



Court of Claims of Ohio

Victims of Crime Division

The Ohio Judicial Center
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IN RE: THOMAS ELTON III

THOMAS ELTON III

Applicant
Case No. 2014-00671 VI

Magistrate Daniel R. Borchert

DECISION OF THE MAGISTR

{¶1} On December 19, 2007, applicant, Thomas Elton III, filed a compensation application as the result of an incident which occurred on December 24, 2005, while he was acting as an Akron Police Officer and arresting a suspect. On April 17, 2008, the Attorney General issued a finding of fact and decision finding applicant had submitted insufficient evidence to receive an award for work loss.

{¶2} On May 16, 2014, applicant filed a supplemental compensation application. On June 2, 2014, the Attorney General issued a finding of fact and decision for the supplemental compensation application denying applicant's claim based on his failure to timely file the supplemental compensation application pursuant to R.C. 2743.68. On June 9, 2014, applicant submitted a request for reconsideration. On July 15, 2014, the Attorney General rendered a Final Decision finding no reason to modify his decision of June 2, 2014.

{¶3} On July 30, 2014, applicant filed a notice of appeal from the July 15, 2014 Final Decision of the Attorney General. Hence, a hearing was held before this magistrate on October 31, 2014 at 1:00 p.m.

{¶4} Applicant, Thomas Elton III and his counsel, Kevin Sanislo, appeared while Assistant Attorney General Megan Hanke, represented the state of Ohio.

{¶5} Applicant gave a brief opening statement. The basis for the current claim is the result of criminally injurious conduct which occurred on December 24, 2005, and involved an injury to Mr. Elton's right hip. Mr. Elton filed a compensation claim as the

result of this incident and the last payment made occurred on April 17, 2008. Subsequently, he had no problems associated with the hip injury until March of 2012. It was not until November of 2013 that Mr. Elton's doctor advised him that surgery was necessary. At that time, his doctor wrote that he should only engage in light duty until surgery on January 16, 2014. Consequently, he was totally off work from January 16, 2014 through August 17, 2014. At which time his surgeon released him back to work on a light duty basis.

{¶6} It is the policy of the Akron Police Department ("APD") that individuals who cannot work or who are on light duty with the APD cannot have secondary employment. Furthermore, this policy also forbids overtime employment.

{¶7} From January 16, 2014 through August 17, 2014, Mr. Elton received temporary total disability benefits from the Bureau of Workers' Compensation. However, the rate of compensation paid by the Bureau is based on his 2005 pay rate, not his pay rate in 2014.

{¶8} Accordingly, applicant seeks the loss of income from the difference in pay rate from January 16, 2014 through August 17, 2014, from benefits received from the Bureau of Workers' Compensation; plus the loss of overtime work with the APD; and the loss of secondary wages based upon the light duty restriction imposed by APD's policy.

{¶9} Applicant acknowledged that his supplemental application was filed beyond the five-year statutory period required by R.C. 2743.68. However, until November of 2013, he experienced no economic loss, and he subsequently filed his supplemental compensation application on May 16, 2014. Applicant requests that this court exercise its equity jurisdiction to allow the late filing of the supplemental compensation application and grant the applicant an additional award for economic loss incurred.

{¶10} The Attorney General's position is that he is barred by the statute and the statute grants the Attorney General no authority to grant an award in this situation.

{¶11} The applicant took the witness stand. Mr. Elton related the events leading up to his injuries on December 24, 2005. The work related nature of his injuries and the long term effects this criminally injurious conduct has had on his ability to earn a

living. Mr. Elton testified that his current rate of pay is \$28.02 per hour; he receives time and one half for overtime hours worked; and he receives \$28.00 per hour for secondary work performed. He also stated he is, pursuant to police policy, unable to work overtime or special duty while on a light duty work restriction.

{¶12} Applicant was then questioned concerning thirty-three exhibits which concerned his hip injury, treatment, surgery, and physical therapy. These exhibits outlined the work restrictions imposed by his doctors, the approval of his Workers' Compensation claims, and related material. Finally, the Fraternal Order of Police rules and regulations were presented showing the restrictions light duty imposes on an officer. Mr. Elton concluded his testimony by expressing the hope he could return to unrestricted duty prior to Thanksgiving of 2014.

{¶13} Upon cross-examination, applicant related that last time overtime wages appeared on his pay check was on January 31, 2014. Finally, applicant acknowledged the only injuries he suffered from the December 24, 2005 incident were physical in nature. Whereupon, the testimony of the applicant was concluded.

{¶14} In closing, the applicant stated from the last award issued by the Attorney General on April 17, 2008, until November of 2013, he incurred no economic loss related to the injuries sustained at the time of the criminally injurious conduct. Consequently, there was no reason to file a supplemental compensation application within the five year period required by R.C. 2743.68. Accordingly, applicant requests this court exercise its equitable powers and toll the statute of limitations so applicant's claim can be referred to the Attorney General for calculation of his economic loss.

{¶15} The Attorney General expressed sympathy to the applicant's position, however, the statute prevented an award being issued in this situation. Whereupon, the hearing was concluded.

{¶16} R.C. 2743.68 states:

- a) "A claimant may file a supplemental reparations application in a claim if the attorney general or the court of claims, within five years

prior to the filing of the supplemental application, has made any of the following determinations:

- b)** “(A) That an award, supplemental award, or installment award be granted;
- c)** “(B) That an award, supplemental award, or installment award be conditioned or denied because of actual or potential recovery from a collateral source;
- d)** “(C) That an award, supplemental award, or installment award be denied because the claimant had not incurred any economic loss at that time.”

{¶17} The court has previously tolled the statute of limitations pursuant to R.C. 2743.68 for equitable considerations including an applicant’s pain, persistent medical problems, post-traumatic disorder, and short-term memory loss. *In re Preston*, Ct. of Cl. V2006-21140jud, 2007-Ohio-7275; *In re Jones*, V2011-60590jud (11-13-12).

{¶18} In the case at bar, applicant did not file the supplemental compensation application until he incurred economic loss due to the injuries he suffered from the criminally injurious conduct of December 24, 2005. There is no question that applicant’s subsequent treatment, surgery, and physical therapy were causally related to his injuries. Furthermore, applicant’s work loss i.e., light duty restrictions, disability pay differential, work loss, possible shift differential pay loss, were suffered as the result of his injuries.

{¶19} The Attorney General does not dispute either the authenticity or substance of the medical records or disability documents presented by the applicant.

{¶20} The court has consistently held that a decision on an application for an award of reparations under the Victims of Crime Program is rendered on a case-by-case basis. See *In re Swint*, Ct. Cl. No. V2004-60679, 2007-Ohio-1421. Based upon the unique nature and circumstances presented in this matter, and in the interest of justice, the court finds that the exhibits presented by applicant should be

admitted as evidence and that such evidence coupled with the applicant's testimony is sufficient to toll the statute of limitations contained in R.C. 2743.68.

{¶21} Based upon the evidence, it is the magistrate's decision that it would be unreasonable to deny applicant's claim. Therefore, it is recommended the Attorney General's July 15, 2014 decision be reversed and this case be remanded to the Attorney General for investigation and decision.

{¶22} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

DANIEL R. BORCHERT
Magistrate

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