



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: A. L. N.

Case No. V2009-40153

TERRY L. NORMAN

Applicant

Commissioners:

Thomas H. Bainbridge, Presiding

Karl C. Kerschner

Lloyd Pierre-Louis

ORDER OF A
THREE-COMMISSIONER PANEL

{¶ 1} On September 2, 2008, the applicant, Terry Norman, filed a compensation application on behalf of his daughter A.L.N. The applicant asserts his daughter was the victim of stalking on March 30, 2008. On December 16, 2008, the Attorney General issued a finding of fact and decision denying the applicant's claim pursuant to R.C. 2743.60(A), since the incident on March 30, 2008 was not reported to law enforcement. On December 29, 2008, the applicant submitted a request for reconsideration. The applicant asserts the incident of March 30, 2008, was orally reported to police on the day of its occurrence. On January 26, 2009, the Attorney General rendered a Final Decision. The Attorney General contends the incident of March 30, 2008 does not constitute criminally injurious conduct as defined pursuant to R.C. 2743.51(C)(1) and even though the applicant submitted two police reports concerning the events of March 30, 2008, neither report referenced the alleged stalking incident of March 30, 2008. Accordingly, the Attorney General found no reason to modify its initial decision. On February 9, 2009, the applicant filed a notice of appeal from the January 26, 2009 decision of the Attorney General. Hence, a hearing was held before this panel of commissioners on May 6, 2009 at 9:30 A.M.

{¶ 2} Assistant Attorney General Tyler Brown appeared on behalf of the state of Ohio. Neither the applicant nor his attorney appeared at the hearing.

{¶ 3} The Attorney General made a brief statement for the panel's consideration. Initially, the Attorney General conceded that the incident of March 30, 2008 was timely reported to the police, however, the Attorney General argued that the applicant did not satisfy his burden of proof that A.L.N. was a victim of criminally injurious conduct. The Attorney General stated that the police reports present conflicting information. The applicant contends the alleged offender harassed his daughter by placing an anonymous call to police to report a curfew violation. However, the caller could never be identified. The Attorney General argued that a review of all police reports indicates that both the alleged offender and A.L.N. each asserted that the other was the aggressor. Consequently, there is insufficient evidence to establish that A.L.N. is a victim of criminally injurious conduct.

{¶ 4} Finally, the Attorney General asserts that if the panel were to find that A.L.N. is a victim of criminally injurious conduct, the restraining order the applicant obtained does not satisfy the requirements of R.C. 2743.51(F)(1)(4). The Attorney General alleges a mutual restraining order should not be compensable since it does not clearly indicate who is the victim and who is the offender. Therefore, it will be unknown if a victim is truly protected by a mutual restraining order. Whereupon, the hearing was concluded.

{¶ 5} R.C. 2743.51(C)(1) in pertinent part states:

{¶ 6} "(C) 'Criminally injurious conduct' means one of the following:

{¶ 7} (1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of

personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state.”

{¶ 8} Black’s Law Dictionary Sixth Edition (1990) defines preponderance of the evidence as: “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.”

{¶ 9} Black’s Law Dictionary Sixth Edition (1990) defines burden of proof as: “the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.” Plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 53 O.O. 25, 118 N.E. 2d 147.

{¶ 10} From review of the case file and upon full and careful consideration of all information presented at the hearing, we find the applicant has failed to prove, by a preponderance of the evidence, that A.L.N. was a victim of criminally injurious conduct as defined by R.C. 2743.51(C)(1). Since the threshold issue of criminally injurious conduct has not been met, we will not address the issue concerning the compensability of the mutual restraining order. Therefore, the January 26, 2009 decision of the Attorney General is affirmed.

{¶ 11} IT IS THEREFORE ORDERED THAT

{¶ 12} 1) The January 26, 2009 decision of the Attorney General is
AFFIRMED;

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

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

THOMAS H. BAINBRIDGE
Presiding Commissioner

KARL C. KERSCHNER
Commissioner

LLOYD PIERRE-LOUIS
Commissioner

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

Filed 7-1-2009

Jr. Vol. 2272, Pgs. 130-133

To S.C. Reporter 8-14-2009