

[Cite as *In re Brill*, 2006-Ohio-3301.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: ERIC BRILL : Case No. V2005-80207
ERIC BRILL : ORDER OF THE THREE-
Applicant : COMMISSIONER PANEL

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{¶ 1} On November 17, 2003, Eric Brill filed a supplemental compensation application seeking reimbursement of expenses incurred with respect to an August 24, 2001 shooting incident. The applicant, a former Whitehall City Police Officer, lost an eye as a result of the incident. On May 17, 2004, 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 a collateral source, namely the Ohio Police & Fireman's Pension Fund. On August 12, 2004, the applicant filed a request for reconsideration. On March 10, 2005, the Attorney General denied the claim once again. On April 6, 2005, the applicant filed a notice of appeal to the Attorney General's March 10, 2005 Final Decision. On November 2, 2005, a panel hearing was held. On November 14, 2005, the Attorney General filed a Supplemental Memorandum with new economic loss calculations. On December 30, 2005, this panel of commissioners rendered an opinion reversing the Final Decision of the Attorney General and rendering judgment in favor of the applicant in the

amount of \$20,706.35, which represented unreimbursed replacement services loss.

{¶ 2} On January 30, 2006, this court received a document entitled an Agreed Entry. The Agreed Entry, in pertinent part, stated:

{¶ 3} The parties acknowledge that no objection was made by the applicant to the Supplemental Memorandum of the Ohio Attorney General filed November 14, 2005, which contained amended work loss calculations demonstrating that the applicant had excess collateral sources totaling \$3,813.03. Furthermore, the applicant recognized that the excess collateral sources would have to be deducted from any calculated economic loss for replacement services expense. As such, the parties agree that the applicant be awarded \$16,907.00 for replacement services expense and the Attorney General will not appeal the Decision of the Panel of Commissioners rendered on December 30, 2005.

{¶ 4} Neither the Attorney General nor the applicant filed an appeal in this case. However, on March 9, 2006, the court issued an order setting this matter for oral hearing. At 1:45 P.M. on April 5, 2006, this panel of commissioners heard this matter.

{¶ 5} Applicant's attorney and an Assistant Attorney General appeared at the hearing. The panel chairperson informed the parties that the panel had deemed the January 30, 2006 Agreed Entry an Ohio Civil Rule 60(B) motion for relief from judgment. Therefore, the hearing proceeded as a Rule 60(B) hearing.

{¶ 6} The Assistant Attorney General, as the moving party, asserted that the panel's December 30, 2005 award amount was in error and referred the commissioners to the Attorney General's November 14, 2005 Supplemental Memorandum. The Attorney General stated that the November 14, 2005 Supplemental Memorandum contained new economic loss calculations, which demonstrates a \$3,813.00 excess collateral source benefit to the applicant. The Assistant Attorney General also contended the applicant never objected to the new calculations. The Assistant Attorney General presented the testimony of William Fulcher, an economic loss specialist in the Attorney General's Crime Victims Office, to better explain the error.

{¶ 7} William Fulcher testified that he performed new economic loss calculations for the case based upon an order of the panel because the previous calculations failed to include a specified time period. Mr. Fulcher briefly explained the discrepancy between the panel's calculations and the Attorney General's new calculations, which is noted in Exhibit A.

{¶ 8} After Mr. Fulcher's testimony, the Assistant Attorney General stated that the applicant should have been granted an award in the amount of \$16,907.00 as noted in the Agreed Entry. Applicant's counsel raised no objection to the Attorney General's work loss calculations or to the \$16,907.00 award recommendation.

{¶ 9} Ohio Civil Rule 60(B) states:

(B) On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable

neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for anew trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

{¶ 10} The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules.

{¶ 11} From review of the file and with full consideration of the information presented at the hearing, we grant the Attorney General's motion for relief from judgment and vacate the panel's December 30, 2005 order.

IT IS THEREFORE ORDERED THAT

1) The January 30, 2006 Agreed Entry shall be deemed an Ohio Civil Rule 60(B) motion for relief from judgment;

2) The Attorney General's January 30, 2006 motion for relief from judgment is hereby GRANTED;

3) The December 30, 2005 panel of commissioners's order (Jr. Vol. 2259, Pg. 76-77) is VACATED and judgment is rendered

in favor of the applicant in the amount of \$16,907.00 for unreimbursed replacement services loss;

4) 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;

5) Costs are assumed by the court of claims victims of crime fund.

RANDI OSTRY LE HOTY
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

TIM MC CORMACK
Commissioner

ID #\25-dld-tad-040506

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

Filed 5-1-2006
Jr. Vol. 2260, Pgs. 65-69
To S.C. Reporter 6-28-2006

Case No. V2005-80207

- 1 -

ORDER