

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: ANTHONY LALLI

ANTHONY LALLI

Applicant

Case No. 2013-00106-VI

Judge Patrick M. McGrath

DECISION

{¶1} This matter came to be considered upon applicant's appeal from the February 4, 2014 order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based upon the finding that applicant failed to timely file a supplemental compensation application pursuant to R.C. 2743.68. The panel found that it did not have statutory authority to exercise equitable powers to permit applicant's untimely supplemental application; however, the panel also found that this case is worthy of such equitable consideration. Assistant Attorney General Matthew Hellman appeared at the hearing on behalf of the state of Ohio and attorney Michael Falleur appeared on behalf of applicant.

{¶2} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios*, 8 Ohio Misc.2d 4, 455 N.E.2d 1374 (1983).

{¶3} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final."

{¶4} The conduct giving rise to applicant's supplemental application occurred in 1993, at which time applicant was assaulted, sustaining fractured bones on the left side of his face. Applicant received an award of reparations, reimbursing him for medical treatment he received from 1993-1996. Applicant required further medical treatment in late 2011 or early 2012 for sinus infections. Applicant had subsequently developed bone spurs near his sinuses which prevented proper drainage, causing increased infection. There is no dispute that applicant's medical condition is "100% related" to the injuries sustained as a result of the criminally injurious conduct.

{¶5} In its decision, the panel of commissioners noted that in previous cases the statute of limitations had been tolled pursuant to R.C. 2743.68, based upon applicant's pain, persistent medical problems, post-traumatic stress disorder, and short-term memory loss. *In re Preston*, Ct. of Cl. No. 2006-21140 VI (Dec. 4, 2007); *In re Jones*, Ct. of Cl. No. V2011-60590 (Oct. 23, 2012). The panel noted that it lacked equitable powers; however, a judge of the Court of Claims has the discretion to determine whether equity should be exercised to toll the statute of limitations contained in R.C. 2743.68. *Id.* The Assistant Attorney General stated that he would defer to the court's discretion as to whether to exercise its equitable authority.

{¶6} 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. *In re Swint*, Ct. of Cl. No. V2004-60679, 2007-Ohio-1421. Based upon the unique nature and circumstances presented in this matter, and in the interests of justice, the court finds that plaintiff has presented sufficient evidence to toll the statute of limitations contained in R.C. 2743.68. Therefore, the decision of the panel of commissioners is reversed and the case is remanded to the Attorney General for investigation and decision.

PATRICK M. MCGRATH
Judge

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ORDER

{¶7} Upon review of the evidence, the order of the panel of commissioners is reversed and the case be remanded to the Attorney General for investigation and decision.

{¶8} IT IS HEREBY ORDERED THAT

{¶9} The order of February 4, 2014, (Jr. Vol. 2287, Pages 139-142) is reversed;

{¶10} This claim is remanded to the Attorney General for further investigation and decision;

{¶11} Costs assumed by the reparations fund.

PATRICK M. MCGRATH
Judge

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