence that he was entitled to an award of reparations.

{¶ 10} Based on the evidence and R.C. 2743.61, it is the court's opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, this court affirms the decision of the three-commissioner panel, and applicant shall be granted an award of reparations in the amount of \$15,033.77, representing work loss.

FRED J. SHOEMAKER
Judge

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SHUKRI MASSRI : ORDER

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Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and the Attorney General's appeal must be denied.

IT IS HEREBY ORDERED THAT:

- 1) The order of August 11, 2004, (Jr. Vol. 2254, Pages 124-127) is approved, affirmed and adopted;
- 2) Judgment is rendered in favor of applicant in the amount of \$15,033.77;
- 3) Costs assumed by the reparations fund.

FRED J. SHOEMAKER
Judge

AMR/cmd

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

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Jr. Vol. 2255, Pg. 126
To S.C. Reporter 12-30-2004

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