

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: PAUL D. BOX	:	Case No. V2004-60601
PAUL D. BOX	:	<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 September 5, 2002 incident. The applicant, a police officer, alleges he was injured while attempting to apprehend Antonio Dinkins. On March 17, 2004, the Attorney General denied the applicant's claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove he qualifies as a victim of criminally injurious conduct. The Attorney General stated that Mr. Dinkins' conduct posed no substantial threat of personal injury or death to the applicant. On March 26, 2004, the applicant filed a request for reconsideration. On May 28, 2004, the Attorney General issued a Final Decision indicating that the previous decision warranted no modification. On June 7, 2004, the applicant filed a notice of appeal indicating that he was injured while chasing, Antonio Dinkins, a parole violator possessing a stolen automobile and crack cocaine. Hence, this matter came to be heard before this panel of three commissioners on October 20, 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.

Officer Paul Box testified that on September 5, 2002 at approximately 2:20 A.M. he and his partner had an encounter with Antonio Dinkins. The applicant stated that he and his partner were working midnight patrol when they observed Mr. Dinkins disregard a stop sign. Officer Box indicated that he did not activate his beacon until he witnessed the suspect swerve around a stopped vehicle in order to avoid being questioned about ignoring the stop sign. The applicant stated that Mr. Dinkins then sped through a residential area and a couple of business areas until he crashed into a guardrail. Officer Box testified that Mr. Dinkins then exited the vehicle and fled, while he and his partner gave chase. However, during the chase the applicant stated that he slipped and fell severely injuring his back after stepping into a pot hole. Officer Box indicated that he came within ten feet of the suspect prior to the fall, however his partner eventually tackled, handcuffed, and arrested the suspect. Officer Box explained that Mr. Dinkins had stated that he ran because he did not want to return to jail since he was a parole violator. The applicant testified that the suspect was arrested, charged and convicted of fleeing and eluding, grand theft motor vehicle, and violation of the state drug law (crack cocaine was found in the stolen motor vehicle).

{¶ 3} 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 must examine the facts of this particular case since the issue of criminally injurious conduct requires a factual determination on a case-by-case basis. In re Walling (1997), 91 Ohio Misc. 2d 181. We find the following facts to be compelling in this case, since Mr. Dinkins: 1) was a parole violator, 2) swerved around a stopped vehicle, 3) refused to stop after the police beacon was activated, 4) sped through business and residential areas at 2:20 A.M., 5) lost control of the

vehicle and crashed into a guardrail, 6) exited the vehicle and fled on foot, and 7) refused to cooperate until captured, handcuffed, and arrested. Based upon the above factors, we believe that Officer Box had no other choice but to pursue Mr. Dinkins.

{¶ 4} Moreover, we continue to hold to the tenets espoused in In re Walling (1997), 91 Ohio Misc. 2d 181, which upheld the panel's May 30, 1997 decision allowing the applicant's claim. In Walling, a police officer was injured while chasing an alleged offender who had been initially stopped for a traffic violation. The panel in Walling stated that "The panel recognizes that, in this case, the underlying traffic offense did not pose any risk of harm to the applicant or others. Moreover, it was ultimately determined that the alleged offender fled the officer solely as a result of fear; he was not armed and had not been involved in any other, more serious, offenses. However, that type of information is not known by police officers at the point that a chase is undertaken. The act of fleeing a police officer is a separate matter, which is criminally punishable in and of itself, and creates a new and different level of risk than the events that preceded it." Id at 185. In addition, the panel in Walling further stated that "In this case, the majority has not deviated from its previous findings in *May*, *Coss*, *Kallay*. Rather, we find that this case is distinguished by the fact that an actual suspect was present and that the applicant was in pursuit of the suspect when the injury occurred. Consequently, the criminally injurious conduct of fleeing from police was the proximate cause of the applicant's injuries, with no intervening act to break the chain of causation." Id at 186.

{¶ 5} Likewise, we also find based upon the above facts and analysis, that this applicant qualifies as a victim of criminally injurious conduct. Therefore, the May 28, 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 May 28, 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.

JAMES H. HEWITT III
Commissioner

KARL H. SCHNEIDER
Commissioner

GREGORY BARWELL
Commissioner

ID #\3-dld-tad-111004

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

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