

[Cite as *In re Lewis*, 2006-Ohio-4023.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION
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IN RE: ANNETTE LEWIS : Case No. V2006-20046
ANNETTE LEWIS : ORDER OF A THREE-
Applicant : COMMISSIONER PANEL

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{¶ 1} Annette Lewis ("Ms. Lewis" or "applicant") filed a reparations application seeking reimbursement of expenses incurred with respect to a December 29, 2004 assault incident. On October 11, 2005, the Attorney General denied the claim pursuant to R.C. 2743.60(E) and *In re Dawson* (1993), 63 Ohio Misc. 2d 79, since the applicant tested positive for cocaine on the hospital toxicology report. On October 24, 2005, the applicant filed a request for reconsideration wherein she denied using any cocaine. On December 28, 2005, the Attorney General determined that the previous decision warranted no modification. On January 11, 2006, the applicant filed a notice of appeal to the Attorney General's Final Decision and contended that she did not use cocaine. Hence, this matter came to be heard before this panel of three commissioners on May 17, 2006 at 11:10 A.M.

{¶ 2} The applicant and applicant's counsel appeared at the hearing via telephone, and an Assistant Attorney General also attended the hearing. The parties presented testimony and oral argument for the panel's consideration. Ms. Lewis testified that as a result of the criminally injurious conduct she was taken to the hospital, where she was admitted for 11 days and

had surgery on her knee on January 3, 2005. Ms. Lewis stated that she initially went to the emergency room, where she was prescribed pain pills. Ms. Lewis stated that she was not placed on intravenous medication until the day after the incident. The applicant acknowledged that she previously used cocaine, but stated that she stopped using the substance in 1987 or 1988. The applicant stated that she believed the positive toxicology report for cocaine was the result of a mistake in her laboratory results. Ms. Lewis explained that she is still in severe pain as a result of the assault and stated that she needs another surgery.

{¶ 3} Revised Code 2743.60(E)(1)(e) states:

(E)(1) [T]he attorney general, a panel of commissioners, or a judge of the court of claims shall not make an award to a claimant if any of the following applies:

(e) It is proved by a preponderance of the evidence that the victim at the time of the criminally injurious conduct that gave rise to the claim engaged in conduct that was a felony violation of *section 2925.11 of the Revised Code* or engaged in any substantially similar conduct that would constitute a felony under the laws of this state, another state, or the United States.

{¶ 4} From review of the file and with full and careful consideration given to all the information presented at the hearing, we find that the applicant failed to rebut evidence that after the criminally injurious conduct occurred she tested positive for cocaine as documented on the hospital toxicology report. As such, we find that the applicant engaged in conduct

that is a violation of R.C. 2925.11. Therefore, the December 28, 2005 decision of the Attorney General shall be affirmed.

IT IS THEREFORE ORDERED THAT

1) The December 28, 2005 decision of the Attorney General is AFFIRMED;

2) This claim is DENIED and judgment is rendered for the state of Ohio;

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

JAMES H. HEWITT III
Commissioner

GREGORY P. BARWELL
Commissioner

RANDI OSTRY LE HOTY
Commissioner

ID #\4-dld-tad-053006

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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