

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: LEE E. GROLL

Case No. V2007-90374

LEE E. GROLL

Applicant

Commissioners:

Clarence E. Mingo II, Presiding

Gregory P. Barwell

Randi Ostry LeHoty

ORDER OF A THREE-
COMMISSIONER PANEL

{¶1} Lee Groll ("applicant" or "Mr. Groll") filed a reparations application seeking reimbursement of expenses incurred as a result of a February 8, 2006 assault incident. On January 8, 2007, the Attorney General granted the applicant an award totaling \$245.23 in unreimbursed allowable expense. On February 6, 2007, the applicant filed a request for reconsideration. On April 9, 2007, the Attorney General granted the applicant an award for work loss totaling \$1,363.00. On May 5, 2007, the applicant filed a notice of appeal to the Attorney General's April 9, 2007 Final Decision. On August 23, 2007 at 10:10 A.M., this matter was heard by 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. Groll testified that he suffered severe injuries as a result of the February 8, 2006 criminally injurious conduct. The applicant explained that he sustained injury to his shoulder and ankle and was confined to a wheelchair for approximately three months. Mr. Groll stated that he underwent physical therapy for

several months and that he was unable to work for a year. The applicant asserted that even though he has returned to his business, he has not recovered completely.

{¶3} Mr. Groll testified that he owns and individually operates Groll Tree Service, which provides landscaping, tree cutting, and trimming services. The applicant asserted that his business requires a certain level of skill, but he nevertheless hired Eric Phipps (his grandson) and Jason Martens to help with the business after the 2006 assault. Mr. Groll explained that the arrangement lasted for approximately two weeks since neither of the men were experienced in the trade and he was unable to train them due to his injuries. Lastly, through the use of exhibits, Mr. Groll explained his business earnings from 2002 - 2006. Mr. Groll indicated that he is seeking \$16,417.00 in unreimbursed work loss as a result of being unable to make an equipment purchase in 2006.

{¶4} Applicant's counsel asserted that Mr. Groll sustained \$16,417.00 in unreimbursed work loss. This figure represents the depreciation/tax loss Mr. Groll would have received but for the criminally injurious conduct. Counsel argued that, but for the 2006 criminally injurious conduct, the applicant would have earned more money and hence would have been able to purchase additional equipment for the business. Counsel asserted that Groll Tree Service lost money as a whole due to the assault. However, the Assistant Attorney General maintained that the applicant was granted a work loss award totaling \$1,363.00, which reflects the payments for two replacement workers in 2006. The Assistant Attorney General argued that even though the applicant was assaulted in 2006, Groll Tree Service's revenues in 2006 were consistent with prior years.

{¶5} R.C. 2743.51(G) states:

"Work loss" means loss of income from work that the injured person would have performed if the person had not been injured and expenses reasonably incurred by the person to obtain services in lieu of those the person would have performed for income, reduced by any income from substitute work actually performed by the person, or by income the person would have earned in available appropriate substitute work that the person was capable of performing but unreasonably failed to undertake.

{¶6} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. We find that the applicant incurred additional work loss in the amount of \$12,941.69. Even though the profits of Mr. Groll's business are consistent with prior years, Mr. Groll, nevertheless, sustained a substantial loss in 2006 compared to 2005. This loss was directly attributed to the criminally injurious conduct. See *In re Caledron*, V02-51320tc (12-12-02).

{¶7} In 2005, Mr. Groll's business had gross receipts of \$230,924.00. In 2006, Mr. Groll's business had gross receipts of \$61,564.00. This was a net decrease in sales of roughly \$169,000.00 for the year 2006. It should also be noted that Mr. Groll's business had a steady increase in sales throughout the years 2002-2005.

{¶8} The Assistant Attorney General argued that Mr. Groll's net profits were \$25,550.22 and \$22,781.00 in 2005 and 2006, respectively. Therefore, the Attorney General maintained Mr. Groll was entitled only to the difference between his sales from 2005 and 2006. However, in order to reduce his tax burden for tax year 2005, Mr. Groll fully depreciated the cost of a truck he had purchased for his business in 2005, knowing that he could not work in 2006 because of the criminally injurious conduct. Mr. Groll

maintains that he traditionally depreciates his equipment over a period of five (5) years instead of the one year as he did in 2005.

{¶9} According to Mr. Groll's Schedule C form that he submitted to the Internal Revenue Service for 2005, his depreciation expense totaled \$32,994.38. However, if Mr. Groll had not been a victim of criminally injurious conduct, and if he had depreciated the truck as he did in past years, his depreciation expense would have been \$10,986.38 instead of \$32,994.38. We arrive at this figure by deducting the cost of the truck he placed in service in 2005 (\$27,510.00) from the actual depreciation expense on Mr. Groll's 2005 Schedule C form. This results in a revised depreciation figure of \$5,484.38 for 2005. However, we must still add in the depreciation for the truck purchase that would have been depreciated over five (5) years instead of just one year. The yearly depreciation for the truck purchased in 2005 should have been \$5,502.00. Therefore, Mr. Groll's true depreciation for 2005 should have been \$10,986.38 and his gross profits should have been \$47,558.22 instead of \$22,550.22.

{¶10} Therefore, in order to create an accurate picture of Mr. Groll's loss, we averaged the depreciation loss and profits for the years 2002-2005 using the revised figures below. Mr. Groll's tax returns for the past four years, prior to the criminally injurious conduct, had been provided to the court. However, the depreciation and net profit were revised for 2005 because Mr. Groll took the full depreciation for the truck in one year instead of his traditional five year period for major equipment purchases. By taking the full depreciation in one year, Mr. Groll was able to decrease his tax liability. However, that does not provide an accurate picture of his business operation.

YEAR	DEPRECIATION EXPENSE	NET PROFIT
2002	\$14,240.51	\$26,886.68

2003	\$20,611.30	\$20,660.79
2004	\$17,274.93	\$25,849.07
2005	\$10,986.00*	\$47,558.22*
Total	\$63,112.74	\$120,954.76
Average	\$15,778.18	\$30,238.69

* revised depreciation and net profit figures for 2005.

{¶11} Therefore, using the figures above, Mr. Groll's average net profit is \$30,238.69 for the years 2002-2005. Mr. Groll's net profit for 2006 would have been \$17,297.00 and his depreciation would have been \$10,346.00 if he had not been a victim of criminally injurious conduct and if he had followed his accounting practices for the last four years. Therefore, Mr. Groll's lost wages for 2006 are computed as the difference between his average net profit of \$30,238.69 over the past four years and revised net profit for 2006 of \$17,297.00 which is \$12,941.69. This figure does not include any additional tax benefit Mr. Groll received in 2005 for taking the full depreciation on an asset that is traditionally depreciated over five years. Therefore, the April 9, 2007 decision of the Attorney General shall be modified to grant the applicant an award in the amount of \$12,941.69 for unreimbursed work loss.

{¶12} IT IS THEREFORE ORDERED THAT

{¶13} 1) The April 9, 2007 decision of the Attorney General is MODIFIED to render judgment in favor of the applicant in the amount of \$12,941.69;

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

{¶15} 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;

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

CLARENCE E. MINGO II
Presiding Commissioner

GREGORY P. BARWELL
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 Henry County Prosecuting Attorney and to:

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ORDER

To S.C. Reporter 11-21-07