



Court of Claims of Ohio

Victims of Crime Division

The Ohio Judicial Center
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Columbus, OH 43215
614.387.9800 or 1.800.824.8263
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IN RE: MARK SWETNAM

MARK SWETNAM

Applicant
Case No. 2013-00455 VI

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

ORDER OF A THREE COMMISSIONER PANEL

{¶1} On March 11, 2013, applicant, Mark Swetnam filed a compensation application as the result of an assault which occurred on October 30, 2012. Applicant sought reimbursement of attorney fees incurred to receive a Civil Protection Order (CPO) against the offender. On June 12, 2013, the Attorney General issued a finding of fact and decision determining that Mark Swetnam qualified as a victim of criminally injurious conduct and incurred allowable expense in the amount of \$265.00, for attorney fees which were paid directly to applicant's attorney Mark Poole to obtain a CPO in 2013. However, the Attorney General denied applicant's claim for attorney fees to obtain a civil stalking protection order ("CSPO") in 2012 based upon the following rationale:

{¶2} "Pursuant to information received by the Attorney General, no final order was successfully obtained in your CSPO case with the case number 12 CV 1436. Specifically, due to the continued lack of service upon the respondent in that case, the petition for the CSPO was denied and the ex parte order dismissed. Therefore, regrettably, no award can be granted for any expenses submitted in relation to that particular case."

- {¶3} On June 18, 2013, applicant submitted a request for reconsideration. On July 9, 2013, the Attorney General rendered a Final Decision finding no reason to modify the initial decision. On August 1, 2013, applicant filed a notice of appeal from the July 9, 2013 Final Decision of the Attorney General. Hence, a hearing was held before this panel of commissioners on November 20, 2013 at 9:25 a.m.
- {¶4} Applicant was represented by his attorney Mark Poole, while Assistant Attorney General Yan Chen represented the state of Ohio.
- {¶5} Applicant argued that the Attorney General misinterpreted R.C. 2743.51(F)(4)(b) which in pertinent part states:
- “‘Allowable expense’ includes attorney's fees not exceeding one thousand dollars, at a rate not exceeding one hundred dollars per hour, incurred to successfully obtain a restraining order, custody order, or other order to physically separate a victim from an offender.”
- {¶6} Applicant related the following facts with respect to the case at bar. On November 1, 2012, applicant petitioned for a CPO as a result of an assault. Applicant was granted an ex parte order on that same day. A hearing date was set for a final hearing on the CPO, however subsequently the matter was continued based upon the inability of law enforcement to locate the offender. Accordingly, the offender could not be served with notice of the hearing. On January 23, 2013, the case was dismissed due to a failure to locate the offender.
- {¶7} In late February 2013, the offender was located after he was arrested for an assault on a law enforcement officer. Once applicant became aware of the offender's location, he refiled his petition for a Civil Protection Order on February 26, 2013. Subsequently, an ex parte order was issued followed by a CPO being issued by the court on March 7, 2013.
- {¶8} In this case, applicant successfully obtained a CPO which satisfied all the requirements of R.C. 2743.51(F)(4)(b). Applicant argued that in order to successfully obtain the CPO he was required to refile the second action due to

no fault of his own.

- {¶9} R.C. 2743.51(F)(4)(b) does not delineate how the successful CPO must be obtained. The statute requires only a successful outcome, which was accomplished in this case. Furthermore, if applicant had the opportunity to reopen the initial case he would have done so, but that is not the procedure required by R.C. 2919.26.
- {¶10} While two petitions were filed, each containing separate claim numbers, they were both based on the same criminal conduct committed by the same offender. Based on no fault of applicant two claims had to be filed to obtain a successful result and attorney fees should be paid for all the work necessary to obtain the successful result.
- {¶11} The Attorney General posits that the statute is clear on its face and leaves no room for interpretation. "When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply the rules of statutory interpretation." (Attorney General's brief, p. 6 quoting *State ex rel. Jones v. Conrad*, 92 Ohio St. 3d 389, 392 (2002).) In the case at bar 12CV1436, applicant's first attempt to receive a CPO was unsuccessful and accordingly attorney fees should not be paid under this claim number. The Attorney General argued the service issue is not pertinent to this proceeding. Because the first case was dismissed by the court, this panel should not delve into the reasons for dismissal since they are not relevant when interpreting R.C. 2743.51(F)(4)(b). Upon questioning by the panel, the Attorney General conceded that both proceedings concerned the same set of facts.
- {¶12} In rebuttal, applicant stated that the statute was drafted to prevent applicants from filing frivolous or fraudulent claims under the Crime Victims Compensation Act, or, to prevent applicants from obtaining attorney fees when they fail to follow through or dismiss CPOs for whatever reason. In the case at bar, applicant was a victim and he successfully obtained a CPO, which is in force today. The only

area of disagreement with the Attorney General is whether the total attorney fees incurred to obtain a successful result should be compensated.

{¶13} Finally, the Attorney General reiterated his position that the first proceeding, 12CV1436, did nothing to separate the victim from the offender. Accordingly, based upon the clear language of the statute the Attorney General has no discretion to award attorney fees in this situation. Whereupon, the hearing was concluded.

{¶14} Upon review of the case file and with full and careful consideration given to the arguments of the parties, we find attorney fees pursuant to R.C. 2743.51(F)(4)(b) should be granted for all work performed under 12CV1436 and 13CV0202, since both were based upon the same victimization involving the same offender. The first claim 12CV1436 was dismissed based on no fault of applicant. The dismissal resulted in the failure of law enforcement to locate and serve the offender notice that a hearing on the CPO had been scheduled.

{¶15} We agree that the purpose of R.C. 2743.51(F)(4)(b) is to prevent applicants from filing frivolous or fraudulent claims or from failing to follow through with the required procedures. However, in this case applicant did everything necessary to obtain a CPO and the dismissal of 12CV1436 was based on no fault of the applicant but rather a failure of law enforcement to serve notice of the proceedings and the active evasion of the offender to avoid the consequences of his unlawful action.

{¶16} We believe the intent of R.C. 2743.51(F)(4)(b) is to allow an award for attorney fees incurred for the successful obtaining of a CPO. This result was achieved in this case. The circumstances present in this case are unique and the law must be interpreted to obtain the results contemplated by the General Assembly. Since the case at bar involved the same criminal conduct, the same offender, and the same victim which resulted in a successful "restraining order" that "physically (separated) a victim from an offender," we believe all attorney fees

incurred under 12CV1436 and 13CV0202 should be compensated.

{¶17} Accordingly, the Attorney General's Final Decision of July 9, 2013 is reversed and this claim shall be remanded to the Attorney General for payment in accordance with this decision.

IT IS THEREFORE ORDERED THAT

- 1) The July 9, 2013 decision of the Attorney General is REVERSED and judgment is rendered in favor of applicant;
- 2) This claim is remanded to the Attorney General for calculation of allowable expense in accordance with this order and decision;
- 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;
- 4) Costs are assumed by the court of claims victims of crime fund.

DANIEL R. BORCHERT
Presiding Commissioner

ANDERSON M. RENICK
Commissioner

HOLLY TRUE SHAVER
Commissioner

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