

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: TODD A. JONES	:	Case No. V2005-80029
TODD A. JONES	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶ 1} Todd Jones (“Mr. Jones” or “applicant”) filed a reparations application seeking reimbursement of expenses incurred with respect to an assault which occurred on March 27, 2004. On June 3, 2004, the Attorney General denied the applicant's claim pursuant to R.C. 2743.52(A) contending that no criminally injurious conduct occurred and even if criminally injurious conduct did exist, the claim would be barred pursuant to R.C. 2743.60(F) asserting that the applicant engaged in substantial contributory misconduct by voluntarily engaging in a physical altercation. On June 18, 2004, the applicant filed a request for reconsideration. On December 15, 2004, the Attorney General issued a Final Decision indicating that the previous decision warranted no modification. On January 5, 2005, the applicant filed a notice of appeal to the Attorney General's Final Decision. On February 18, 2005, the Attorney General filed a Brief restating his position that the applicant had failed to prove by a preponderance of the evidence that he was a victim of criminally injurious conduct pursuant to R.C. 2743.52(A) and even if criminally injurious conduct had occurred, the claim should be denied because the applicant

engaged in substantial contributory misconduct in violation R.C. 2743.60(F) and *In re Spaulding* (1991), 63 Ohio Misc. 2d 39. On January 10, 2006, the Attorney General filed a Supplemental Memorandum stating that again no evidence has been presented to warrant a change in the Attorney General's position. Hence, this matter came to be heard before this panel of three commissioners on January 25, 2006 at 12:00 P.M.

{¶ 2} The applicant, the applicant's attorney, and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral argument for this panel's consideration.

{¶ 3} The applicant testified concerning his tenure working for building operations at The Ohio State University. Mr. Jones described the events leading up to the physical altercation with his supervisor, Derek Bynes, the injuries he sustained, and the limitations those injuries posed on his employment history. The applicant testified that he was a victim of crime and that at no time did he engage in any form of contributory misconduct. Mr. Jones stated that he believed the attack was planned, and that it was in retaliation for him attempting to contact campus police to report the misconduct of his superior.

{¶ 4} An Assistant Attorney General cross examined the applicant concerning his working environment, the events leading up to the altercation, the altercation itself, and applicant's attempts to receive benefits from the Bureau of Unemployment and the Bureau of Workers' Compensation as well as the complaint filed with the Ohio Civil Rights Commission.

{¶ 5} Next, the applicant's mother, Floristine Jones ("Mrs. Jones"), testified. Mrs. Jones related that she received a telephone call from her son on the night of the altercation explaining the trouble he was experiencing at work. He told her about the actions of his superior and requested that she provide him with the number for the campus police. Mrs. Jones related that

she heard the initial confrontation and then the telephone went dead. She called the campus police to the scene of the incident. Later her and her husband arrived on the scene and viewed its aftermath. An Assistant Attorney General cross examined the witness concerning the incident as well as the actions pending with the Ohio Civil Rights Commission.

{¶ 6} At the conclusion of the hearing, both parties submitted their exhibits into evidence. Finally the Assistant Attorney General, based upon the testimony of the applicant and the applicant's mother, conceded that sufficient evidence had been submitted to change the Attorney General's position with respect to the issues of criminally injurious conduct and contributory misconduct. The Assistant Attorney General requested the claim be remanded to his office for economic loss calculations. Applicant's attorney concurred with the Assistant Attorney General's request.

{¶ 7} From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. We find the applicant has proven, by a preponderance of the evidence, that he was a victim of criminally injurious conduct and the Attorney General has failed to prove that the applicant engaged in contributory misconduct at the time of the incident.

{¶ 8} Revised Code 2743.51(C), in pertinent part, states:

(C) "Criminally injurious conduct" means one of the following:

(1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state.

{¶ 9} Revised Code 2743.52(B) states:

(B) A court of claims panel of commissioners or a judge of the court of claims has appellate jurisdiction to order awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.

{¶ 10} The applicant has established by a preponderance of the evidence that he was a victim of criminally injurious conduct.

{¶ 11} Revised Code 2743.51(M) states:

(M) "Contributory misconduct" means any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim.

{¶ 12} R.C. 2743.60(F) in pertinent part 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.

{¶ 13} The Attorney General has failed to meet his burden of proof that the applicant engaged in contributory misconduct at the time he was injured. Therefore, the December 15,

2004 Final Decision of the Attorney General shall be reversed. The claim is remanded to the Attorney General for economic loss calculations.

IT IS THEREFORE ORDERED THAT

- 1) The December 15, 2004 decision of the Attorney General is REVERSED;
- 2) The claim is REMANDED to the Attorney General for calculations of economic loss 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.

GREGORY P. BARWELL
Commissioner

JAMES H. HEWITT III
Commissioner

RANDI OSTRY LE HOTY
Commissioner

ID #\14-drb-tad-020906

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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