

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: DIA N. MIXON	:	Case No. V2005-80037
DIA N. MIXON	:	<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 24, 2003 DUI related automobile accident. On October 18, 2004, the Attorney General denied the claim pursuant to R.C. 2743.60(E) and *In re Dawson* (1993), 63 Ohio Misc.2d 79. The Attorney General asserted that the applicant engaged in felonious drug use at the time of the incident since she tested positive for opiates on a hospital toxicology screening shortly after the criminally injurious conduct occurred. On October 27, 2004, the applicant filed a request for reconsideration indicating that she was administered a morphine sulfate solution at the hospital. On January 7, 2005, the Attorney General denied the claim once again. On January 12, 2005, the applicant filed a notice of appeal to the Attorney General's Final Decision. On July 28, 2005, an Assistant Attorney General filed a Supplemental Memorandum recommending the Final Decision be reversed in light of Dr. Seman's statement that the applicant was administered IV pain medication prior to the collection of her drug screening sample. The Attorney General also recommended the claim be remanded to the

Attorney General for economic loss calculations and decision. Hence, this matter came to be heard before this panel of three commissioners on August 10, 2005 at 12:25 P.M.

{¶ 2} The applicant's attorney and an Assistant Attorney General attended the hearing and presented brief comments for the panel's consideration. The Assistant Attorney General stated that, as noted in the July 28, 2005 Supplemental Brief, the Final Decision should be reversed since there is evidence that the applicant was administered IV pain medication prior to the collection of the applicant's drug screening sample. The applicant's counsel raised no objections to the Assistant Attorney General's recommendation.

{¶ 3} From review of the evidence, we find that the applicant's claim should not be denied pursuant to R.C. 2743.60(E). Therefore, the January 7, 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.

IT IS THEREFORE ORDERED THAT

- 1) The January 7, 2005 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;
- 2) This claim is remanded to the Attorney General for economic loss calculations and decision;
- 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.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

RANDI OSTRY LE HOTY
Commissioner

ID #\5-dld-tad-081005

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

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To S.C. Reporter 10-25-2005

