

[Cite as *In re Burr*, 2008-Ohio-6094.]

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: WILLIAM BURR

JOCELYN BURR

and

MARY REDMOND

Applicants

Case No. V2008-30529

Commissioners:
Karl C. Kerschner, Presiding
Tim McCormack
Gregory Barwell

ORDER OF A THREE COMMISSIONER PANEL

{¶ 1} On July 26, 2007, the applicant, Jocelyn Burr filed a compensation application as the result of the murder of William Burr, her husband. The applicant filed the application on her own behalf and on behalf of their two minor children. The applicant, Mary Redmond, paid for the funeral.

{¶ 2} On December 21, 2007, the Attorney General issued a finding of fact and decision denying the applicants' claim for economic loss incurred as a result of the decedent's death because the decedent tested positive for cocaine. Pursuant to R.C. 2743.60(E)(1)(e), the possession or use of a felony drug at the time of the victim's death

constitutes grounds for denial of a claim for economic loss incurred as the result of the death. However, R.C. 2743.60(E)(2) states:

“(2) The attorney general, a panel of commissioners, or a judge of the court of claims may make an award to a minor dependent of a deceased victim for dependent’s economic loss or for counseling pursuant to division (F)(2) of section 2743.51 of the Revised Code if the minor dependent is not ineligible under division (E)(1) of this section due to the minor dependent’s criminal history and if the victim was not killed while engaging in illegal conduct that contributed to the criminally injurious conduct that gave rise to the claim. For purposes of this section, the use of illegal drugs by the deceased victim shall not be deemed to have contributed to the criminally injurious conduct that gave rise to the claim.”

{¶ 3} The Attorney General’s investigation revealed that benefits received from the Social Security Administration outweigh the things of economic value the decedent was contributing for the care and support of his children prior to his death. Accordingly, no award was granted.

{¶ 4} On February 20, 2008, the applicants submitted a request for reconsideration. The applicant, Jocelyn Burr, asserts the decedent began using drugs only after he witnessed the murder of his brother. The applicant asserts an exception should be made in this situation. On May 15, 2008, the Attorney General rendered a Final Decision finding no reason to modify the initial decision. On June 11, 2008, the applicants filed a notice of appeal of the May 15, 2008 Final Decision of the Attorney General. Hence, a hearing was held before this panel of commissioners on August 27, 2008 at 10:15 A.M.

{¶ 5} Assistant Attorney General David Lockshaw attended the hearing on behalf of the Attorney General's office. Neither applicant attended the hearing. Assistant Attorney General Lockshaw presented a brief statement for the panel's consideration. Mr. Lockshaw stated this appeal presented three issues. First, the claim for the dependent's economic loss incurred on behalf of the applicant, Jocelyn Burr, which was denied pursuant to R.C. 2743.60(E)(1)(e) since the decedent tested positive for cocaine. Second, the children's claim for dependent's economic loss, although not precluded by the felony exclusion, was also denied since benefits received from the Social Security Administration exceeded the support the children had been receiving from their father prior to his death. And, third, the applicants would like to reopen a claim as the result of the death of Anthony Perez, the decedent's brother. However, Anthony Perez's claim has already been denied pursuant to R.C. 2743.60(E) since Mr. Perez had a prior felony conviction and felony drugs were found in his system at the time of his death. Mr. Lockshaw asserted if minor children were involved, a supplemental compensation application under Mr. Perez's claim should be filed.

{¶ 6} Mr. Lockshaw then presented States Exhibits "D," "E," and "F" for the panel's consideration. These exhibits detail corrected calculations which clearly reflect that monies received from the Social Security Administration for the minor children outweigh any financial support the children were receiving from their father prior to his murder, whereupon the hearing was concluded.

{¶ 7} R.C. 2743.60(E)(1)(e) states:

"(E)(1) Except as otherwise provided in division (E)(2) of this section, the attorney general, a panel of commissioners, or a judge of the court of claims shall not make an award to a claimant if any of the following applies:

“(e) It is proved by a preponderance of the evidence that the victim at the time of the criminally injurious conduct that gave rise to the claim engaged in conduct that was a felony violation of section 2925.11 of the Revised Code or engaged in any substantially similar conduct that would constitute a felony under the laws of this state, another state, or the United States.”

{¶ 8} R.C. 2743.60(E)(2) states:

“(2) The attorney general, a panel of commissioners, or a judge of the court of claims may make an award to a minor dependent of a deceased victim for dependent’s economic loss or for counseling pursuant to division (F)(2) of section 2743.51 of the Revised Code if the minor dependent is not ineligible under division (E)(1) of this section due to the minor dependent’s criminal history and if the victim was not killed while engaging in illegal conduct that contributed to the criminally injurious conduct that gave rise to the claim. For purposes of this section, the use of illegal drugs by the deceased victim shall not be deemed to have contributed to the criminally injurious conduct that gave rise to the claim.”

{¶ 9} R.C. 2925.11(A)(4)(a) states:

“(A) No person shall knowingly obtain, possess, or use a controlled substance.

“(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of possession of cocaine. The penalty for the offense shall be determined as follows:

“(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), or (f) of this section, possession of cocaine is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.”

{¶ 10} From a review of all the information presented at the hearing this panel makes the following determination. The applicants’ claims for economic loss incurred as the result of William Burr’s death were properly denied pursuant to R.C. 2743.60(E)(1)(e), since cocaine was present in William Burr’s system at the time of his death. Although there may have been a variety of reasons for the ingestion of cocaine prior to his death, the statute clearly directs this panel to deny this claim. While we may sympathize with the applicants, we are duty bound to follow the mandates of these statutes. Secondly, the Attorney General’s Exhibits “D,” “E” and “F,” evidence that Isaac Burr and Maleah Burr are receiving \$403.00 each from Social Security Benefits and an additional \$136.67 each from ADCR per month. These benefits outweigh the financial support they were receiving from their father prior to his murder. Accordingly, the Attorney General’s decision with respect to dependent’s economic loss concerning the minor children is affirmed. Finally, the Anthony Perez matter is not before us, so we will not comment on that matter. Therefore, the Final Decision of the Attorney General is affirmed.

{¶ 11} IT IS THEREFORE ORDERED THAT

{¶ 12} 1) State’s Exhibits “D”, “E”, and “F” are admitted into evidence;

{¶ 13} 2) The May 15, 2008 decision of the Attorney General is AFFIRMED;

{¶ 14} 3) This claim is DENIED and judgment is entered for the state of Ohio;

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

Karl C. Kerschner
Presiding Commissioner

Tim McCormack
Commissioner

Gregory Barwell
Commissioner

ID #:\VICTIMS\2008\30529\9-29-08 panel decision.wpd\DRB-tvp

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

Filed 11-21-2008
Jr. Vol. 2270, Pgs. 118-122
To S.C. Reporter 11-24-2008