



## Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center  
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IN RE: REBECCA WONN

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Applicant  
Case No. 2014-00586 VI

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

### ORDER OF A THREE-COMMISSIONER PANEL

{¶1} On March 13, 2013, applicant, Rebecca Wonn, filed a compensation application as the result of a hit and run accident that occurred on May 9, 2012.

{¶2} On July 10, 2013, the Attorney General issued a finding of fact and decision which denied applicant's claim based upon the finding that applicant's economic loss either was or could have been recouped by collateral sources of compensation. On December 31, 2013, the Attorney General issued a finding of fact and decision for applicant's October 30, 2013 supplemental compensation application, granting applicant an award for work loss in the amount of \$1,618.61 for the period May 30, 2012 through June 30, 2012 and \$1,105.19 for reimbursement of allowable expense incurred.

{¶3} On January 30, 2014, applicant submitted a request for reconsideration. On May 27, 2014, the Attorney General issued a Final Decision, determining that there was no reason to modify the initial decision on the supplemental application.

{¶4} On June 25, 2014, applicant filed a notice of appeal from the May 27, 2014 Final Decision of the Attorney General. A hearing was held before this panel of

commissioners on August 28, 2014 at 9:00 a.m. Applicant attended the hearing while Assistant Attorney General Yan Chen represented the state of Ohio.

{¶5} Applicant testified that prior to the criminally injurious conduct she was primarily employed as a part-time nurse for Signature Care Inc. (Signature) and Summa Nursing

{¶6} Solutions LLC (Summa). Applicant also occasionally worked as a substitute teacher for several local school districts. Applicant explained that she briefly returned to work after the May 9, 2012 accident, but had great difficulty driving due to neck pain and occasional dizziness. Applicant testified that she used ice packs on her neck to help alleviate her pain so that she could drive to work. However, the dizziness she experience persisted, attempting to work aggravated her pain, and she was unable to perform certain job duties involving lifting more that light weight objects. According to applicant, she continued to work for Summa with one of her patients who lived within walking distance to her home, but she learned that her employer assigned other nurses to assist her remaining patients. Applicant testified that on or about the end of June, 2012, she learned that she had effectively been “let go” by Signature. Applicant testified she is currently employed by a retail establishment and performs job duties that are not as strenuous as nursing. Applicant related that she hopes to return to nursing after her symptoms have resolved.

{¶7} Regarding her medical treatment, applicant testified that she has received treatment from various providers, including her primary care physician, Marvin Im, D.O., physical therapists, and a chiropractor. On February 19, 2014, Dr. Im reported that applicant “has been unable to work since her accident in May of 2012” and that she still experiences “a lot of lower and mid to upper neck pains and muscle spasms.” According to Dr. Im, applicant has received “extensive testing and therapy” including “chiropractor therapy, manual manipulations, and acupuncture.”

{¶8} The Attorney General's investigator, Shawn Moser, testified that in April 2014, he spoke with Dr. Im, who reported that he was unable to establish within a reasonable degree of medical certainty that applicant's dizziness or vertigo was causally related to the criminally injurious conduct. According to Moser, for a short period of time after the incident, applicant worked more hours than before the accident. Moser testified that applicant's former employer informed him that in November 2012, applicant resigned her nursing position without notice.

{¶9} The Attorney General contends that applicant has failed to prove by a preponderance of the evidence that she is unable to return to her previous employment as a nurse inasmuch as she had worked as a nurse after the criminally injurious conduct and Dr. Im could not state with certainty that her symptoms of vertigo are related to the accident.

{¶10} R.C. 2743.51(G) provides:

- a) "‘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."

{¶11} In order to prove her claim for additional work loss, applicant must provide corroborating evidence to show both that work loss was sustained by an inability to work and the monetary amount of such loss. *In re Berger*, 91 Ohio Misc. 2d 85 (Ct. of Cl. 1994).

{¶12} Although the Attorney General argues that applicant relies on only her self-serving testimony to prove her work loss claim, the medical documents in the claim

file support applicant's testimony regarding her symptoms and the effect of those symptoms on her ability to perform duties as a nurse.

{¶13} The medical records corroborate Dr. Im's statement that applicant has undergone extensive testing and treatment for her injuries. Furthermore the medical records provide a detailed history of applicant's symptoms, which supports her testimony that those symptoms caused her work loss. Specifically, the supplemental transmission filed by the Attorney General on August 25, 2014, includes records from OhioHealth Rehabilitation which show that in May 2012, applicant was referred by Dr. Im with the stated "functional goal" being "back to work, back to normal." The records show that applicant's functional limitations included decreased use of her left arm, pain in her "head and neck with all activity," periodic dizziness, inability to turn her head to drive, difficulty sleeping, such that she could not travel to work as a nurse. (Page 1 of 111.) Applicant continued to receive regular treatment through July 21, 2012, when it was noted that applicant was still experiencing 4 out of 10 pain while taking pain medication and that "on a bad day pain goes up to 9/10." (Page 29 of 111.) In July 2012, her treatment goal continued to be "back to work."

{¶14} More recently, on February 25, 2014, applicant was still under Dr. Im's care and receiving physical therapy with functional limitations listed as "can't lift or carry and [patient] gets severe spasms, [patient] needs to be careful about body mechanics to avoid pain and spasms, can't work as a nurse." (Page 91 of 111.) The records show that applicant continued to experience chronic neck, thoracic and lumbar spine pain in February and March 2014 with occasional 9 out of 10 pain. (Page 95 of 111.) The medical records also corroborate applicant's testimony that she continued to experience dizziness and the provider noted objective clinical indications of pain such as grimacing and frowning. (Page 99 of 111.) The most recent therapy record in the claim file, dated April 30, 2014, states that applicant's symptoms have partially resolved; however,

she continues to have increased pain while lifting and carrying, which ranges from 3-8 out of 10. (Page 110 of 111.) Applicant was discharged from physical therapy with an exercise program designed to allow her to increase “functional activities” with the goal of returning to work.

{¶15} Although the panel was impressed by Moser’s testimony regarding his thorough investigation, the panel found applicant's testimony regarding both her medical symptoms and her desire to return to nursing to be both credible and persuasive. Applicant's testimony provides additional evidence that the Attorney General did not have to consider during the administrative review of applicant's claim. Considering both applicant's testimony and the evidence in the claim file, the panel finds that her temporary return to work in the months following the criminally injurious conduct does not show that she decided to quit working while she was physically able. Rather, the panel finds that applicant's attempt to return to work is indicative of her desire to remain employed as a nurse, even though she was experiencing great pain.

{¶16} Concerning work loss for applicant's employment as a substitute teacher, during her testimony, applicant stated that she was not seeking reimbursement for any loss related to teaching. Furthermore, the panel finds that applicant failed to prove that she completed the annual prerequisites for remaining employed by the local school districts.

{¶17} From review of the case file and with full and careful consideration given to the testimony and information presented at the hearing, we find that applicant has proved by a preponderance of the evidence that the injuries she sustained from the criminally injurious conduct are causally related to her inability return to work as a nurse. For the reasons stated above, the panel finds that applicant is entitled to work loss related to her former nursing job for the period July 1, 2012 to April 30, 2014, which must be reduced by the earnings from her retail employment. Accordingly, the May 27,

2014 decision of the Attorney General shall be reversed.

IT IS THEREFORE ORDERED THAT

{¶18} The May 27, 2014 decision of the Attorney General is REVERSED to render judgment in favor of applicant on the work loss claims related to her former nursing job for the period July 1, 2012 to April 30, 2014;

{¶19} This claim is remanded to the Attorney General for economic loss calculation and payment of the award in accordance with this order;

{¶20} 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;

{¶21} Costs are assumed by the court of claims victims of crime fund.

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DANIEL R. BORCHERT  
Presiding Commissioner

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ANDERSON M. RENICK  
Commissioner

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HOLLY TRUE SHAVER  
Commissioner

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