

[Cite as *In re Nethers*, 2018-Ohio-5476.]

IN RE: AMBER NETHERS AMBER NETHERS Applicant	Case No. 2018-00302VI Magistrate Daniel R. Borchert <u>DECISION OF THE MAGISTRATE</u>
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{¶1} On April 11, 2017, applicant, Amber Nethers, filed a compensation application as the result of being assaulted by her husband, William Nethers, on March 5 and 8, 2017. On August 14, 2017, applicant filed a second compensation application concerning an assault by William Nethers which occurred on July 30, 2017.

{¶2} On June 5, 2017, the Attorney General issued a finding of fact and decision concerning the incidents of March 5 and 8, 2017. The Attorney General found applicant had met the jurisdictional requirement for an award of reparations and applicant was granted an award in the amount of \$848.00, for attorney fees associated with the successful receipt of a Civil Protection Order (“CPO”).

{¶3} On December 11, 2017, the Attorney General issued a finding of fact and decision concerning the compensation application filed on August 14, 2017. It should be noted that the Attorney General treated this application as a supplemental compensation application. Applicant was granted a supplemental award of reparations in the amount of \$3,573.44, of which \$3,401.44 was paid directly to applicant’s medical providers, \$20.00 paid directly to applicant, and \$152.00 paid to her attorney for another CPO. The Attorney General noted that the second CPO concerned her husband, the same as the first CPO addressed in the Attorney General’s June 5, 2017 decision.

{¶4} On December 14, 2017, applicant submitted a request for reconsideration. Applicant asserted the incidents that occurred on March 5 and 8, 2017 were separate incidents from the domestic violence which occurred on July 30, 2017. Accordingly, the August 14, 2017 application should not have been treated as a supplemental

compensation application, but a wholly new application. Therefore, each civil protection order should be treated separately.

{¶5} On February 14, 2018, the Attorney General rendered a Final Decision finding no reason to modify the decision issued on December 11, 2017. On February 28, 2018, applicant filed a notice of appeal from the Attorney General's Final Decision of February 14, 2018. Hence, a hearing was held before this magistrate on June 14, 2018 at 10:00 a.m.

{¶6} Attorney Mark Poole appeared on behalf of the applicant, while Assistant Attorney General Robin Mathews represented the State of Ohio.

{¶7} Applicant stated on August 14, 2017, a compensation application was filed to recover medical expenses and additional attorney's fees incurred for the domestic violence incident of July 30, 2017. However, the Attorney General considered this filing to be a supplemental compensation application to the claim applicant filed on April 11, 2017. Applicant asserted this determination was in error since the second incident occurred approximately five months after the first incident. Applicant argued each incident should be treated separately since they were two separate incidents of physical assault. Accordingly, the Attorney General's decision limits the victim from being compensated for attorney fees in these two separate situations.

{¶8} The Attorney General countered that the second application was deemed a supplemental application since these events concerned an ongoing course of domestic violence which dated back until at least 2016. The Attorney General noted the court has consistently held ongoing domestic violence should be treated as one incident of criminally injurious conduct.

{¶9} Applicant stated there were two separate incidents of domestic violence. In March 2017, applicant was assaulted by her husband which resulted in her husband being convicted of Domestic Violence. An application was filed as the result of this incident and the claim was paid. The award included \$848.00 for reimbursement of

attorney fees in conjunction with the obtaining of a CPO. On July 30, 2017, applicant was again assaulted by her husband. He was convicted of felony Domestic Violence and Felonious Assault and is currently confined for these offenses. Subsequently, applicant filed for divorce.

{¶10} Applicant argued these were two distinct acts of criminally injurious conduct. Applicant argued that if this case involved a stranger who assaulted the victim, they would be considered two separate incidents for which two compensation applications would have been filed. But due to the fact that the offender was the victim's husband, both incidents are considered a continuation of a single act of domestic violence.

{¶11} In this case, there were two separate incidents of domestic violence, separately charged, and separately resulting in a conviction of the offender.

{¶12} Applicant pointed out that the Attorney General reliance on the holdings *In re Mickunas*, Ct. of Cl. No. V2005-80452tc (October 28, 2005), 2005-Ohio-6054 and *In re Shook*, Ct. of Cl. No. V2006-20348tc (April 16, 2007), aff'd jud (September 18, 2007), 2007-Ohio-5696 are misplaced since the applicants in those cases asserted the ongoing nature of domestic violence to avoid a denial due to the two-year statute of limitations. The details of the criminal proceeds against the particular offenders in those cases are unknown.

{¶13} Applicant stated both *Mickunas* and *Shook* involve a pattern of domestic violence while in the case at bar, there are two distinct incidents. Applicant argued this concept of ongoing criminal conduct is not applied to any other crime victims other than domestic violence victims and unfairly penalizes those victims. Accordingly, applicant requests this court reverse the decision of the Attorney General and find two separate and distinct incidents occurred which should result in two claims being processed.

{¶14} The Attorney General pointed out that domestic violence is treated differently than other crimes since domestic violence is ongoing in nature. The Attorney

General cited statistics from the National Domestic Violence Hotline which reveals on the average, a victim suffers domestic violence seven times before they leave their abuser.

{¶15} Initially, the abuse occurred on March of 2017. A CPO was granted in April of 2017. Within a week after the issuance of the CPO, applicant filed a Motion to have the CPO terminated. The Motion was granted in April. When the July 2017 incident occurred, the victim and the offender continued to have contact. As a matter of fact, they were returning from a camping trip when the second incident occurred.

{¶16} The Attorney General quoted a statement that applicant provided on March 9, 2017, when she sought the first CPO, which in pertinent part stated:

“William has been very violent in the past with me. In November 2016, William kicked me in the face and hit me in the face. I ran to my dad’s house. I wrote a statement for the police then as well. I can’t tell you how many times this has happened.”

{¶17} Accordingly, the Attorney General argued that he was correct in treating domestic violence as an ongoing situation, rather than an isolated incident as applicant contends. Therefore, the Final Decision should be affirmed.

{¶18} Applicant conceded that Domestic Violence differs from other criminal offenses, due to the nature of the relationship involved. However, to universally treat all incidents of domestic violence as a single incident, does a disservice to the victims. Each case should be analyzed on its own merits. The circumstances should dictate whether each incident is treated separately or as an ongoing course of conduct. Whereupon, the hearing was concluded.

{¶19} The issue presented to this court is whether the domestic violence experienced by the applicant on March 7 and 8, 2018, and July 30, 2018, should be treated as two separate cases of criminally injurious conduct, as argued by applicant or a single incident for the purpose of processing this claim, as argued by the Attorney General.

{¶20} Traditionally, this court has treated separate incidents of Domestic Violence as a single incident for purposes of processing a claim. A panel of commissioners in *In re Mickunas* stated the following:

"Since the inception of the Victims of Crime Program, when a victim of repeated and prolonged criminally injurious conduct (such as sexual abuse or domestic violence) the court has grouped the series of incidents together to create a single criminally injurious conduct incident to accommodate victims as well as program administrators. This method of grouping various incidents of criminally injurious conduct was undertaken to diminish the bureaucratic nightmare that would result by requiring a victim to file a reparations application every time he/she was assaulted. We believe to do otherwise, would result in a high volume of filings that essentially involves the same act and covers many of the same expenses. Moreover, requiring multiple single filings would also necessitate that program administrators separate and apportion expenses for multiple claims: A daunting and chaotic chore to undertake for multiple claims." *Mickunas* at ¶ 4.

{¶21} A review of the Licking County Sheriff's Department, field case report, 2017-00006686 dated March 8, 2017, revealed the following:

"On Wednesday 3-8-17 at 1036 hrs., Capt. Evans and I were dispatched to 4289 Hickman Rd. Lot #3, to check on an Amber Nethers. The caller, Kim, was from Amber's employer, Licking Memorial Hospital, and she hadn't heard from Amber and knew there was a history of domestic violence at Amber's residence. Report #6681-17..."

"Upon our arrival we made contact with Amber Nethers. Amber advised her husband William (David) Nethers had already left the residence prior to our arrival. Amber had two black eyes and a scratch across her nose. I asked her how she got the black eyes. Amber advised she received them Sunday evening from her husband..."

"Amber advised they did not talk to each other at all Monday all day. She advised David left for work this morning as usual.*** She advised when he returned several hours later, he drove the car into their trailer. She advised he hit

the house where their children's bedroom is. She stated he came in the house and started yelling at her. Amber stated she took the kids and went into their bedroom and locked the door. She stated her parents called the authorities for her...

"Amber advised David was not physical tonight with her however, she stated this has been an ongoing thing with him and she is afraid for her and her children's safety."

{¶22} In a statement applicant made when she sought a CPO in March of 2017, she stated the following:

"William has been very violent in the past with me. In November 2016, William kicked me in the face and hit me in the face. I ran to my dad's house. I wrote a statement for the police then as well. I can't tell you how many times this has happened."

{¶23} In the Licking County Sheriff's Department, field case report of July 31, 2017, it stated the following:

"I was only able to get a verbal statement from Amber due to her injuries. I asked Amber if she had somewhere safe to go for the night and she said yes, she was going home with her mom....

"While I was doing the investigation, Amber's four-year old daughter came up to me and asked if I could go find her dad because he is always beating mommy up."

{¶24} In the Order of Protection issued by the Licking County Court of Common Pleas dated August 7, 2017, the Court found the following:

"On July 30, 2017 respondent struck petitioner in the face several times causing a fracture, black eyes, and a bloody nose. The assault occurred in the presence of the parties' children. Respondent has been charged with felony domestic violence. Respondent has previously committed domestic violence against petitioner."

{¶25} Finally, on a Medical Information Report dated November 3, 2017, and submitted to the Attorney General, Dr. Donald Deshetler stated the following:

"On 3/5/17 pts. husband hit her, breaking wrist. Two weeks earlier had given her two black eyes. At the time having anxiety symptoms, stable but no PTSD

symptoms. Seen on 8/15/2017 with orbital fracture. Pts. husband punched her in the face 7/30/17."

{¶26} Based upon the review of the information contained in the case file and the arguments of the parties, I find, by a preponderance of the evidence, that applicant was a victim of ongoing domestic violence. Accordingly, the Attorney General was correct in considering the application filed on August 14, 2017, to be a supplemental application of the original application filed on April 11, 2017.

{¶27} Therefore, I recommend the Attorney General's decision of February 14, 2018 be affirmed.

{¶28} *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 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: