[Cite as *In re Allen*, 2015-Ohio-5678.]

Court of Claims of Ohio
Victims of Crime Division
The Ohio Judicial Center
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IN RE: BONNIE ALLEN

BONNIE ALLEN

Applicant
Case No. 2013-00733 VI

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

ORDER OF A THREE-COMMISSIONER PANEL

{¶1} On February 10, 2012, applicant Bonnie Allen filed a compensation application as a result of ongoing incidents of domestic violence that occurred from 1995 through 2004 and were committed by her ex-husband, Richard Cook. On March 6, 2013, the Attorney General issued a finding of fact and decision determining that applicant was eligible for an award of reparations as a result of five separate incidents of domestic violence that occurred in Ohio from 2000 through 2004 and were reported to law enforcement, and granted her an award of reparations for prescription medication and for travel expenses to her counselor in the total amount of $169.79. The Attorney General denied certain of applicant's claims for counseling and prescription expenses on the basis of collateral source availability, and denied her request for travel expenses related to prosecuting the offender for violating the terms of a protection order as not compensable. In addition, the Attorney General denied applicant's claims for certain prescription medications and medical expenses related to a herniated disc, as well as a request for a Jacuzzi tub on the basis that they were not

causally related to the five reported instances of domestic violence which served as the basis of her claim.

{¶2} On May 8, 2013, applicant submitted a request for reconsideration, wherein she stated that her treating physician, Dr. Scanlon, prescribed a whirlpool tub as treatment for her back injuries, which Dr. Scanlon stated were a direct result of ongoing domestic violence. Applicant also asserted that her back surgeon referred her to an urologist who stated in medical records that her back injuries were related to domestic violence. Applicant argued that the prescription for a whirlpool tub, medical records, and counseling records show a causal relation between domestic violence and her back injuries. On November 20, 2013, the Attorney General rendered a Final Decision finding no reason to modify the initial decision. On December 19, 2013, applicant filed a notice of appeal from the Final Decision of the Attorney General. After a series of continuances, a hearing was held before this panel of commissioners on November 20, 2014, at 10:00 a.m. Applicant and her attorney, Melissa Furhmann, attended the hearing, as well as Assistant Attorney General Lauren Angell, who represented the state of Ohio.

{¶3} As a preliminary matter, the parties presented Joint Exhibits 1 and 2, with regard to mileage reimbursement. These exhibits show that applicant is entitled to mileage reimbursement for a June 27, 2012 trip to Cleveland Municipal Court to attend a hearing for the offender's violation of a civil protection order; counseling sessions with Anita Moreno from April 2, 2007 through November 7, 2008; and counseling sessions with Barbara Maher from September 21, 2007 through November 7, 2008, in the total amount of $319.62, which shall be awarded.

{¶4} The central issue in this appeal is whether applicant's back injuries and related expenses arose out of the incidents of domestic violence that constitute the criminally injurious conduct. Applicant testified that she was married to Richard Cook for 11 years and had four children with him. From 1995 through 1996, applicant lived

with Cook in Hawaii on a Navy base. They returned to Parma, Ohio, where she lived for approximately ten years. Applicant initiated divorce proceedings in 2005 and eventually moved to Pennsylvania with her children out of fear for her safety. Applicant testified that she was a victim of ongoing domestic violence throughout her marriage. Although she filed police reports regarding some of the incidents, applicant testified that she did not report every domestic violence incident to police for various reasons, including not having access to a telephone and fear of retaliation.

{¶5} Applicant testified that Cook caused her back injuries in the following ways. At one point in time prior to her divorce being finalized, Cook dragged applicant along a chain-link fence from a moving vehicle. Applicant also testified that Cook "body slammed" her by jumping from stairs and landing on top of her on the floor. Applicant further testified that Cook grabbed her by her legs and pulled her to the floor approximately 50 times during the course of their marriage, which resulted in repeated strikes to her back. Applicant also testified that Cook sprained her legs by twisting them. Applicant admitted that she did not seek medical attention for either the fence dragging incident or the body slamming incident. The evidence also shows no police report exists regarding either incident.

{¶6} According to applicant, her back surgeries to repair herniated discs and central core nerve damage in 2006 and again in 2010 performed by Dr. Gordon Bell are directly related to the ongoing domestic abuse. According to applicant, she told Dr. Bell, Dr. Scanlon (her family physician), and Dr. Goldman (her urologist), that the back injuries were related to ongoing domestic violence. Applicant also testified that she has fallen multiple times since the first surgery as a result of nerve damage and that she suffers from numbness in her legs.

{¶7} The Attorney General argued that applicant has failed to prove both that she reported any injury to her back as a result of domestic violence, and that any back injury is causally related to the criminally injurious conduct. The Attorney General also noted

that applicant has a history of back injuries including multiple falls, two car accidents, and a report of injuring her back while moving a stove. Although the Attorney General acknowledged that applicant reported in 2006 that she believed her back injuries were related to domestic violence, the Attorney General contends that applicant has failed to prove by a preponderance of the evidence that her back injuries are causally related to the criminally injurious conduct.

{¶8} The Attorney General presented the testimony of John Cunningham, M.D., M.S., who reviewed the records in applicant's claim file and wrote a report. Dr. Cunningham is board certified in preventative and occupational medicine and routinely evaluates medical records for fitness to work determinations.

{¶9} According to Dr. Cunningham, he reviewed applicant's medical records and her reports to law enforcement and focused on issues regarding injuries to her back. According to Dr. Cunningham's review, on November 17, 1997, applicant was seen in the emergency room after a rear-end motor vehicle accident, where her discharge diagnosis was acute lumbosacral strain with right sciatica. X-rays taken at that time showed "bilateral sacralization of L5 on S1 with slight narrowing of the L5 on S1 disc space." Otherwise, no fracture or dislocation was noted.

{¶10} On November 29, 2002, applicant slipped and fell on ice. On October 29, 2003, applicant was seen for back pain as the result of moving a stove. X-rays were negative for fracture at that time. On July 25, 2006, Dr. Scanlon noted that an MRI revealed a large disc herniation between the fourth and fifth lumbar vertebra which was pressed against the membrane surrounding applicant's spinal cord. On January 17, 2007, Dr. Bell reported that applicant had degenerative disc disease at L4-5. On January 29, 2007, applicant was seen in the emergency room after a motor vehicle accident, where x-rays revealed a "decrease in lumbar lordosis" but were otherwise unremarkable. On September 24, 2007 and March 11, 2008, applicant reported to medical providers that she had fallen. In 2010, Dr. Bell performed a second surgery on

applicant's back, described as a "re-do" discectomy at L4-5. A CT scan at that time revealed chronic degenerative disc disease at fourth and fifth vertebral level.

{¶11} In Dr. Cunningham's opinion, applicant suffers from degenerative disc disease that was not caused by any acute incident of domestic violence, but, rather, is congenital in nature. Dr. Cunningham notes that applicant suffered three possible incidents of acute injury to her back, including two motor vehicle accidents and one incident of injury to her back while moving a stove. Although Dr. Cunningham did not perform a physical examination of applicant, he testified that he has routinely performed reviews of medical records over his 40-year medical career. Dr. Cunningham also acknowledged that the February 17, 2002 incident of applicant being pulled forcefully off of a bed could result in an acute injury, however, applicant refused medical treatment at that time, and, as a result, there is no medical record to substantiate any injury.

{¶12} On December 19, 2014, applicant submitted additional documentation regarding Dr. Cunningham's payment from the Attorney General's office for consulting work from 2007 to the present. Over the Attorney General's objection, Applicant's Exhibit A shall be admitted, and the additional documentation filed on December 19 shall be marked as Applicant's Exhibit A-2 and admitted as well.

{¶13} An applicant has the burden of proof to satisfy the Court of Claims Commissioners that the requirements for an award have been met. *In re Rios*, 8 Ohio Misc.2d 4, 455 N.E.2d 1374 (Ct. of Cl. 1983).

{¶14} Initially, the panel notes that former R.C. 2743.60(A) states: "The attorney general, a court of claims panel of commissioners, or a judge of the court of claims shall not make or order an award of reparations to a claimant if the criminally injurious conduct upon which the claimant bases a claim never was reported to a law enforcement officer or agency." The evidence presented at the hearing shows that applicant did not report either the fence dragging incident or the body slamming incident to law enforcement. In addition, applicant did not seek medical treatment for either

incident. Although applicant asserted that she did not have access to a telephone during a portion of her marriage and that she did not report all incidents of domestic violence because she feared retaliation, applicant did not testify with any specificity regarding why she was able to report some instances but not these two, which might show a causal connection to a back injury. As a result, this panel cannot make a determination that applicant had good cause not to report either incident. Therefore, pursuant to R.C. 2743.60(A), the panel is constrained to consider only the reported incidents of domestic violence in this claim.

{¶15} The applicant has the burden of proof, by a preponderance of the evidence, to establish the economic loss sustained was causally related to the criminally injurious conduct. *In re Clark*, V82-32238jud (5-8-84). The applicant must produce evidence which furnishes a reasonable basis for sustaining her claim. If the evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, she fails to sustain the burden as to such issue. *In re Staten*, V2011-60051tc (5-27-11), 2011-Ohio-4321, citing *Landon v. Lee Motors, Inc*. 161 Ohio St. 82, 118 N.E.2d 147 (1964). The uncorroborated statement of the applicant does not constitute sufficient proof, by a preponderance of the evidence, to establish a specific element of the claim. *In re Minadeo*, V79-3435jud (10-31-80).

{¶16} Upon review of the evidence presented at the hearing and the contents of the claim file, the panel finds that applicant has failed to prove, by a preponderance of the evidence, that any back injury was causally related to the criminally injurious conduct of domestic violence that was reported to law enforcement. A review of the police reports shows that the sole incident that could be construed as resulting in any injury to applicant's back is a report dated February 17, 2002, wherein applicant reported that the offender forcefully pulled her off of a bed. According to the police report, applicant immediately thereafter ran to the police station to report the incident but she refused medical treatment at the time. (Pages 10-2 and 10-3 of the transmitted

file.) Although the panel does not doubt that applicant was a victim of ongoing domestic violence, she has failed to prove, by a preponderance of the evidence, that her herniated disc was proximately caused by any of the incidents of domestic violence that were reported to law enforcement. Based upon applicant's medical history of congenital disc disease, multiple motor vehicle accidents, and multiple falls, the panel finds that applicant has produced evidence that furnishes a basis for only a guess, among different possibilities, as to proximate cause of her back injuries. Therefore, the decision of the Attorney General is AFFIRMED, in part, and MODIFIED, in part.

{¶17} IT IS THEREFORE ORDERED THAT:

{¶18} Joint Exhibits 1 and 2, Applicant's Exhibits A and A2, and State's Exhibits 1-5 are ADMITTED;

{¶19} The November 20, 2013 Final Decision of the Attorney General is MODIFIED to render judgment in favor of applicant in the amount of $489.41, which represents the original award of allowable expense in the amount of $169.79, plus $319.62 as represented in Joint Exhibits 1 and 2, and AFFIRMED in all other respects;

{¶20} 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;

{¶21} 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 Cuyahoga County Prosecuting Attorney and to:

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