

[Cite as *In re Goldsmith*, 2005-Ohio-7126.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: JASON D. GOLDSMITH	:	Case No. V2005-80495
JASON D. GOLDSMITH	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
	: : : : :	

{¶ 1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to an August 30, 2003 aggravated assault incident. On March 28, 2005, the Attorney General denied the applicant's claim pursuant to R.C. 2743.60(D) contending that all the applicant's economic loss had been or may be recouped from collateral sources. The Attorney General indicated that restitution was ordered in the amount of \$8,107.60 and that the applicant received a gross settlement from the offender in the amount of \$6,892.40. On April 26, 2005, the applicant filed a request for reconsideration asserting that none of the funds the applicant received should be considered a collateral source, since the restitution amount was for the applicant's medical bills and the settlement amount was for the applicant's pain and suffering. On June 9, 2005, the Attorney General determined that no modification of the previous decision was warranted since the applicant's collateral sources outweigh his economic loss. On July 8, 2005, the applicant filed a notice of appeal to the Attorney General's June 9, 2005 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on October 5, 2005 at 11:45 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 the panel's consideration. The Assistant Attorney General explained that the applicant was granted an order to receive \$8,107.60 in restitution from the offender (but only \$450.00 was paid) and that the applicant also received a settlement from the offender in the amount of \$6,892.40. The Assistant Attorney General stated that the applicant only incurred \$1,334.01 in economic loss, after applying HCAP and write-off deductions. The Assistant Attorney General asserted, based on the nature of the applicant's injuries, the applicant's two week disability period, and the fact that the applicant has made a full recovery, that she believes a 50/50 apportionment figure should be used to calculate the applicant's total loss.

{¶ 3} In review of the file and in light of the information presented at the hearing, we make 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 compensation involving insurance proceeds shall be determined on a case-by-case basis according to the particular facts and circumstances of the case.

{¶ 4} As a result of the August 30, 2003 assault, this 26 year old applicant sustained a head injury, resulting in a left occipital epidural hematoma and scalp laceration. The applicant indicated in his Victim Impact Statement that he sustained several scars, has difficulty sleeping, suffers from severe headaches, anxiety, and mental distress as a result of the incident. In light of

the above information, the court finds that 50 percent is a reasonable percentage to be attributed to non economic loss considering the nature and effects of the applicant's injuries.

\$6,892.40 - gross settlement
-\$1,892.40 - attorney fees and costs
\$5,000.00 - net settlement

\$5,000.00 - net settlement
x 50% - % of economic loss
\$2,500.00 - collateral source deduction

\$1,334.01 - economic loss (after HCAP, write-off, and restitution deductions)
-\$2,500.00 - collateral source deduction
\$-1,165.99 - remaining collateral source amount

{¶ 5} Based upon the above, the applicant's claim shall be denied pursuant to R.C. 2743.60(D) since his collateral sources outweigh his economic loss. Should the applicant obtain evidence that he incurred additional loss that would be an appropriate basis for filing a supplemental compensation application. Therefore, the June 9, 2005 decision of the Attorney General shall be affirmed without prejudice.

IT IS THEREFORE ORDERED THAT

- 1) The June 9, 2005 decision of the Attorney General is AFFIRMED without prejudice;
- 2) This claim is DENIED and judgment is rendered for the state of Ohio;
- 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

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Commissioner

CLARK B. WEAVER, SR.
Commissioner

TIM MC CORMACK
Commissioner

ID #\1-dld-tad-101105

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

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