

[Cite as *In re Tucker*, 2004-Ohio-7265.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: ANITA F. TUCKER	:	Case No. V2004-60415
ANITA F. TUCKER	:	<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 in relation to a June 11, 2003 assault incident. On November 25, 2003, the Attorney General granted the applicant an award of reparations in the amount of \$155.25 for unreimbursed work loss incurred from June 12, 2003 through July 10, 2003. However, the Attorney General denied reimbursement of certain expenses pursuant to R.C. 2743.60(D) contending that the applicant's medical bills had been or may be recouped from United Healthcare, Blue Cross, and Medicaid. On December 22, 2003, the applicant filed a request for reconsideration. On April 6, 2004, the Attorney General granted the applicant an additional award of reparations in the amount of \$495.80 for unreimbursed work loss incurred from June 12, 2003 through July 10, 2003. On April 21, 2004, the applicant filed a notice of appeal to the Attorney General's April 6, 2004 Final Decision contending she is owed additional work loss. On June 16, 2004, the court issued an order directing the Attorney General to pay the April 6, 2004 award. Hence, this matter came to be heard before this panel of three commissioners on September 8, 2004 at 11:45 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 the panel's consideration.

{¶ 3} Anita Tucker testified that she sustained a broken nose and multiple facial injuries as a result of a June 11, 2003 assault. Ms. Tucker explained that at the time of the assault she was performing home healthcare services for Ohio Presbyterian Retirement Services. The applicant stated that when she returned to work after the assault, her face was still distorted and that her employer had advised her to tell clients that she had sustained the injuries in an automobile accident. Ms. Tucker also testified that, after returning to work, she was surrounded by office rumors concerning the assault, which were being spread by a co-worker. The applicant explained that she also suffered a reduction in her work hours because her work schedule was changed after being presented with the option of either working part time or going on family medical leave. Ms. Tucker stated that as a single parent she decided to work part time. The applicant explained that eventually she was unable to cope with the negative work environment coupled with trying to handle personal affairs (doctor's appointments and court dates), and that on August 5, 2003 she resigned from Ohio Presbyterian Retirement Services, but indicated that she secured a similar job at Interim Healthcare shortly after her resignation. Dajuana Davis, the applicant's sister, also briefly testified concerning the changes she observed in the applicant's behavior and attitude after the assault.

{¶ 4} Applicant's counsel asserted that the applicant's claim should be allowed based upon the testimony presented and that the case should be determined on a case-by-case basis considering the facts surrounding the case. Counsel contended that the applicant's former employer, and not the applicant, unilaterally determined that the applicant's work schedule was

to be changed and but for that decision the applicant would have continued to work full time. Moreover, counsel asserted that the negative affects of office gossip concerning the criminally injurious conduct ultimately fueled the applicant's decision to resign from Ohio Presbyterian Retirement Services. Counsel argued that emotionally the applicant was simply unable to continue working in such an adverse environment. Counsel further noted that soon after resigning the applicant found similar employment with Interim Healthcare. Lastly, counsel stated that the applicant seeks only work loss incurred from having to reduce her work hours from June 18, 2003 through August 5, 2003 and work loss incurred between the time she resigned from Ohio Presbyterian Retirement Services and obtained new employment at Interim Healthcare (August 6, 2003 through August 26, 2003).

{¶ 5} The Assistant Attorney General acknowledged that certain work loss dates have not been reimbursed to the applicant. However, the Assistant Attorney General nevertheless maintained that medical documentation was needed to substantiate the applicant's claim for reduced work loss and work loss incurred between the time the applicant resigned and secured new employment. The Assistant Attorney General asserted that the applicant failed to present any evidence that the applicant's physician or former employer advised or required her to reduce her work hours or terminate her employment with Ohio Presbyterian Retirement Services. The Assistant Attorney General referred the panel to the applicant's 2003 evaluation, which seems to indicate that the applicant chose to reduce her work hours.

{¶ 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. According to In re Berger (1994), 91 Ohio Misc. 2d 85, a victim must prove two elements: 1) the inability to work and 2) the monetary amount of work loss in order to substantiate a claim for work loss. In this case we believe, based upon Ms. Tucker's credible testimony, that she sustained work loss from June 11, 2003 through August 26, 2003 as a result of the criminally injurious conduct. Ms. Tucker testified that her former supervisor, in light of the applicant's many absences after the assault, presented her with the option of either working part time or going on family medical leave. Naturally, Ms. Tucker chose to reduce her work hours in order to continue receiving a salary. Ms. Tucker stated that after the assault she often missed work in order to attend doctor's appointments, court dates, or to handle other affairs stemming from the criminally injurious conduct. The applicant further testified that her employer told her to lie to her clients concerning how she sustained her facial injuries and that a fellow co-worker had spread rumors around the office concerning the assault. Lastly, Ms. Tucker indicated that her former job was emotionally challenging for her in light of the psychological harm she sustained as a result of the assault and the stress of working in a negative environment.

{¶ 9} Although we consider medical documentation to be our primary method of evidence for cases such as this, we note that a victim's testimony (if credible) carries a significant amount of weight. Here, we seek to determine whether this applicant sustained additional work loss in light of the facts presented, even though no supplemental medical evidence has been presented to certify that Ms. Tucker sustained emotional injury as a result of the assault. In this case, we find that an incident such as this would naturally result in some form of emotional distress to this applicant. We also believe that a change in the applicant's

emotional health may be seen in her 2002 and 2003 performance evaluations. After hearing Ms. Tucker's and Ms. Davis' testimonials, we further believe this applicant to be credible in that she has truly sustained personal harm (physical and emotional) as a result of the criminally injurious conduct, despite the lack of additional medical documentation.

{¶ 10} We find that Ms. Tucker worked in a negative office environment after the assault, which consequently perpetuated the applicant's emotional instability thereby causing the applicant greater emotional distress. We also find that it was not the victim's choice to reduce her work hours, but was strongly recommended to the applicant by her supervisor. We further believe that Ohio Presbyterian Retirement Services administrators presented the applicant with the above options because they were concerned about the company's image as it related to the applicant's appearance and numerous absences.¹ Moreover, we also note that the applicant worked in the medical profession whereby she and her supervisor would have been reasonably familiar with accessing a person's emotional state and could have concluded that it was in the applicant's best interest to go on family medical leave or reduce her work hours.

{¶ 11} Based on the above, we find that the applicant sustained work loss from June 11, 2003 through August 26, 2003 as a result of the criminally injurious conduct and the injuries she sustained as a result of the incident. Therefore, the April 6, 2004 decision of the Attorney General shall be modified and the claim shall be remanded to the Attorney General for further

¹See In re Rust, V03-40275tc (2-5-04), where a panel of commissioners allowed an applicant's claim after the victim's employer denied her the opportunity to work, due to her appearance.

investigation, calculation, and decision concerning all the applicant's incurred economic loss from June 11, 2003 through August 26, 2003.

{¶ 12} IT IS THEREFORE ORDERED THAT

- 1) The April 6, 2004 decision of the Attorney General shall be MODIFIED to render judgment in favor of the applicant;
- 2) This claim is remanded to the Attorney General for further investigation, calculation, and decision concerning all the applicant's incurred economic loss from June 11, 2003 through August 26, 2003;
- 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.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

JAMES H. HEWITT III
Commissioner

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

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