[Cite as *In re Rinkus,* 2007-Ohio-4691.]

Court of Claims of Ohio

Victims of Crime Division
The Ohio Judicial Center
65 South Front Street, Fourth Floor
Columbus, OH 43215
614.387.9860 or 1.800.824.8263
www.cco.state.oh.us

IN RE: MICHAEL V. RINKUS

MICHAEL V. RINKUS

Applicant

Case No. V2006-20119

DECISION

Judge Clark B. Weaver Sr.

This matter came on to be considered upon the Attorney General's appeal from the April 2, 2007 order issued by the panel of commissioners. The panel's determination modified the final decision of the Attorney General, which denied applicant's claim for an award of reparations pursuant to R.C. 2743.52(A) based upon the finding that applicant failed to prove that he incurred work loss.

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 presented sufficient evidence to meet his burden.

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."

Based upon the evidence, the panel determined that AFLAC issues insurance policies that are designed "to help with those out-of-pocket expenses not covered by existing primary insurance." The panel noted in its decision that applicant had incurred work loss in the amount of $4,949.65 and that he had received a payment of $645 from AFLAC.

Applicant asserts that the insurance benefits that he was entitled to receive from AFLAC do not qualify as a collateral source under R.C. 2743.51(B). According to applicant, an insurance policy issued by AFLAC "does not directly compensate an individual for lost wages and medical expenses incurred after an injury." Applicant maintains that AFLAC is an "event policy" that pays benefits upon the occurrence of certain events such as receiving physical therapy or medical treatment. The Attorney General contends that pursuant to R.C. 2743.51(B)(7), any benefits that applicant receives from AFLAC must be considered a collateral source.

R.C. 2743.51 provides in pertinent part:

"(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:

"* * *

"(7) Proceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct; * * *"

Although applicant characterizes AFLAC as an "event policy," it is undisputed that the events at issue occurred as a result of the criminally injurious conduct. Applicant, a police officer for the city of Cleveland, was injured while apprehending an individual suspected of drug trafficking. Applicant seeks reimbursement for work loss that he incurred when his injuries prevented him from performing "private duty" work.

The court has previously held that "[w]hen the victim or applicant receives benefits, from whatever source, after the criminally injurious conduct, that they were not receiving prior to the incident, the receipt of those benefits offsets lost wages and are deemed collateral sources." *In re Martin* (1993), 63 Ohio Misc.2d 82, 84.

In this case, any benefits that applicant was entitled to receive from AFLAC were due as a consequence of events that transpired as a result of the criminally injurious conduct. The court finds that the panel of commissioners was correct in its determination that any benefits that may be available to applicant from AFLAC

constitute "[p]roceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct."

The Attorney General asserts that the panel's decision was unreasonable and unlawful in that it apportioned the insurance payment from AFLAC and determined that 60 percent of the proceeds represented non-economic loss (pain and suffering) pursuant to the holding in *In re Fout-Craig*, V93-27851tc (2-5-99). The Attorney General argues that applicant failed to present any evidence to support a finding regarding non-economic loss.

In *Fout-Craig*, the panel held that the proceeds obtained by an applicant from an insurance settlement agreement in a civil action should be apportioned, on a case-by-case basis, to distinguish non-economic loss from economic loss. The portion of the insurance proceeds that is deemed to be reimbursement for non-economic loss does not constitute a collateral source pursuant to R.C. 2743.51(B). Id.

The insurance settlement in *Fout-Craig* resulted from a civil action where an alleged tortfeasor may have been found liable for both economic and non-economic damages. In this case, applicant received benefits from AFLAC under a supplemental insurance policy that provides benefits for expenses that are not covered by primary insurance. Therefore, the court finds that the AFLAC insurance payment received by applicant differs from the insurance settlement at issue in *Fout-Craig* in that the AFLAC policy does not cover non-economic damages. Consequently, the court finds that the apportionment analysis set forth in *Fout-Craig* is inapplicable in this case.

Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicant had shown by a preponderance of the evidence that he was entitled to an award of reparations. However, based upon the evidence and R.C. 2743.61, it is the court's opinion that the decision of the panel of commissioners was unreasonable in apportioning the AFLAC insurance payment. Therefore, the court modifies the decision of the three-commissioner panel such that the entire amount of the AFLAC payment shall be considered a collateral source. Accordingly, applicant shall be granted an award totaling $4,304.65, which represents the work loss figure calculated in the panel's

decision ($4,949.65) reduced by $645, the amount of the AFLAC payment.

CLARK B. WEAVER SR.

Judge

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ORDER

Judge Clark B. Weaver Sr.

{¶1} Upon review of the evidence, the court finds the order of the panel of commissioners must be modified.

{¶2} IT IS HEREBY ORDERED THAT:

{¶3} 1) The order of April 2, 2007, (Jr. Vol. 2264, Pages 10-16) is modified and judgment is rendered in favor of applicant in the amount of $4,304.65;

{¶4} 2) This claim is REMANDED to the Attorney General for payment of the award;

{¶5} 3) This order is entered without prejudice to applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

{¶6} 4) Costs assumed by the reparations fund.

Judge

AMR/cmd

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

Filed 8-21-2007
Jr. Vol. 2266, Pg. 58
To S.C. Reporter 9-13-2007