



# 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](http://www.cco.state.oh.us)

IN RE: JOHN P. HOBAN

JOHN P. HOBAN

Applicant

Case No. V2006-20275

Judge Alan C. Travis

## DECISION

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{¶1} This matter came on to be considered upon applicant's appeal from the October 15, 2008 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.

{¶2} 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 failed to present sufficient evidence to meet his burden regarding additional medical expense. However, the panel determined that applicant was entitled to an award representing work loss in the amount of \$1,174.12.

{¶3} 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.”

{¶4}In its decision, the panel of commissioners summarized the procedural history of this case as follows:

{¶5}“On September 16, 2004, the applicant, John Hoban, filed an application for compensation as the result of an assault which occurred while he was working for his employer Continental Airlines as a flight attendant. On March 3, 2005, the Attorney General issued a Finding of Fact and Decision determining that the applicant was a victim of criminally injurious conduct. The Attorney General determined that any work loss suffered by the applicant had been reimbursed either by his employer, Continental Airlines, or by Gallagher Bassett, a readily available collateral source. The applicant’s request for mileage reimbursement was also denied due to a lack of supporting documentation.

{¶6}“On March 21, 2005, the applicant submitted a request for reconsideration. The applicant asserted that his prescription expenses were not covered by insurance and that he continues to experience work loss due to post traumatic stress disorder. The applicant further claimed that he had to take HIV and HEP tests because he was bitten and spit on by the offender. The first test was paid by insurance, however, the second and third tests were not. Finally, his insurance carrier, Gallagher Bassett, paid only one month of work loss and he received nothing from the Bureau of Workers’ Compensation.

{¶7}“On March 1, 2006, the Attorney General issued a Final Decision. The Attorney General found the prescription expenses should be submitted to the applicant’s insurance carrier for reimbursement. The Attorney General determined, in conjunction with a comprehensive analysis by its mental health consultant, that the applicant incurred work loss from July 11, 2004 through November 24, 2004. However, this work loss was covered in full by Gallagher Bassett and Continental Airlines. Accordingly, the Attorney General found no reason to modify its initial decision. On March 29, 2006, the applicant filed a notice of appeal from the Final Decision of the Attorney General. After five continuances of this matter based upon motions filed by both parties, a hearing was held before a panel of commissioners.”

{¶8}The panel modified the final decision of the Attorney General to reflect the fact that the sick leave benefits that applicant received from his employer were not a collateral source inasmuch as those benefits could be converted to a cash payment upon the termination of his employment or carried over into subsequent pay periods. “Sick leave benefits, which directly reduce a future right to sick leave for future illness or cash payment upon retirement, do not constitute a collateral source.” *In re Semmens* (1988), 61 Ohio Misc.2d 203, 204-205. However, the panel reduced the amount of the award for unreimbursed work loss based upon the opinion of the Attorney General’s expert that no more than 17 percent of applicant’s disability was attributable to the criminally injurious conduct.

{¶9}At the panel hearing, applicant, Dr. Masoud Hejazi, applicant’s treating psychiatrist, and Dr. Michael Murphy, the Attorney General’s expert, testified regarding applicant’s medical and psychological history. Applicant testified that he was injured while working as a flight attendant when a passenger became agitated and assaulted him by biting and spitting. According to applicant, the stress he experienced as a result of the incident was so debilitating that he was unable to return to work. Dr. Hejazi diagnosed applicant with Post Traumatic Stress Disorder (PTSD) and treated him for depression and attention deficit disorder. Dr. Hejazi testified that he attributed 80 to 90 percent of applicant’s psychological problems to the criminally injurious conduct and that the balance of his treatment was related to pre-existing conditions resulting from a serious automobile accident and family issues.

{¶10}Dr. Murphy testified that he had reviewed the reports of Dr. Hejazi and Dr. Gerald Aronoff, who had also performed an assessment of plaintiff. According to Dr. Murphy, the impact of the criminally injurious conduct was limited to the time period between July 11, 2004, and October 24, 2004, and he opined to a reasonable degree of medical certainty that applicant’s PTSD was mild. Dr. Murphy assessed applicant’s degree of PTSD impairment as 14 percent, with no more than a three percent margin of error.

{¶11}Applicant asserts that it was unreasonable and unlawful for the panel to consider the percent of applicant’s PTSD impairment in determining an award for work loss. Applicant argues that once a determination has been made that the criminally injurious conduct resulted in his inability to return to work, he is entitled to the entire

amount of unreimbursed work loss that was incurred during the disability period. The court agrees.

{¶12}The court has not found, nor has the Attorney General identified, any precedent to support the panel's position that applicant is entitled to only that percentage of his unreimbursed work loss that is proportional to his degree of impairment.

{¶13}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.”

{¶14}Based upon the plain language of R.C. 2743.51(G), the court finds that applicant is entitled to an award of work loss which represents loss of income from work that he would have performed if he had not been injured by the criminally injurious conduct, regardless of any determination regarding his percentage of disability.

{¶15}Upon review of the testimony and evidence, the panel found that applicant suffered physical and psychological injuries as a result of the criminally injurious conduct; however, the panel determined that the serious automobile accident and “many family and marital difficulties” that occurred prior to the criminally injurious conduct were the primary cause of applicant's inability to return to work. The panel had the opportunity to consider the expert testimony and evidence and it found “the testimony of Dr. Murphy to be persuasive with respect to the duration of the applicant's disability due to the criminally injurious conduct of July 11, 2004.” Dr. Murphy opined that applicant was disabled with PTSD from July 11, 2004, to October 24, 2004, as a result of the criminally injurious conduct.

{¶16}The credibility of witness testimony and the issue of whether applicant was injured as a result of criminal conduct involves a factual determination on a case-by-case basis. See *In re Walling* (1997), 91 Ohio Misc.2d 181. The court finds that the panel's decision contains sufficient findings of fact to support its conclusion that applicant was unable to work from July 11, 2004, to October 24, 2004. On appeal from

a determination of fact, a court is not permitted to substitute its judgment for that of the trier of the fact. *In re Saylor* (1982), 1 Ohio Misc.2d 1.

{¶17} 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 representing work loss.

{¶18} Based on the evidence and R.C. 2743.61, it is the court's opinion that the decision of the panel of commissioners to reduce applicant's award for work loss in proportion to the percent that his disability is related to the criminally injurious conduct was unreasonable and unlawful. Therefore, this court reverses the decision of the three-commissioner panel and hereby remands applicant's claim to the panel to determine applicant's work loss.

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ALAN C. TRAVIS  
Judge



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### ORDER

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{¶19} Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and applicant's appeal must be denied.

IT IS HEREBY ORDERED THAT:

{¶20}1) The order of October 15, 2008, (Jr. Vol. 2270, Pages 1-12) is reversed;

{¶21}2) This claim is REMANDED to the panel to determine applicant's work loss;

{¶22}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;

{¶23}4) Costs assumed by the reparations fund.

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ALAN C. TRAVIS  
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:

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