



Court of Claims of Ohio

Victims of Crime Division

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

IN RE: ESPIRITA KEYS

ESPIRITA KEYS

Applicant
Case No. 2013-00237 VI

Commissioners:
Holly True Shaver, Presiding
Daniel R. Borchert
Anderson M. Renick

ORDER OF A THREE COMMISSIONER PANEL

- {¶1} On August 16, 2012, applicant, Espirita Keys, filed a compensation application as the result of an incident which occurred on September 24, 2010. On December 7, 2012, the Attorney General issued a finding of fact and decision denying applicant's claim since she failed to prove, by a preponderance of the evidence, that she was injured as the result of criminally injurious conduct. The Attorney General also noted that applicant's dental provider stated that her dental expense was not related to the September 24, 2010 incident.
- {¶2} On January 7, 2013, applicant submitted a request for reconsideration. On March 8, 2013, the Attorney General rendered a Final Decision determining that there was no reason to modify the initial decision. On April 17, 2013, applicant filed a notice of appeal from the Final Decision of the Attorney General. A hearing was held before this panel of commissioners on September 19, 2013 at 10:00 a.m.
- {¶3} Neither applicant nor anyone on her behalf attended the hearing, while the state of Ohio was represented by Assistant Attorney General Gwynn Kinsel. The Attorney General submitted an audio-video recording of the incident that was

obtained from the Allen County Sheriff's Office. (Exhibit A.)

- {¶4} The recording was captured by a camera which was located inside a patrol vehicle that was operated by a deputy sheriff who was involved in the incident. The deputy had responded to a disabled vehicle which was stopped at an intersection. The recording showed the following: Applicant returned to the disabled vehicle and informed the deputy that her car had run out of gas. When applicant approached the patrol car, the deputy related that her license was suspended and he instructed her to return to her vehicle. Applicant subsequently became upset and uttered profanity toward the deputy. After a brief verbal confrontation, the deputy attempted to place applicant in handcuffs, but applicant resisted and began to yell. The deputy subdued applicant with the use of a Taser, at which time she fell to the ground, out of the view of the camera.
- {¶5} Applicant was escorted to the patrol car and placed in the back seat where she continued to berate the deputy during the drive to jail. Applicant was subsequently charged with resisting arrest, obstructing official business, and disorderly conduct. According to the Attorney General's investigation, the charges against applicant were eventually dismissed.
- {¶6} On December 14, 2010, applicant reported the incident to the Allen County Sheriff's Office, claiming that she had been assaulted. However, the Attorney General reports that no criminal charges were filed as a result of the report. According to the Attorney General's investigation, applicant obtained a settlement as a result of an action that was filed against the Allen County Sheriff's Office in federal court.
- {¶7} R.C. 2743.51 provides, in pertinent part:
- “(C) ‘Criminally injurious conduct’ means one of the following:
- “(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} R.C. 2743.60(F) provides, in part:

“(F)(1) ‘Allowable expense’ means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care and including replacement costs for hearing aids; dentures, retainers, and other dental appliances” * * * .

{¶9} Applicant must prove criminally injurious conduct by a preponderance of the evidence. *In re Rios*, 8 Ohio Misc. 2d 4 (Ct. of Cl. 1983). Applicant must produce evidence which furnishes a reasonable basis for sustaining her claim. If the 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. *In re Staten*, V2011-60051tc (5-27-11), 2011-Ohio-4321, citing *Landon v. Lee Motors, Inc.* 161 Ohio St. 82, 118 N.E. 2d 147 (1964). “[T]he uncorroborated statement of the applicant does not constitute sufficient proof, by a preponderance of the evidence, to establish the criminally injurious conduct occurred.” *In re Warren*, V2008-30014tc (9-5-08) citing *In re Minadeo*, V79-3435jud (10-31-80).

{¶10} From review of the case file and with full and careful consideration given to the arguments made by the parties at the hearing, we find applicant has failed to prove, by a preponderance of the evidence, that she was a victim of criminally injurious conduct. Applicant has the burden of proof to establish her claim and based upon the information presented and without the testimony of applicant she has failed to do so.

{¶11} Furthermore, applicant has failed to establish that her dental expense is related to any injuries she may have sustained as a result of the incident. The Attorney

General's investigation revealed that applicant did not seek dental treatment until May 2012, approximately one and a half years after the incident. Moreover, the court notes that the video recording does not show any injuries to applicant's face or mouth and that she did not mention any such injury during the time of the recording.

{¶12} For the foregoing reasons, the March 8, 2013 decision of the Attorney General shall be affirmed.

IT IS THEREFORE ORDERED THAT

- 1) The Attorney General's Exhibit A is admitted into evidence;
- 2) The March 8, 2013 decision of the Attorney General is AFFIRMED;
- 3) This claim is DENIED and judgment is rendered for the state of Ohio;
- 4) Costs are assumed by the court of claims victims of crime fund.

HOLLY TRUE SHAVER
Presiding Commissioner

DANIEL R. BORCHERT
Commissioner

ANDERSON M. RENICK
Commissioner

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

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