

[Cite as *In re Lang*, 2007-Ohio-2934.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: DANIEL J. LANG : Case No. V2006-20674

DANIEL J. LANG : DECISION
Applicant :
Anderson M. Renick, Magistrate

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{¶1} This matter came on to be considered upon applicant's appeal from the November 30, 2006, order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based upon the finding that applicant had engaged in violent felonious conduct within ten years of the criminally injurious conduct.

{¶2} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The panel found, upon review of the evidence, that applicant was convicted of domestic violence on April 30, 2001.

{¶3} Pursuant to Civ.R. 53, the court appointed the undersigned magistrate to hear applicant's appeal.

{¶4} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final."

{¶5} At the judicial hearing, counsel for applicant asserted that the Attorney

General failed to prove that applicant engaged in felonious conduct inasmuch as all felony charges were dismissed and applicant was ultimately convicted of a misdemeanor charge of domestic violence. Applicant argued that the Attorney General was aware of the April 30, 2001, domestic violence conviction when he issued his final decision. According to applicant, the Attorney General's failure to rely on the domestic violence conviction as the basis of the June 15, 2006, final decision constitutes a waiver of the exclusion set forth in R.C. 2743.60(E)(1)(d) as it relates to applicant's case.

{¶16} R.C. 2743.60(E)(1) states, in part, as follows:

{¶17} "(E)(1) Except as otherwise provided in division (E)(2) of this section, the 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:

{¶18} "***

{¶19} "(d) The claimant was convicted of a violation of section 2919.22 or 2919.25 [domestic violence] of the Revised Code, or of any state law or municipal ordinance substantially similar to either section, within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim. ***"

{¶10} The court finds applicant's argument concerning the Attorney General's alleged waiver of the provisions of R.C. 2743.60(E)(1)(d) to be without merit. Although the Attorney General's final decision did not address applicant's conviction for domestic violence, pursuant to R.C. 2743.55(A), the panel was obligated to "determine *all* matters relating to claims for an award of reparations." (Emphasis added.) A panel of commissioners conducts a hearing de novo wherein new evidence may be submitted and new issues raised. *In re Martin* (1988), 61 Ohio Misc.2d 280. Furthermore, the Supreme Court of Ohio has held that "[c]ourts may not ignore plain and unambiguous statutory language." *Bd. of Edn. v. Fulton County Budget Comm.* (1975), 41 Ohio St.2d 147, 156. Upon review of the file in this matter, the magistrate finds that the panel of commissioners was not arbitrary in finding that applicant did not show by a preponderance of the evidence that he was entitled to an award of reparations.

{¶11} Based on the evidence and R.C. 2743.61, it is the magistrate's opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, it is recommended that the decision of the three-commissioner panel be affirmed and applicant's claim be denied.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

ANDERSON M. RENICK
Magistrate

AMR/cmd

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

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DECISION