

[Cite as *In re Fletcher*, 2007-Ohio-2986.]

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

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IN RE: JOSEPH A. FLETCHER	:	Case No. V2006-20836
JOSEPH A. FLETCHER	:	Commissioners:
	:	Karl C. Kerschner, Presiding
Applicant	:	Tim McCormack
	:	Randi Ostry LeHoty
_____	:	
_____	:	<u>ORDER OF A THREE-</u>
	:	<u>COMMISSIONER PANEL</u>
	:	

{¶1} Joseph Fletcher (“applicant” or “Mr. Fletcher”) filed a reparations application seeking reimbursement of expenses incurred with respect to a June 25, 2005 assault and robbery incident at a Days Inn hotel. On June 2, 2006, the Attorney General denied the claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove he qualified as a victim of criminally injurious conduct. The Assistant Attorney General asserted that the applicant’s injuries resulted from a mutual fight. On June 30, 2006, the applicant filed a request for reconsideration. The applicant contended that the police confused the facts of his case with another case that occurred the evening of June 25, 2005 at the hotel. On August 18, 2006, the Attorney General denied the claim pursuant to R.C. 2743.60(F) and R.C. 2743.60(C). The Attorney General stated that the applicant engaged in substantial contributory misconduct and that he failed to fully cooperate with law enforcement during their investigation of the

case. On August 31, 2006, the applicant filed a notice of appeal to the Attorney General's August 18, 2006 Final Decision. On March 21, 2007 at 11:35 A.M., this matter was heard by this panel of commissioners.

{¶2} The applicant, applicant's attorney, and an Assistant Attorney General attended the hearing and presented testimony, an exhibit, and oral argument for the panel's consideration. Mr. Fletcher testified that he and his then girlfriend (currently, his wife), Monica Grewatsch ("Mrs. Grewatsch") traveled to the Days Inn in Brook Park on June 25, 2005 for an evening alone, as they had done numerous times in the past, without incident. The applicant explained that during that evening he was asked by Mrs. Grewatsch to retrieve an item that she needed from their vehicle. The applicant stated that as he proceeded to the automobile, he was assaulted by an unknown male while in the hallway of the hotel. Mr. Fletcher testified that during the incident he yelled for help several times to no avail. The applicant indicated that he was thrown down the stairs and sustained a broken left arm, broken right hand, and two torn rotator cuffs. Mr. Fletcher explained that after he recovered, he proceeded to his hotel room to tell his girlfriend what had occurred. The applicant related that Mrs. Grewatsch told him to call the police from the front desk in order to avoid a telephone charge. Mr. Fletcher further testified that as he proceeded to the front desk he encountered a police officer and made an oral report. The applicant indicated that he reported to the officer that the offender was a white male, that he needed medical attention, and that he wanted the matter pursued. The applicant stated that he was transported to the hospital via ambulance shortly after making his report. Mr. Fletcher testified that he was unaware of

any witnesses to the incident. The applicant further elaborated that the police never contacted him after the incident.

{¶3} Mrs. Grewatsch briefly testified concerning the events of June 25, 2005. Mrs. Grewatsch stated that at the time of the incident she and the applicant had been dating and that they had been to the Days Inn hotel in Brook Park several times in the past without incident. Mrs. Grewatsch testified that she did not see the assault, but essentially confirmed the applicant's recollection of the events prior to and after the assault.

{¶4} Officer Thomas Sensel ("Officer Sensel") of the Brook Park Police Department testified via telephone that he was dispatched to the Days Inn hotel in Brook Park concerning a disturbance on the date of the incident. Officer Sensel stated that when he arrived at the hotel there was substantial chaotic activity in the hotel lobby. Officer Sensel indicated that shortly after he arrived on the scene witness Monique Evans approached him and reported that she was staying at the hotel with her church group and that she had witnessed an altercation between the applicant and another person regarding drugs. Ms. Evans stated that the applicant was the initial aggressor of the fight. Officer Sensel related that he then spoke to the applicant who was uncooperative and appeared intoxicated. Officer Sensel stated that the applicant told him that he was assaulted by a black male and that he did not want to pursue the matter. Officer Sensel explained that he did a disposition, but did not file a written report until requested by his chief on a much later date.

{¶5} With respect to the exclusionary criteria of R.C. 2743.60, the Attorney General bears the burden of proof by a preponderance of the evidence. In re Williams, V77-0739jud (3-26-79) and In re Brown, V78-3638jud (12-13-79). According to R.C. 2743.51(M) and relevant case law, there are three elements that must be established before a prima facie case of contributory misconduct can be met: (1) specific, unlawful or intentionally tortious conduct by the victim or applicant;¹ (2) a causal relationship between the specific conduct and the criminally injurious conduct; and (3) foreseeability of the likelihood of the criminally injurious conduct occurring if the victim or applicant engaged in such conduct.² Furthermore, in order to completely deny an award under R.C. 2743.60(F), the Attorney General must prove that the victim's or applicant's contributory misconduct was substantial.³ Contributory misconduct determinations depend upon the particular facts and circumstances of each case and thereby warrant a case-by-case analysis. In re Williams, V2001-32691tc (10-11-02).

{¶6} In this case, we first find that the applicant qualifies as a victim of criminally injurious conduct because he was a victim of an assault. Second, we find that the Attorney General has failed to prove that the applicant engaged in contributory misconduct. The Attorney General failed to prove that Mr. Fletcher engaged in any specific unlawful or intentionally tortious conduct that contributed to the assault. Other

¹ See *In McGary II*, V91-83761jud (11-16-94).

² See *In re Ewing* (1987), 33 Ohio Misc.2d 48.

³ See *In re Spaulding* (1991), 63 Ohio Misc.2d 39.

than a police report prepared over one year after the incident, there is no evidence that the applicant engaged in a mutual fight with someone. Moreover, the reporting officer did not witness the incident and no corroboratory testimony was provided. The applicant testified that he and Mrs. Grewatsch were at the hotel socially when he was assaulted. We find the applicant's and Mrs. Grewatsch's testimony concerning the events of June 25, 2005 to be credible. Moreover, Mr. Fletcher's hospital records verify that he sustained injury to his shoulders, arms, and hand as a result of the incident. Further, we note that a written police report concerning the matter was not actually drafted until July 2006 (over one year later) and that it was at the request of the Attorney General's Office.⁴

{¶7} Revised Code 2743.60(C) states:

(C) The attorney general, a panel of commissioners, or a judge of the court of claims, upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny a claim or reconsider and reduce an award of reparations.

{¶8} Third, we find that the Attorney General failed to prove that the applicant failed to fully cooperate with law enforcement during their investigation. The applicant testified that he reported the incident to Officer Sensel on the date of the incident and Officer Sensel corroborated that testimony. The police told the applicant that they would further contact him concerning the matter after the evening of June 25, 2005, but the applicant never heard from the police again. Subsequently, the police department

⁴See the Attorney General's July 31, 2006 Supplemental Field Investigative Report.

closed the matter until the Attorney General's Office contacted the Brook Park Police Department's chief regarding a police report.

{¶9} Based upon the above, we therefore find that the August 18, 2006 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for total economic loss calculations and decision consistent with this decision.

{¶10} IT IS THEREFORE ORDERED THAT

{¶11} 1) The August 18, 2006 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;

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

{¶13} 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;

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

KARL C. KERSCHNER
Presiding Commissioner

TIM MC CORMACK

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Commissioner

RANDI OSTRY LE HOTY
Commissioner

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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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