

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: JASON DE FRANCO	:	Case No. V2004-60911
JASON DE FRANCO	:	<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 as a result of an October 7, 2003 incident. The applicant, a police officer, asserts that he sustained injury to his back while attempting to apprehend Demetrius White. On July 6, 2004, the Attorney General denied the applicant’s claim pursuant to R.C. 2743.52(A) contending that the applicant does not qualify as a victim of criminally injurious conduct. On July 22, 2004, the applicant filed a request for reconsideration. On August 26, 2004, the Attorney General denied the applicant’s claim once again. On September 15, 2004, the applicant filed a notice of appeal to the Attorney General’s August 26, 2004 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on January 13, 2005 at 11:00 A.M.

{¶2} The applicant, applicant’s counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel’s consideration. Officer DeFranco testified that he and his partner were on routine patrol in a high drug area on October

7, 2003, when they observed Demetrius White execute a transaction with a stopped vehicle. Officer DeFranco stated that he and his partner watched Mr. White as he jaywalked across the street. Officer DeFranco explained that then he and his partner exited their vehicle to question Mr. White, but the suspect noticed them and fled. Officer DeFranco stated that he gave chase thru various obstacles and finally captured Mr. White after a brief struggle. Officer DeFranco testified that he arrested Mr. White for drug possession (marijuana was found on Mr. White's person) and jaywalking. Officer DeFranco explained that he injured his back while attempting to apprehend the suspect and was unable to work for a period of time.

{¶3} Counsel stated that the claim should be allowed based upon the applicant's testimony. Counsel asserted that the applicant qualifies as a victim of criminally injurious conduct under R.C. 2743.51(L)(1) and (3) based upon the facts of this case. Counsel argued that there was a causal relationship between Officer DeFranco's injury and Demetrius White's conduct, since the applicant would not have sustained injury but for the suspect's criminally injurious conduct.

{¶4} The Assistant Attorney General maintained that the applicant does not qualify as a victim of criminally injurious conduct and that there is no causal connection between the suspect's jaywalking and fleeing and the applicant's injury. The Assistant Attorney General argued that no criminally injurious conduct occurred since there was no substantial threat of harm or death to the applicant.

{¶5} Former R.C. 2743.51(L) states:

(L) "Victim" means a person who suffers personal injury or death as a result of any of the following:

- (1) Criminally injurious conduct;
- (2) The good faith effort of any person to prevent criminally injurious conduct;
- (3) The good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

{¶6} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, this panel makes the following determination. We find that the applicant has proven, by a preponderance of the evidence, that he qualifies as a victim of criminally injurious conduct. Officer DeFranco testified that he and his partner observed Demetrius White jaywalk and flee after conducting some type of transaction in a high drug area. Officer DeFranco also stated that an involved chase and brief struggle ensued before capturing Mr. White. We believe, due to the circumstances, that Mr. White's conduct presented a substantial threat of harm or death to the applicant. We also believe that the applicant acted in a good faith attempt to apprehend Mr. White from further misconduct, especially since there was a pending warrant for Mr. White's arrest.¹ Therefore, the August 26, 2004 decision of the Attorney General shall be reversed and this claim is referred to the Attorney General for economic loss calculations and decision.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} 1) The August 26, 2004 decision of the Attorney General is REVERSED and judgment is entered for the applicant;

{¶9} 2) This claim is referred to the Attorney General for economic loss calculations and decision consistent with the panel's findings;

¹ See In re Walling (1997), 91 Ohio Misc.2d 181 and In re Box, V04-60601tc (12-17-04).

{¶10} 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;

{¶11} 4) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

CLARK B. WEAVER, SR.
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

ID #\2-dld-tad-012505

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

Filed 3-10-2005
Jr. Vol. 2256, Pgs. 112-115
To S.C. Reporter 4-29-2005