

[Cite as *In re Metz*, 2006-Ohio-2802.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

www.cco.state.oh.us

IN RE: KENNETH A. METZ	:	Case No. V2005-80118
KENNETH A. METZ	:	<u>OPINION 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 as a result of an assault that occurred on July 25, 2004. On December 6, 2004, the Attorney General denied the applicant's claim pursuant to R.C. 2743.60(A), failure to report the criminal incident to law enforcement officials within seventy-two hours of its occurrence and failure to show good cause for the delay in reporting. The Attorney General's investigation revealed the incident was not reported until July 30, 2004. On January 12, 2005, the applicant filed a request for reconsideration. On March 8, 2005, the Attorney General issued a Final Decision indicating that the previous decision warranted no modification. On March 10, 2005, the applicant filed a notice of appeal to the Attorney General's Final Decision. On June 8, 2005, a panel hearing was held. At the hearing, the applicant requested the hearing be continued so he could retain counsel. On December 8, 2005, a panel hearing was held. The panel determined that a decision could not be rendered solely on the current record, therefore an order was issued scheduling a full evidentiary hearing. Hence, this matter came to be heard before this panel of three commissioners on February 8, 2006 at 11:40 A.M.

{¶ 2} The applicant, appearing via telephone, his attorney, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. The applicant testified he was assaulted on July 25, 2004, but instead of going directly to the hospital he was transported to the bar owner's residence to recover from his injuries. The applicant explained that he was attempting to control a fight in the tavern when he was assaulted by various individuals. The next day, July 26, 2004, the applicant stated that he telephoned the police to make an oral report concerning the incident, but was informed that he needed to make a written report at the district station. In light of his injuries, the applicant stated that he was physically unable to make a written police report until several days after the incident.

{¶ 3} Due to his injuries, the applicant testified that he went to the hospital on July 26, 2004 where he was diagnosed with having sustained two broken ribs along with various facial cuts and abrasions. The applicant explained that the emergency room physician informed him that he would be unable to return to his job, landscaping, for four weeks. Nevertheless, the applicant returned to work in three weeks. The applicant explained that in July of 2004, prior to the injury, he worked 55-60 hours per week earning \$12.00 per hour. As a result of the criminally injurious conduct, the applicant stated that he lost three weeks of work loss in addition to unemployment benefits. The applicant explained that due to the injuries he suffered, he lost three weeks of wages (in a 22 week period) thereby making him ineligible to receive unemployment benefits. The applicant stated that as a landscaper his employment is seasonal and typically concludes in December, but commences again in March.

{¶ 4} In summation, applicant's counsel asserted that the applicant's claim should be allowed based on the applicant's testimony that he telephoned the police the day after the assault.

Counsel also asserted, due to the nature of the applicant's injuries, that the applicant established good cause for the delayed reporting.

{¶ 5} From a review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. The applicant satisfied the reporting requirement as contained in R.C. 2743.60(A).

{¶ 6} R.C. 2743.60(A), in pertinent part, states:

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.

{¶ 7} We find the applicant presented credible testimony that he orally reported the incident to the police on July 26, 2004. Pursuant to the holding in *In re Rea* (1989), 61 Ohio Misc. 2d 732, an oral report to police satisfies the reporting requirement contained in R.C. 2743.60(A).

{¶ 8} Furthermore, the evidence supports the applicant's contention that he had good cause for the delayed report. At the time of the oral report, he was told that since the incident was not reported at the time of its occurrence that he would have to appear in person at the district station closest to the site of the crime. Accordingly, on July 30th, the first day the applicant had sufficiently recovered from his injuries, he went to District 3 of the Cincinnati Police Department and reported the incident. The purpose of the reporting requirement is to: 1) verify the occurrence and 2) ensure the investigation and/or prosecution of the offender. See *In*

re Ries, V93-69316tc (1-31-95). In the case at bar, the applicant told the police a man named Hawkins had assaulted him and he provided the police with his address. The applicant told police he was willing to prosecute and made follow up telephone calls concerning the progress of the investigation. The applicant did not receive cooperation from the police and subsequently no prosecution was forthcoming. However, this was not due to any fault on the part of the applicant. The applicant provided the police with a truthful account of the incident, had witnesses, as well as a video tape of the incident captured on the bar's surveillance equipment.

{¶ 9} Lastly, the applicant indicated that his injuries, two broken ribs and a variety of cuts and abrasions rendered him incapable of reporting the incident within the seventy-two hour time period. The applicant was unable to care for himself and was thereby forced to stay with friends for five days while recovering from the incident. We find the applicant's testimony was credible with respect to his injuries and is substantiated by medical records. Accordingly, we find that the applicant has met the requirements of R.C. 2743.60(A) by establishing good cause for failing to report the matter to police within seventy-two hours of the assault. Therefore, the March 8, 2005 decision of the Attorney General shall be reversed.

TIM MC CORMACK
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

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LLOYD PIERRE-LOUIS
Commissioner

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IN RE: KENNETH A. METZ	:	Case No. V2005-80118
KENNETH A. METZ	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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IT IS THEREFORE ORDERED THAT

- 1) The March 8, 2005 decision of the Attorney General is REVERSED;
- 2) This claim is remanded to the Attorney General's office for total 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.

TIM MC CORMACK
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

LLOYD PIERRE-LOUIS
Commissioner

ID #\16-drb-tad-022406

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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To S.C. Reporter 6-5-2006

