



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: BRIAN MOODY

BRIAN MOODY

Applicant
Case No. 2013-00437 VI

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

ORDER OF A THREE COMMISSONER PANEL

- {¶1} On August 29, 2011, applicant, Brian Moody, filed a compensation application as the result of injuries he sustained when he was shot on June 9, 2011, following an altercation at a bar, in Toledo, Ohio. On December 1, 2011, the Attorney General issued a finding of fact and decision denying the applicant's claim for an award of reparations based upon the finding that applicant voluntarily participated in the altercation and that such conduct constituted substantial contributory misconduct pursuant to R.C. 2743.60(F). On December 21, 2012, applicant submitted a request for reconsideration. On February 19, 2013, the Attorney General rendered a Final Decision finding no reason to modify his initial decision. On July 26, 2013, the applicant filed a notice of appeal from the February 19, 2013 Final Decision of the Attorney General.
- {¶2} On October 24, 2013 at 9:00 a.m., a hearing was held before this panel of commissioners. Applicant appeared at the hearing, while Assistant Attorney General Melissa Montgomery appeared on behalf of the state of Ohio.
- {¶3} Applicant testified that he was drinking beer at a local bar when several other patrons arrived at approximately 7:35 p.m. Applicant had inserted five dollars in a juke box and was selecting his music when a man approached and asked if he

could also deposit money in the machine and select songs to play. After selecting three songs, applicant allowed the other patron to make selections. When applicant returned to the juke box he learned that no selections remained available and he concluded that the other patron had “spent all his money.” Applicant confronted the patron who then refused to reimburse applicant. When applicant subsequently observed the patron “whispering” to a female acquaintance, applicant exclaimed “you don’t have to get all smart in front of your bitch”; whereupon the patron “smashed” his beer into applicant’s face. Applicant testified that he threw his beer in response and, soon thereafter, he was attacked by other patrons. According to applicant, he was pushed onto a pool table and three male patrons continued to attack him until he was able to grab a pool cue and strike at least one of his attackers. Applicant testified that he fled the bar and returned to his apartment where he remained until approximately midnight when he walked to a nearby store to purchase food.

{¶4} As he was walking home with his food, applicant encountered a young man, who appeared to be approximately 16 years old. The young man asked applicant if he had been talking to someone “down the street.” Applicant responded that he did not know what the man was talking about and applicant continued to walk away. Applicant testified that “something in his head” told him to turn around, and when he turned he noticed the man had a gun. According to applicant, he threw his groceries at the man and ran toward him, at which time applicant was shot twice. Applicant related that he attempted to defend himself by pushing his Subway sandwich in the offender’s face and the offender shot him two more times. Applicant explained that he did not think the shooting was related to the bar fight because he did not recognize the offender and other shootings had occurred in the same area. However, applicant stated near the end of his testimony that, just before the shooting, he told the offender that he looked familiar.

{¶5} According to the police report in the claim file, applicant informed police that, after the shooting, the offender fled in the direction of the bar. Police officers

responded to the bar and located a young man who met the description provided by applicant. While he was being treated at the hospital, applicant observed a man who was being treated for a head wound that was caused by being struck with a pool cue. According to the police report, applicant exclaimed to police "his people are the ones who did this to me." On cross examination, applicant admitted that while he was in the hospital he saw an individual with a head wound and that he informed police that it was the man he had struck with the pool cue.

{¶6} The Attorney General contends that the shooting was directly related to the bar fight that occurred early that evening, that applicant voluntarily participated in the fight, and that the criminally injurious conduct was a consequence of the violent altercation.

{¶7} R.C. 2743.51(M) states:

"(M) 'Contributory misconduct' means any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim."

{¶8} R.C. 2743.60(F) provides, in pertinent part:

"In determining whether to make an award of reparations pursuant to this section, the attorney general or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. The attorney general, a panel of commissioners, or a judge of the court of claims shall reduce an award of reparations or deny a claim for an award of reparations to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or the victim."

{¶9} Contributory misconduct must be based on a specific, unlawful or intentionally tortious act. *In re McGary II*, V91-83761tc (7-29-94) affirmed jud (11-16-94). When determining if the unlawful or intentionally tortious conduct of the victim was causally connected to the criminally injurious conduct, foreseeability is a

necessary element. *In re Ewing*, 33 Ohio Misc. 2d 48 (Ct. of Cl. 1987). In order to deny rather than reduce an award of reparations on the basis of contributory misconduct, there must be a showing that the victim engaged in substantial contributory misconduct. *In re Spaulding*, 63 Ohio Misc. 2d 39 (Ct. of Cl. 1991).

{¶10} Upon review of the evidence, the panel finds that a mutual fight ensued between applicant and the bar patrons and that applicant's conduct directly precipitated the altercation. Furthermore, based upon applicant's testimony and his statements to law enforcement, the panel concludes that the subsequent shooting was in retaliation for applicant's intentionally tortious conduct at the bar. From review of the file and with full and careful consideration given to the testimony and evidence presented at the hearing, the panel finds that applicant engaged in substantial contributory misconduct. Accordingly, applicant's claim must be denied in its entirety.

IT IS THEREFORE ORDERED THAT

- 1) The February 19, 2013 decision of the Attorney General is AFFIRMED;
- 2) This claim is DENIED and judgment is rendered for the state of Ohio;
- 3) Costs are assumed by the court of claims victims of crime fund.

ANDERSON M. RENICK
Presiding Commissioner

DANIEL R. BORCHERT
Commissioner

HOLLY TRUE SHAVER
Commissioner

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

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ORDER

Jr. Vol. 2287, Pgs. 68-72
Sent to S.C. Reporter 9/29/15