

[Cite as *In re Mundy*, 2005-Ohio-3319.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: RICHARD MUNDY	:	Case No. V2004-60822
RICHARD MUNDY	:	<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 11, 2003 assault incident. On April 27, 2004, the Attorney General denied the claim pursuant to R.C. 2743.60(F), In re Bieri, V80-36295jud (5-10-83), and In re Spaulding (1991), 63 Ohio Misc. 2d 39, contending that the applicant engaged in substantial contributory misconduct when he initiated a fight with Earl Medley. On May 25, 2004, the applicant filed a request for reconsideration. On July 23, 2004, the Attorney General denied the claim pursuant to R.C. 2743.60(F) once again. On August 26, 2004, the applicant filed a notice of appeal to the Attorney General's July 23, 2004 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on March 23, 2005 at 11:35 A.M.

{¶ 2} Neither the applicant nor anyone on his behalf appeared at the hearing. An Assistant Attorney General attended the hearing and presented brief comments for this panel's consideration. The Assistant Attorney General maintained that the applicant's claim should be denied since the police report indicates that the applicant engaged in substantial contributory misconduct when he initially struck Mr. Medley.

{¶ 3} R.C. 2743.60(F) states:

(F) In determining whether to make an award of reparations pursuant to this section, the Attorney General or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. 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 to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or the victim.

{¶ 4} When the Attorney General decides whether a claim should be denied because of an allegation of contributory misconduct, the burden of proof on the issue of that alleged contributory misconduct shall be upon the claimant, if either of the following apply:

{¶ 5} The victim was convicted of a felony more than ten years prior to the criminally injurious conduct that is the subject of the claim or has a record of felony arrests under the laws of this state, another state, or the United States;

{¶ 6} There is good cause to believe that the victim engaged in an ongoing course of criminal conduct within five years or less of the criminally injurious conduct that is the subject of the claim.

{¶ 7} 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. According to the police report, the victim stated that he was drinking with Mr. Medley when they began to engage in a verbal argument. The victim further stated that Mr. Medley became violent and assaulted him with a box cutter. However, Mr. Medley told the police that he and the victim had consumed a gallon of vodka together and had engaged in a verbal argument when the victim swung a fist at him. Mr. Medley indicated that he retrieved a box cutter and cut the victim to defend himself. Mr. Medley also stated that he intended to cut the victim's neck and kill him. As a result of the incident, Earl Medley pled guilty to and was convicted of felonious assault

against the applicant, but the applicant was not arrested or charged with any crime. Based on the above, we believe the applicant engaged in some form of contributory misconduct, albeit not substantial, which requires a reduction of all the applicant's future awards of reparations. Therefore, the July 23, 2004 decision of the Attorney General shall be modified to reduce all future awards of reparations by 35 percent pursuant to R.C. 2743.60(F). The claim shall be remanded to the Attorney General for economic loss calculations and decision.

IT IS THEREFORE ORDERED THAT

{¶ 8} 1) The July 23, 2004 decision of the Attorney General is MODIFIED to reduce all future awards of reparations by 35 percent pursuant to R.C. 2743.60(F);

{¶ 9} 2) This claim is remanded to the Attorney General for economic loss calculations and decision;

{¶ 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

THOMAS H. BAINBRIDGE
Commissioner

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TIM MC CORMACK
Commissioner

ID #\4-dld-tad-032905

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 5-20-2005
Jr. Vol. 2257, Pgs. 61-64
To S.C. Reporter 6-28-2005

