

[Cite as *In re Stiggers*, 2007-Ohio-2985.]

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

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IN RE: AARON E. STIGGERS	:	Case No. V2006-20216
AARON E. STIGGERS	:	Commissioners:
Applicant	:	Gregory P. Barwell, Presiding
	:	Thomas H. Bainbridge
	:	Lloyd Pierre-Louis
_____	:	
_____	:	<u>ORDER OF A THREE-</u>
	:	<u>COMMISSIONER PANEL</u>
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{¶1} On June 20, 2005, Aaron Stiggers (“applicant” or “Mr. Stiggers”) filed a supplemental compensation application seeking reimbursement of expenses incurred as a result of an April 15, 2003 aggravated menacing incident when he witnessed the murder of his cousin. On October 18, 2005, the Attorney General denied the applicant’s claim pursuant to R.C. 2743.52(A) contending the applicant failed to prove that he incurred economic loss as a result of the criminally injurious conduct. On November 16, 2005, the applicant filed a request for reconsideration. On March 3, 2006, the Attorney General determined that the previous decision warranted no modification. On March 16, 2006, the applicant filed a notice of appeal to the Attorney General’s March 3, 2006 Final Decision. On January 25, 2007 at 10:40 A.M., this matter was heard before this panel of three commissioners.

{¶2} Mr. Stiggers (via telephone), applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony, an exhibit, and oral argument for this panel's consideration. Mr. Stiggers testified that on April 15, 2003 he witnessed the murder of his cousin by Michael Mitchell ("offender"). Mr. Stiggers stated that he informed the police of the offender's identity, however the offender has yet to be apprehended by the police. The applicant explained that he fears for his life and that of his family, because he witnessed the crime against his cousin and that he hears constant rumors about the offender's continuing criminal activities. The applicant presented a November 3, 2005 letter from Scott W. Smith, Business Agent for the International Brotherhood of Electrical Workers-Local Union No. 212, which states that Mr. Stiggers is unable perform any electrical assignments at this time due to safety concerns for himself, his family, and co-workers. Mr. Stiggers related that his wife suggested that he seek counseling because she noticed a change in his psychological state after the crime. The applicant explained that his reaction to the incident began to negatively impact every area of his life.

{¶3} Mr. Stiggers further testified that he began seeing psychologist Dr. Joseph Lipari ("Dr. Lipari") in 2005 and that he continues to seek treatment once a week. The applicant explained that he was diagnosed with Post Traumatic Stress Disorder ("PTSD") and major depression. The applicant stated that he began drinking heavily after the incident, as a way of coping with his situation. Mr. Stiggers testified that Dr. Lipari placed him on a series of anti-depressant medications (via another physician) and authorized work restrictions due to the severity of his psychological condition. Mr.

Stiggers noted that prior to the incident, he had never sought any type of counseling nor had he been diagnosed with any type of substance abuse or mental health condition. The applicant stated that he believes that therapy is helping him to better cope with the situation.

{¶4} Mr. Stiggers also testified that prior to the incident, he maintained a steady work history and earned approximately \$100,000.00 annually. The applicant explained that he held a trucking contract with Trans Continental Service and worked as an electrician. However, the applicant stated that after the criminally injurious conduct he was unable to engage in gainful employment. Mr. Stiggers explained that after the murder, he was forced to take a lay off because his union foreman noticed a decline in his job performance, which could have jeopardized the applicant's and his co-workers' safety.

{¶5} Dr. Lipari testified, via telephone, that he diagnosed Mr. Stiggers with major depression and PTSD. Dr. Lipari also testified that he placed the applicant on work restriction due to the severity of his condition. Dr. Lipari explained that the applicant's current psychological condition has a profound effect on his ability to engage in employment and makes it impossible for him to work steadily, because symptoms such as anxiety, hyper vigilance, and paranoia are likely to reoccur if he returns to the workforce at this time. Dr. Lipari testified that Mr. Stiggers could easily suffer additional trauma by entering an environment that triggers feelings that remind him of the incident. Dr. Lipari noted that he has certified the applicant to remain off work until July 2007.

{¶6} Dr. Lipari further testified that prior to the criminally injurious conduct, the applicant maintained steady employment, was a good provider for his family, maintained healthy relationships with his family, and had no known history of substance abuse, mental health conditions, or a criminal background. Dr. Lipari noted that the applicant began drinking heavily after the incident. Dr. Lipari opined that the applicant's drinking was a symptom of PTSD and a mechanism for coping with the situation.

{¶7} Dr. Donald Tosi ("Dr. Tosi"), a consultant for the Attorney General, testified, via telephone, that he had never met or treated Mr. Stiggers, but based his opinion upon Dr. Lipari's session notes with the applicant. Dr. Tosi stated that he is unable to make a conclusion with 100 percent psychological certainty whether all of Mr. Stiggers' diagnosed conditions fully relate to the criminally injurious conduct.

{¶8} Counsel stated, based upon Mr. Stiggers and Dr. Lipari's testimony, that the applicant's claim should be allowed. Counsel argued that Dr. Lipari's testimony along with his two letters contained in the claim file state that the applicant's psychological conditions of PTSD, major depression, and related symptoms were a direct result of the April 15, 2003 criminally injurious conduct. Counsel argued that this evidence clearly demonstrates a causal relationship between the applicant's psychological condition and the criminally injurious conduct. Counsel asserted that the applicant has met his burden of proof, within a reasonable degree of psychological certainty, that the applicant is unable to work as a result of the criminally injurious conduct. Counsel further noted that the applicant was approved for disability leave by his treating psychologist from April 15, 2003 through July 2007.

{¶9} The Assistant Attorney General maintained that the claim should be denied since Dr. Tosi was unable to state with 100 percent medical certainty that all of the applicant's diagnoses and symptoms stem directly from the criminally injurious conduct. The Assistant Attorney General argued that there is insufficient evidence that a 100 percent causal connection exists between the criminally injurious conduct and the applicant's level of psychological injury. The Assistant Attorney General argued that Dr. Lipari's opinion was based upon limited knowledge of the applicant's medical history and thus is not an accurate account of the applicant's injury as it relates to the criminally injurious conduct. The first issue for this panel to decide is whether Mr. Stiggers has proven by a preponderance of the evidence that he incurred economic loss as a result of criminally injurious conduct. There are two elements necessary to prove work loss, which are as follows: 1) inability to work and 2) monetary amount of the loss. See *In re Berger* (1994), 91 Ohio Misc. 2d 85. In this case, we find that Mr. Stiggers has proven by a preponderance of the evidence his inability to work. We also find that all the applicant's counseling expenses with Dr. Lipari fully relate to the criminally injurious conduct.

{¶10} Mr. Stigger's psychological conditions of PTSD and major depression are a direct result of the criminally injurious conduct. A determination of whether a victim of criminally injurious conduct is entitled to an award for economic loss requires application of the principles of traditional proximate cause standards. The quantum of evidence required is a preponderance of competent, material, and relevant evidence of record on that issue. Furthermore, there is a long-standing requirement in the law of evidence in

Ohio that damages for claimed personal injuries are recoverable only for injuries directly resulting from and as a natural consequence of the injury sustained. The evidence must tend to show that reasonable certainty of such a result exists. See *In re Toney*, V79-3029jud (9-4-81), *In re Saylor* (1982), 1 Ohio Misc. 2d 1, and *In re Bailey*, V78-3484jud (8-23-82).

{¶11} The panel was presented with no evidence that the applicant had any substance abuse issues, mental conditions, criminal record, or history of violence prior to the criminally injurious conduct. Dr. Lipari opined to a reasonable degree of psychological certainty that the applicant suffered from PTSD and major depression as a direct result of the criminally injurious conduct. Dr. Lipari also opined that the severity of Mr. Stiggers psychological condition has prevented and continues to prevent him from working.

{¶12} In the matter of *In re Woodfork*, V04-60130tc (12-17-04), 2004-Ohio-7342, the panel of commissioners allowed the work loss claim of a United States Postal Service employee who was injured after having been assaulted at work. Upon medical release to return to work for light duty assignments, the applicant was repeatedly sent home due to the lack of available light duty assignments. The panel in *Woodfork*, *supra*, reasoned that whether the applicant's employer involuntarily or purposefully prevented her from working was irrelevant, since the applicant would have continued working her regularly scheduled job but for the criminally injurious conduct. Likewise, in this case, we find that Mr. Stiggers would have continued his employment but for the April 15, 2003 incident.

{¶13} The second issue for this panel to decide is whether the victim/applicant is required to seek recovery from the Social Security Administration for disability benefits.

{¶14} Revised Code 2743.51(B)(3) states:

(B) "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:

(3) Social security, medicare, and medicaid;

{¶15} According to the holding in *In re Ross*, V2006-20062tc (4-2-2007) when making a determination whether a victim/applicant is required to seek recovery from a potential collateral source there are certain factors that should be considered. Those factors are as follows: (1) is the source of benefits or advantage for economic loss listed under R.C. 2743.51(B) as a collateral source; (2) is the item in question a source of benefits or an advantage for economic loss; (3) is the source of benefits or advantage for economic loss "readily available" - meaning is it highly plausible that recoupment of such benefits within a reasonable time frame (three to six months) of applying for such benefits will occur; and (4) will the victim/applicant run the risk of incurring a substantial and unreasonable monetary cost to recover benefits from the source of benefits or advantage for economic loss. In this case, we find that Mr. Stiggers should file a claim for Social Security Disability benefits, since Social Security is a collateral source pursuant to R.C. 2743.51(B)(3) and because it is reasonably plausible that he may be entitled to receive such benefits without incurring substantial costs.

{¶16} Therefore based on the above facts and analysis, we find the March 3, 2006 decision of the Attorney General shall be reversed, the applicant shall be granted an award in the amount of \$15,000.00 for unreimbursed economic loss, and the claim shall be remanded to the Attorney General for additional economic loss calculations and decision.¹

{¶17} IT IS THEREFORE ORDERED THAT

{¶18} 1) The March 3, 2006 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant in the amount of \$15,000.00;

{¶19} 2) This claim is referred to the Attorney General for economic loss calculations and decision consistent with the panel's decision;

{¶20} 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;

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

¹Prior to the criminally injurious conduct, Mr. Stiggers was earning approximately \$100,000.00 annually, however since his mandated May 2003 lay off he has not worked. The applicant's economic loss, since the date of the criminally injurious conduct, will most likely exceed the program's \$50,000.00 maximum award. Also, see *In re Massri*, V04-60334jud (11-22-2004), 2004-Ohio-7264, where a judge held that R.C. 2743.60(D) clearly provides the Attorney General, a panel of commissioners, or a judge has the discretion to determine whether to grant an award to an applicant who has not received benefits from a collateral source.

GREGORY P. BARWELL
Presiding Commissioner

THOMAS H. BAINBRIDGE
Commissioner

LLOYD PIERRE-LOUIS
Commissioner

ID #A26-dld-tad-032706

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

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