

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: LOUISE PLANT : Case No. V2006-20135

LOUISE PLANT : DECISION

Applicant : Anderson M. Renick, Magistrate

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{¶1} This matter came on to be considered upon the Attorney General's appeal from the November 22, 2006, order issued by the panel of commissioners. The panel's determination reversed the final decision of the Attorney General, which had denied applicant's claim for an award of reparations based upon the finding that applicant failed to prove by a preponderance of the evidence that she qualifies as a victim of criminally injurious conduct under any of the motor vehicle exceptions listed in R.C. 2743.51(C).

{¶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. A majority of the panel commissioners found, upon review of the evidence, that applicant presented sufficient evidence to meet her burden.

{¶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} The Attorney General asserts that the panel's determination was unreasonable and unlawful because applicant failed to qualify as a victim of criminally injurious conduct under any of the motor vehicle exceptions listed in R.C. 2743.51(C) (1). Specifically, the Attorney General contends that there was no evidence presented to show that the driver who struck applicant's vehicle was driving in a manner that constitutes a violation of R.C. 2903.08.

{¶6} R.C. 2743.51 provides, in relevant part:

{¶7} "(C) 'Criminally injurious conduct' means one of the following:

{¶8} "(1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:

{¶9} "(a) The person engaging in the conduct intended to cause personal injury or death;

{¶10} "(b) The person engaging in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a felony but for the fact that the person engaging in the conduct lacked the capacity to commit the felony under the laws of this state;

{¶11} "(c) The person engaging in the conduct was using the vehicle in a manner that constitutes an OVI violation;

{¶12} "(d) The conduct occurred on or after July 25, 1990, and the person engaging in the conduct was using the vehicle in a manner that constitutes a violation of section 2903.08 of the Revised Code."

{¶13} In order for applicant to establish her eligibility for an award of reparations pursuant to R.C. 2743.51(C)(1)(d) and 2903.08, it is necessary for her to show that the offender acted recklessly, with an "absence of care or an absolute perverse indifference to the safety of others." *In re Calhoun* (1994), 66 Ohio Misc.2d 159, 161 quoting

Roszman v. Sammett (1971), 26 Ohio St.2d 94, 98; *In re Ward*, V2004-61136jud, 2005-Ohio-4231. A majority of the panel determined that the driver who struck applicant's vehicle acted in a reckless manner. The panel considered the testimony and witness statements contained in the claim file and found that the offending driver lacked a valid operator's license when she "approached the intersection at an excessive rate of speed and disregarded the red light — a light that had been red for ten seconds." Considering the totality of the circumstances, the panel concluded that the offender "acted with heedless indifference to the consequences" and "completely disregarded the known risks" of serious physical harm.

{¶14} Upon review of the file in this matter, the court finds that there is sufficient information in the claim file to support the panel's determination and the court will not substitute its judgment for that of the trier of fact.

{¶15} 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:

Filed 4-4-2007
To S.C. Reporter 6-8-2007

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VICTIMS OF CRIME DIVISION

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IN RE: LOUISE PLANT : Case No. V2006-20135

LOUISE PLANT : ENTRY AMENDING MAGISTRATE'S
DECISION

Applicant : Anderson M. Renick, Magistrate

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The April 4, 2007, magistrate's decision is hereby amended such that page 3, paragraph 4 reads as follows: "Therefore, it is recommended that the decision of the three-commissioner panel be affirmed."

ANDERSON M. RENICK
Magistrate

AMR/cmd

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

