

[Cite as *In re Motzko*, 2007-Ohio-4509.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: GARY D. MOTZKO	:	Case No. V2007-90111
GARY D. MOTZKO	:	Commissioners:
Applicant	:	Lloyd Pierre-Louis, Presiding
	:	Thomas H. Bainbridge
	:	Clarence E. Mingo II
	:	
	:	<u>ORDER OF A THREE-</u>
	:	<u>COMMISSIONER PANEL</u>
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{¶1} Gary Motzko (“applicant” or “Mr. Motzko”) filed a reparations application seeking reimbursement of expenses incurred with respect to a September 1, 2005 assault incident. On May 15, 2006, the Attorney General denied the claim pursuant to R.C. 2743.60(D), R.C. 2743.52(A), and R.C. 2743.60(C). The Attorney General stated that applicant has collateral sources available, that the applicant failed to prove that he incurred work loss, and that the applicant failed to fully cooperate with law enforcement. On June 13, 2006, the applicant filed a request for reconsideration. On September 11, 2006, the Attorney General denied the claim once again. On February 8, 2007, the applicant filed a notice of appeal to the Attorney General’s September 11, 2006 Final Decision. At 11:20 A.M. on May 9, 2007, this matter was heard before this panel of three commissioners.

{¶2} The applicant, applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral argument for the panel's consideration. Mr. Motzko testified that he had been employed with Valley National Gases as the Mansfield's office branch manager between October 2004 and December 2005. The applicant stated that he was paid an annual salary of \$37,000.00 and monthly commissions ranging between \$800.00 and \$1,200.00.

{¶3} Mr. Motzko testified that he was assaulted while intoxicated on September 1, 2005 outside of a bar. The applicant stated that he was diagnosed as having a brain injury, Post Traumatic Stress Disorder, epileptic seizures, and severe memory loss as a result of the assault. Mr. Motzko explained that he was informed that he could never perform his previous job duties again and noted that nobody will hire him now. The applicant asserted that he applied for Social Security disability benefits, however a final determination is still pending. Mr. Motzko contended that he was terminated from Valley National Gases in December 2005, as a result of his medical conditions after the assault. Mr. Motzko denied that his employment was terminated as a result of poor work performance, even though he acknowledged that he had a problem with alcohol while employed at Valley National Gases.

{¶4} Officer Frank Foti ("Officer Foti") of the Mansfield Police Department testified that on September 1, 2005 he was dispatched to Janice's Pub in reference to an assault. Officer Foti stated that upon his arrival, Mr. Motzko was found lying in the parking lot with injuries to his head and face. Mr. Motzko was transported by ambulance to the hospital for treatment. Officer Foti stated that he spoke with patrons

of the bar (who were intoxicated), and was informed that when the applicant left the bar two males followed him outside. However, no witnesses reported seeing the assault. Officer Foti stated that after interviewing the bar patrons, he went to the hospital to interview the applicant. Officer Foti explained that Mr. Motzko was intoxicated, but was able to speak and respond to his questions. Officer Foti testified that the applicant refused to disclose the identity of the offenders and stated that he would “get them on the street.” Officer Foti stated he then advised the applicant and his daughter (who was with the applicant) that if he wanted to press charges that he should contact him or the city law director. Officer Foti testified that due to the applicant’s lack of cooperation, the case was closed. Lastly, Officer Foti stated that he never personally attempted to contact the applicant after the interview at the hospital.

{¶15} Barbara Moore (“Mrs. Moore”), the applicant’s former supervisor at Valley National Gases, testified that Mr. Motzko was hired in October 2004 at their Mansfield office. The applicant received a bi-weekly base salary and a monthly commission along with paid vacation, sick leave, and health care benefits. Mrs. Moore stated that two months after the applicant was hired, she began to notice problems with the applicant’s work performance. Mrs. Moore asserted that she was concerned that Mr. Motzko had an alcohol problem based upon office rumors and because the applicant would take clients out to lunch and order alcoholic beverages, even after being warned to stop.

{¶16} Mrs. Moore testified that the applicant returned to work the Monday after the September 1, 2005 assault, however due to his facial injuries he was removed (for a short time period) from interaction with clients. Mrs. Moore noted that the applicant

never used any sick or vacation time (which had previously been exhausted) as a result of the criminally injurious conduct and stated that he was paid his regular salary until he was terminated. Mrs. Moore stated that after the September 1, 2005 assault, the applicant's work performance deteriorated and hence he was placed on probation in November 2005. Mrs. Moore indicated that neither she nor any other employees noticed any cognitive or attitude changes in the applicant after the assault. Mrs. Moore stated that she repeatedly counseled the applicant to no avail. Mrs. Moore stated that on December 8, 2005, 30 days after being placed on probation, the applicant was terminated from Valley National Gases for failure to comply with company rules and for poor job performance. Mrs. Moore noted that the corporate office made the decision to terminate the applicant and that the company did not contest the applicant's unemployment benefits based on company policy.¹

{¶17} 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.

{¶18} From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. First, we find that the applicant did not fail to comply with R.C. 2743.60(C). Mr. Motzko was inebriated when he was assaulted on September 1, 2005 and sustained a severe head

¹Mr. Motzko received unemployment benefits from December 2005 through August 2006.

injury. According to the applicant's medical records, he suffered a head injury that required staples in the back of his head. However, Officer Foti testified that he spoke to the applicant only once in the hospital shortly after the incident and that he never attempted to contact the applicant again. We do not find that Mr. Motzko failed to fully cooperate with law enforcement in light of his condition, especially when law enforcement made no attempt to conduct a follow-up interview with the applicant at a more appropriate time.

{¶19} Second, we find that the applicant has failed to prove that he incurred work loss as a result of the criminally injurious conduct. Based upon Mrs. Moore's testimony and the applicant's acknowledgment of alcohol abuse, we find that Mr. Motzko was terminated from Valley National Gases as a result of poor work performance and not as a result of the criminally injurious conduct. The evidence shows that prior to the September 1, 2005 assault, Mr. Motzko was repeatedly warned about his poor work performance. The applicant failed to present sufficient medical evidence that relates his September 1, 2005 injuries to his December 2005 termination. Therefore, the September 11, 2006 decision of the Attorney General to deny the claim shall be affirmed, in part.

{¶10} IT IS THEREFORE ORDERED THAT

{¶11} 1) The September 11, 2006 decision of the Attorney General is REVERSED in part with respect to the failure to cooperate issue and AFFIRMED in part with respect to work loss;

{¶12} 2) This claim is DENIED and judgment is rendered for the state of Ohio;

{¶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.

LLOYD PIERRE-LOUIS
Presiding Commissioner

THOMAS H. BAINBRIDGE
Commissioner

CLARENCE E. MINGO II
Commissioner

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

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