

[Cite as *In re Page*, 2005-Ohio-5662.]

**IN THE COURT OF CLAIMS OF OHIO**

**VICTIMS OF CRIME DIVISION**

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IN RE: HENRY PAGE	:	Case No. V2003-41131
HENRY PAGE	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶ 1} On December 22, 2003, Henry Page (“Mr. Page” or “applicant”) filed a supplemental compensation application seeking additional reimbursement of expenses incurred with respect to a February 11, 2003 automobile related incident.<sup>1</sup> The applicant was injured when his automobile was struck by a stolen vehicle being driven by a juvenile fleeing from the police. On May 20, 2004, the Attorney General granted the applicant an award in the amount of \$29,234.14 for unreimbursed allowable expense and work loss. On May 25, 2004, the applicant filed a request for reconsideration contending that the Attorney General’s assigned non economic loss apportionment figure was incorrect, in light of Mr. Page’s injury. On January 31, 2005, the Attorney General issued a Final Decision that modified his previous decision and indicated that the applicant had \$18,631.64 in collateral sources and therefore is not entitled to any additional reimbursement. On February 25, 2005, the applicant filed a notice of appeal to the Attorney

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<sup>1</sup> On August 7, 2003, the applicant was granted an award in the amount of \$19,230.20 for unreimbursed allowable expense and work loss.

General's Final Decision. Hence, this matter came to be heard before this panel of three commissioners on July 13, 2005 at 10:45 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. Mr. Page testified that on February 11, 2003 he suffered a brain injury as a result of an automobile accident. The applicant explained that he was initially hospitalized for approximately 1 ½ days and subsequently underwent multiple surgeries, suffered seizures, memory loss, headaches, lessened reaction time, struggles mentally to accomplish tasks, and had difficulty sleeping. Mr. Page noted that he was temporarily prescribed Dilantin, an antiepileptic drug, for a time to help control his seizures. The applicant informed the panel that he was advised by his treating physician, Dr. Stephensen, that he should not return to his bus driving job, in light of the brain injury he sustained in the accident. Mr. Page also noted that his pastoral obligations were interrupted as a result of the criminally injurious conduct, since he now requires additional time and assistance to complete his pastoral tasks. The applicant acknowledged that since his surgeries and his release from taking Dilantin he is doing much better, even though he is not the same person he was mentally prior to the criminally injurious conduct.

{¶ 3} Cheryl Page ("Mrs. Page"), the applicant's wife, and Eric Ebron ("Mr. Ebron"), the applicant's friend, briefly testified concerning the changes they have witnessed in the applicant's behavior since the criminally injurious conduct. Mrs. Page's and Mr. Ebron's testimony essentially mirrored the applicant's testimony concerning his mental condition after the criminally injurious conduct.

{¶ 4} After the presentation of testimony, applicant's counsel contended that in light of Mr. Page's injuries his non economic loss apportionment percentage should range between 85-90. However, the Assistant Attorney General acknowledged that Mr. Page's non economic loss apportionment percentage should be 80 percent.

{¶ 5} 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. The applicant bears the burden of proving, by a preponderance of the evidence, what percentage of proceeds received should be considered compensation for non economic loss (pain and suffering). Pursuant to the holding in *In re Fout-Craig*, V93-27851tc (2-5-99), the apportionment of a victim's non economic loss involving insurance proceeds shall be determined on a case-by-case basis according to the particular facts and circumstances of the case.

{¶ 6} Based upon the Victim's Impact Statement, other documents in the file, and the testimony presented, we find that the applicant has proven, by a preponderance of the evidence, that he incurred additional economic loss as a result of the criminally injurious conduct. Mr. Page sustained an extremely serious brain injury that left him permanently disabled from bus driving according to Mr. Page's physician, Dr. Stephensen. The applicant testified, along with his spouse and friend, that he suffers from memory loss, lessened reaction time, mental capacity and judgment. The applicant noted that after the criminally injurious conduct, he suffered from seizures, headaches, and had difficulty sleeping. The applicant underwent multiple surgeries to treat his chronic subdural hematomas and brain contusion and was prescribed Dilantin to help control his seizures. Mr. Page indicated that the accident has significantly impacted his life, since he is no longer able to perform certain tasks. The applicant explained that prior to the

accident, he was able to fulfil all his pastoral duties efficiently and usually independently, however now he requires additional assistance and time in performing and completing his pastoral tasks.

{¶ 7} Based upon the above information, we find 80 percent to be a reasonable percentage to be attributed to non economic loss considering the degree of the applicant's injuries and the effects of those injuries, in light of the applicant's recovery efforts. Therefore, the January 31, 2005 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision based on the above findings.

IT IS THEREFORE ORDERED THAT

{¶ 8} The January 31, 2005 decision of the Attorney General is REVERSED and judgment is rendered for the applicant;

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

{¶ 10} 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} Costs are assumed by the court of claims victims of crime fund.

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CLARK B. WEAVER, SR.  
Commissioner

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THOMAS H. BAINBRIDGE

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Commissioner

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TIM MC CORMACK  
Commissioner

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

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To S.C. Reporter 10-25-2005

