

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: ADAM M. LUCIEN	:	Case No. V2004-60750
ADAM M. LUCIEN	:	<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 an April 9, 2004 assault incident. The applicant contends he was stabbed while attempting to prevent a female neighbor from being assaulted by her boyfriend, David Smith. On June 29, 2004, the Attorney General denied the claim pursuant to R.C. 2743.60(F) contending that the applicant engaged in substantial contributory misconduct since he initiated the fight when he struck Mr. Smith with a metal snow brush. On July 12, 2004, the applicant filed a request for reconsideration asserting that he was not the initial aggressor in the matter, but was defending his female neighbor. On August 2, 2004, the Attorney General denied the claim once again. On August 4, 2004, the applicant filed a notice of appeal to the Attorney General's August 2, 2004 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on January 26, 2005 at 11:05 A.M.

{¶2} Applicant's counsel and an Assistant Attorney General attended the hearing and presented testimony, an exhibit, an oral argument for the panel's consideration. Jennifer Jones,

eye witness and Mr. Lucien's live-in girlfriend, testified via telephone that on April 9, 2004, she, the applicant, and her two sisters were at her home when the incident began. Ms. Jones explained that Mr. Lucien was outside working in the front yard when he called for her and her sisters to come outside to see Dave Smith pushing and yelling at their female neighbor. Ms. Jones stated that she saw Mr. Smith pushing her neighbor and calling her names. Ms. Jones testified that Mr. Lucien yelled at Mr. Smith to leave the woman alone, but Mr. Smith told the applicant to mind his own business. Ms. Jones then stated that the applicant and Mr. Smith began to exchange words and then proceeded toward one another. Ms. Jones stated that Mr. Lucien picked up a metal snow brush as he and Mr. Smith approached each other. Ms. Jones explained that Mr. Lucien swung the snow brush at Mr. Smith first and a fight ensued, however two males (presumed to be friends of Mr. Smith) approached the scene and also began to assault the applicant. Ms. Jones stated that the police arrived shortly after the melee began and that all the assailants fled. Ms. Jones explained that Mr. Lucien suffered a collapsed lung when the snow brush broke and was stabbed into his side. Ms. Jones stated, despite her pleas not to intervene into the situation, that Mr. Lucien had merely intended to protect the female neighbor from further harm.

{¶3} Applicant's counsel stated that this claim should be allowed based upon the testimony proffered which indicates that the applicant did not engage in substantial contributory misconduct. Counsel argued that Mr. Lucien's intentions were honorable in attempting to defend his female neighbor. Counsel stated that Mr. Lucien merely desired to dissuade Mr. Smith from further assaulting the woman. Counsel asserted that the applicant retrieved the snow brush to protect himself, since he knew Mr. Smith was agitated and that he would be risking his

life by intervening into an already volatile situation. Counsel also noted that there was no past conflict between the applicant and Mr. Smith which would have provided a hidden motive for Mr. Lucien to have assaulted Mr. Smith. Lastly, counsel conceded that the claim could be reduced by 20 percent in light of the fact that Mr. Lucien initially struck Mr. Smith with the snow brush.

{¶4} The Assistant Attorney General continued to maintain, based upon the testimony presented, that the applicant engaged in substantial contributory misconduct. The Assistant Attorney General urged the panel to consider the fact that: 1) no criminally injurious conduct was committed against the female, 2) the applicant used a weapon against Mr. Smith, 3) the applicant struck Mr. Smith first, and 4) the applicant failed to undertake alternative measures to deal with the situation.

{¶5} R.C. 2743.51(L)(2) states in pertinent part:

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

{¶7} (2) The good faith effort of any person to prevent criminally injurious conduct;

{¶8} From review of the file and with full and careful consideration given to the information presented at the hearing, this panel makes the following determination. We believe that the applicant held honorable intentions in attempting to prevent a female neighbor from being further assaulted by her boyfriend. Jennifer Jones testified that she observed David Smith pushing the female. We also note that the applicant was assaulted by two other individuals besides Mr. Smith. However, we cannot ignore the fact that the applicant initially struck the offender with a metal snow brush and hence, we find that the applicant engaged in some form of

contributory misconduct that day. Therefore, the August 2, 2004 decision of the Attorney General shall be modified to reduce any and all awards of reparations by 30 percent in accordance with R.C. 2743.60(F). This claim shall be remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings.

{¶9} IT IS THEREFORE ORDERED THAT

{¶10} “1) The January 24, 2005 motion to allow witness, Jennifer Jones, to appear via telephone is hereby GRANTED;

{¶11} “2) The August 2, 2004 decision of the Attorney General is MODIFIED to render judgment in favor of the applicant with all future awards being reduced by 30 percent;

{¶12} “3) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings;

{¶13} “4) 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;

{¶14} “5) Costs are assumed by the court of claims victims of crime fund.

GREGORY P. BARWELL
Commissioner

JAMES H. HEWITT III
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

ID #\3-dld-tad-020305

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

Filed 3-23-2005

Jr. Vol. 2256, Pgs. 147-150

To S.C. Reporter 4-29-2005