

[Cite as *In re Rinkus*, 2007-Ohio-2928.]

**IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION**

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IN RE: MICHAEL V. RINKUS	:	Case No. V2006-20119
MICHAEL V. RINKUS	:	Commissioners:
Applicant	:	James H. Hewitt III, Presiding
	:	Thomas H. Bainbridge
	:	Gregory P. Barwell
	:	
	:	<u>ORDER OF A THREE-</u>
	:	<u>COMMISSIONER PANEL</u>

: : : : :

{¶1} The applicant, a police officer for the City of Cleveland, filed a reparations application seeking reimbursement of expenses incurred after he sustained injury to his elbow while chasing a person suspected of drug trafficking on July 16, 2004. On October 14, 2005, the Attorney General denied the claim pursuant to R.C. 2743.52(A) because the applicant was unable to prove that he incurred work loss. On November 11, 2005, the applicant filed a request for reconsideration asserting that he incurred private duty work loss from July 16, 2004 through September 24, 2004. On January 10, 2006, the Attorney General issued a Final Decision indicating that the previous decision warranted no modification. On February 8, 2006, the applicant filed a notice of appeal to the Attorney General's January 10, 2006 Final Decision contending that American Family Life Assurance Company of Columbus ("AFLAC") is not a collateral source because the policy does not cover lost wages. On September 29, 2006, the Attorney General filed a brief indicating that the applicant received \$645.00 in AFLAC benefits

and hence the applicant should be granted an award of reparations in the amount of \$4,304.65 for private duty work loss incurred from July 18, 2004 through September 26, 2004. On December 21, 2006 at 10:30 A.M., this matter came to be heard before this panel of three commissioners.

{12} Applicant's counsel and an Assistant Attorney General attended the hearing and presented oral argument for this panel's consideration. Applicant's counsel stated that the applicant is entitled to receive an award totaling \$4,949.65 in unreimbursed private duty work loss, since AFLAC does not qualify as a collateral source under R.C. 2743.51(B). Counsel argued that AFLAC is an insurance event policy and is not triggered by mere economic loss sustained by a policy holder, even though economic loss is usually suffered by the insured. Counsel asserted that an AFLAC policy is akin to recovery for pain and suffering as well as for the added aggravation of dealing with the circumstances of an unfortunate event (i.e., hospitalization, physical therapy, loss of a limb, etc.). Lastly, counsel stated that AFLAC does not reimburse a policy holder for medical expense or work loss but rather reimburses a policy holder a flat rate monetary benefit merely based upon a particular event occurring. However, the Assistant Attorney General continued to maintain that AFLAC qualifies as a collateral source based on the plain and unambiguous language of R.C. 2743.51(B)(7) and hence asserted the applicant's claim must be reduced by the amount of benefits that the applicant received from AFLAC.

{13} Revised Code 2743.51(B) states:

{¶4} 'Collateral source' means a source of benefits or advantages for economic loss otherwise reparable that the victim or claimant has received, or that is readily available to the victim or claimant, from any of the following sources:

1. The offender;
2. The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under sections 2743.51 to 2743.72 of the Revised Code;
3. Social Security, medicare and medicaid;
4. State-required, temporary, non occupational disability insurance;
5. Workers' compensation;
6. Wage continuation programs of any employer;
7. Proceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct;
8. A contract providing prepaid hospital and other health care services, or benefits for disability;
9. That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim that exceeds fifty thousand dollars;
10. Any compensation recovered or recoverable under the laws of another state, district, territory or foreign country because the victim was the victim of an offense committed in that state, district, territory or country.

{¶5} 'Collateral source' does not include any money, or the monetary value of any property, that is subject to sections 2969.01 to 2969.06 of the Revised Code or that is received as a benefit from the Ohio public safety officers death benefit fund created by section 742.62 of the Revised Code."

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

“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 that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is recouped from other persons, including collateral sources. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant’s economic loss being recouped by the collateral source. If the award or denial is conditioned upon the recoupment of the claimant’s economic loss from a collateral source and it is determined that the claimant did not unreasonably fail to present a timely claim to the collateral source and will not receive all or part of the expected recoupment, the claim may be reopened and an award may be made in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source.”

{¶7} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, this panel makes the following determination. This case might be considered unique as it involves the first instance where a panel of commissioners is asked to determine whether AFLAC benefits under the Ohio’s Victims of Crime Program should be considered a collateral source. First, we find that AFLAC qualifies as a collateral source, as the term is defined under R.C. 2743.51(B)(7). The core of AFLAC’s business (which is now all too commonly familiar based on the company’s popular television ads featuring a duck “quacking” AFLAC) is to design insurance policies that can be used to help with those out-of-pocket expenses not

covered by existing primary insurance. Based on that premise, we find AFLAC benefits to be proceeds of a contract of insurance payable to the victim for loss sustained due to criminally injurious conduct. See *In re Martin* (1993), 63 Ohio Misc. 2d 82.

{18} Second, we find that 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.

{19} In this particular case, we find that the applicant has proven, by a preponderance of the evidence, that he has incurred additional economic loss as a result of the criminally injurious conduct. The applicant suffered a biceps tendon rupture and was disabled for approximately 2 ½ months. We find that 60 percent is a reasonable percentage to be attributable to non-economic loss considering the degree of the applicant's injuries and the effects that the injuries have had, and may continue to have on the applicant. Thus, the applicant's reparations award shall be calculated in the following manner:

\$645.00	AFLAC award
<u>x 40%</u>	% of economic loss
\$258.00	Total collateral source reduction
\$12,586.95	Total salary time loss amount
<u>- 7,637.30</u>	Total reimbursement
\$ 4,949.65	
<u>- 258.00</u>	Total collateral source reduction
\$ 4,691.65	Total work loss reimbursement for

July 18, 2004 - September 26, 2004

{¶10} Therefore, the January 10, 2006 decision of the Attorney General shall be modified to grant the applicant an award totaling \$4,691.65 for unreimbursed work loss incurred from July 18, 2004 through September 26, 2004.

{¶11} IT IS THEREFORE ORDERED THAT

{¶12} 1) The January 10, 2006 decision of the Attorney General is MODIFIED and judgment is rendered in favor of the applicant in the amount of \$4,691.65;

{¶13} 2) The claim is remanded to the Attorney General for payment of the award;

{¶14} 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;

{¶15} 4) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Presiding Commissioner

THOMAS H. BAINBRIDGE
Commissioner

GREGORY P. BARWELL
Commissioner

ID #11-dld-laa-022207

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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