

[Cite as *In re McCulley*, 2005-Ohio-5666.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: MARK S. MC CULLEY	:	Case No. V2005-80291
MARK S. MC CULLEY	:	<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 August 6, 2004 assault and robbery incident. On January 14, 2005, the Attorney General denied the applicant's claim pursuant to R.C. 2743.60(A) and R.C. 2743.60(C). The Attorney General contended that the applicant failed to file a timely police report concerning the criminally injurious conduct and that the applicant failed to fully cooperate with law enforcement in the investigation of the matter. On January 31, 2005, the applicant filed a request for reconsideration indicating that he was hospitalized for several days after the assault. The applicant stated that when he was released from the hospital and felt better he filed a written police report on August 23, 2004. On April 1, 2005, the Attorney General denied the applicant's claim once again. On April 20, 2005, the applicant filed a notice of appeal to the Attorney General's April 1, 2005 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on July 13, 2005 at 10:35 A.M.

{¶ 2} Neither the applicant nor anyone on his behalf appeared at the hearing. An Assistant Attorney General attended the hearing and stated that she rests on the June 2, 2005 Statement in Lieu of Brief and documents in the file.

{¶ 3} Revised Code 2743.60(A) states:

{¶ 4} “(A) The attorney general, a court of claims panel of commissioners, or a judge of the court of claims shall not make or order an award of reparations to any claimant who, if the victim of the criminally injurious conduct was an adult, did not file an application for an award of reparations within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which the victim is seeking an award of reparations or who, if the victim of that criminally injurious conduct was a minor, did not file an application for an award of reparations within the period provided by division (C)(1) of section 2743.56 of the Revised Code. An award of reparations shall not be made to a claimant if the criminally injurious conduct upon which the claimant bases a claim was not reported to a law enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the seventy-two-hour period.

{¶ 5} Revised Code 2743.60(C) states:

{¶ 6} “(C) The attorney general, a panel of commissioners, or a judge of the court of claims, upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny a claim or reconsider and reduce an award of reparations.

{¶ 7} From review of the file this panel makes the following determination. The first issue we must address is whether the applicant had good cause for not making a timely police report pursuant to R.C. 2743.60(A). In *In re Steel* (1996), 85 Ohio Misc. 2d 43, Judge Strausbaugh upheld the panel’s determination that a “911” telephone call satisfies the R.C. 2743.60(A) reporting requirement. According to Deaconess Hospital medical records the applicant was transported from his home, via life squad, between 6:15 A.M. and 6:35 A.M. to

Deaconess Hospital on August 7, 2004. The claim file contains a bill from the City of Cincinnati Fire Division confirming that the applicant was transported to Deaconess Hospital via fire rescue transportation on August 7, 2004.

{¶ 8} Moreover, *In re Ross*, V2003-40933tc, 2004-Ohio-3233, the panel held that the R.C. 2743.60(A) reporting requirement was satisfied when an applicant notifies hospital personnel of the criminally injurious conduct. The panel determined that since Ohio hospitals' have a duty to report a crime pursuant to R.C. 2921.22, that a victim then holds a reasonable expectation that a report will be made to law enforcement officials. This panel notes that Deaconess Hospital staff had been informed of the applicant's assault, since such information is contained within the applicant's medical records. However, there is no evidence that Deaconess Hospital personnel contacted the police concerning the matter. Therefore in light of the above information, we find that the applicant had good cause for the delayed reporting.

{¶ 9} The second issue of contention to be addressed is whether the applicant failed to fully cooperate with law enforcement officials in their investigation of the August 6, 2004 assault and robbery. According to the holding in *In re Dray* (1989), 61 Ohio Misc. 2d 417, any action, inaction or inexcusable neglect by an applicant which substantially impedes or impairs the investigation and/or prosecution of the offender constitutes a failure to fully cooperate under R.C. 2743.60(C). We find, outside of the Attorney General's statement contained in the January 14, 2005 Finding of Fact and Decision, that there is no information in the file evidencing that the applicant failed to fully cooperate with the police in the investigation of the August 6, 2004 assault and robbery that substantially impeded or impaired law enforcement's investigation of the matter. The applicant was hospitalized for several days and indicated that he held no

knowledge of his assailants' identities. In light of the above, we find that the applicant did not fail to fully cooperate with law enforcement during their investigation of the matter. Therefore, the April 1, 2005 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss and decision.

IT IS THEREFORE ORDERED THAT

- 1) The April 1, 2005 decision of the Attorney General is REVERSED and judgment is rendered for the applicant;
- 2) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings;
- 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.

CLARK B. WEAVER, SR.
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

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 Hamilton County Prosecuting Attorney and to:

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