[Cite as *In re Pulliam*, 2018-Ohio-5478.]

IN RE: FRANCES PULLIAM	Case No. 2018-00900VI
	Magistrate Daniel R. Borchert
FRANCES PULLIAM	
Applicant	DECISION OF THE MAGISTRATE

{¶1} On June 23, 2017, applicant, Frances Pulliam, filed a compensation application as the result of an assault which occurred on March 23, 1997.

{¶2} On January 9, 2018, the Attorney General issued a finding of fact and decision wherein it was determined applicant qualified as a victim of criminally injurious conduct as defined in R.C. 2743.51(C)(1). Applicant was granted an award of reparations in the amount of $6,131.93, of which $420.00 represented clothing taken as evidence (R.C. 2743.51(U)), $608.17 represented prescription expenses, $475.00 represented services provided by Beaumont Behavior Health, and $4,628.76 represented work loss for the period January 1, 1999 through December 31, 1999. Applicant's claim for services rendered by Illinois Associates in Psychiatry, Shopard Patel, M.D., and Astra Behavioral Health were denied for lack of supporting documentation. Finally, the Attorney General denied compensation for the loss of a St. Christopher's Medal since this was a property loss claim not compensable under the provisions of the victim's compensation program.

{¶3} On January 23, 2018, applicant submitted a request for reconsideration. Applicant asserted her work loss was calculated incorrectly and she should be granted additional work loss based on her inability to return to her former employment. Applicant also contended the amount paid for medical treatment was too low and did not reflect her medical history.

{¶4} On May 22, 2018, the Attorney General rendered a Final Decision. The Attorney General granted applicant an additional award in the amount of $1,064.07, of

which $529.07 represents additional prescription expenses and $535.00 for expenses incurred with Astra Behavioral Health.

{¶5} On June 1, 2018, applicant filed a notice of appeal from the May 22, 2018 Final Decision of the Attorney General. Hence, a hearing was held before this magistrate on August 30, 2018 at 11:00 a.m.

{¶6} Applicant, Frances Pulliam appeared via telephone while Assistant Attorney General Robin Mathews appeared in person.

{¶7} Applicant stated she disagreed with the Attorney General's calculation of her work loss for the year 1999. Applicant related that she had filed a prior claim with the Attorney General's office which included medical documentation which revealed she was unable to work from the date of the criminal action, March 23, 1997 until 2002. Furthermore, she stated it was unfair to use her income from 1997, the year she was sexually assaulted, since it only included income from January to March 20, 1997. Applicant stated due to a divorce from her husband in 1996, she cannot receive tax returns for 1996 or prior years without the signature of her ex-husband which he would refuse to do.

{¶8} Upon cross-examination, applicant acknowledged she was employed prior to 1997. However, she also stated she did not supply the Attorney General with tax returns for years prior to 1997, or the 1997 tax return.

{¶9} Applicant was questioned about when she first saw Dr. Clemens, however, she stated she did not recall. Applicant did acknowledge that medical records from Dr. Clemens were filed in a prior claim concerning a stalking incident whereupon, applicant's testimony was concluded.

{¶10} The Attorney General called William Fulcher, Deputy Director of Investigations for the Attorney General's Office. Mr. Fulcher stated he calculated work loss in the case at bar.

{¶11} Mr. Fulcher stated the amount of work loss granted in this claim totaled $4,620.00. The calculation of work loss was based on documentation contained in applicant's prior claim. Since documentation prior to 1997 could not be obtained, the Attorney General's Office used the Social Security Administration information for the year 1997 which revealed an income of $7,573.00. This amount was used since it was higher than the amount reported in 1996, which was $6,927.00. Mr. Fulcher related a calculation for earning five years prior to the incident would have been utilized but this information was not available.

{¶12} While documentation from Dr. Clemens revealed she was unable to work from 1997 through 2002, Dr. Clemens did not see the applicant until 2001. Accordingly, the Attorney General could not credibly rely on Dr. Clemens' statements to determine when applicant could not work, since he did not treat her until three years after the assault.

{¶13} The work loss calculations used the income earned in 1997, $7,573.00, minus the $1,986.00 earned in 1999, which resulted in a work loss award of $4,620.00, which was reduced by the tax liability involved. Furthermore, her income rose in the following years until 2002, when she began receiving Social Security Disability Benefits which outweighed her work loss.

{¶14} The Attorney General directed Mr. Fulcher to a document filed by applicant with her request for reconsideration. The document asserted that applicant's income for 1997 should have been $30,292. Mr. Fulcher stated no documentation has ever been supplied which confirmed applicant earned this amount in past or future years.

{¶15} Mr. Fulcher's attention was then directed to documentation received from the Social Security Administration. This document revealed applicant's earnings for the following years were: 1996, $6,927.00; 1997, $7,573.00; 1998, $8,543.00; 1999, $1,986.00; 2000, $8,543.00; and 2001, $8,497.00, respectively.

{¶16} Mr. Fulcher stated in conversation with applicant, she indicated she was not able to get tax returns for 1996 or prior years. However, she was informed if she contacted the Social Security Administration they would be able to provide her with this information. However, this documentation was never received. Applicant was informed if she received this information on a later date she would be able to file a supplemental compensation application.

{¶17} Upon cross-examination, Mr. Fulcher acknowledged that he has not investigated many cases where the criminal conduct occurred twenty-one years prior. However, he stated tax returns could be located if they were filed and in situations where tax returns could not be located, a printout from Social Security revealing earnings could be obtained if requested by applicant. Mr. Fulcher stated in the past, joint tax returns have been used.

{¶18} Applicant explained in her situation the prior tax returns were not available since they were filed with her assailant and he would not give her permission. However, Mr. Fulcher indicated that a printout from Social Security revealing her income history would be sufficient. Mr. Fulcher acknowledged receiving documentation from the Social Security Administration revealing the amount of Social Security Disability Benefits received, but not documentation evidencing her work history.

{¶19} While Mr. Fulcher verbally told applicant to obtain a printout of her work history from Social Security, the letter in the file only indicated that applicant should present evidence of her work history. It did not specifically mention the Social Security Administration.

{¶20} Mr. Fulcher stated that his office received a 1099 for 1996. The amount on this statement was $42,000. Mr. Fulcher revealed this amount was not used since applicant reported to the Social Security Administration that her income for 1996 was $6,927.00. Since this program only deals with net income not gross income the amount reported to the Social Security Administration was used.

{¶21} When questioned concerning the income for 1997 of $7,573.00, Mr. Fulcher stated no documentation supported that this income was for only three months. While applicant referred to letters submitted by Dr. Clemens, applicant had not sought treatment from him until years after the initial attack and Dr. Clemens' documentation was filed in an earlier claim concerning stalking and not the rape which occurred on March 23, 1997. While applicant argued that the letter from Dr. Clemens and her earnings for 1997 revealed only three months of work loss. However, documentation from the Social Security Administration revealed earnings for 1998, 1999, 2000, and 2001. Furthermore, applicant did not see Dr. Clemens until 2001, so he could not have made a determination about applicant's ability to work in 1997.

{¶22} Upon re-direct examination, the Attorney General clarified that documentation obtained from Social Security concerned both a history of earnings as well as benefits received from Social Security Disability Benefits.

{¶23} The Attorney General directed Mr. Fulcher's attention to a memorandum which he wrote on May 21, 2018. The Attorney General directed Mr. Fulcher to read the following portion of the memorandum: "If Ms. Pulliam can get a printout from the Social Security Administration that her average income in the years of 1992-1996 was more than the $7,573.00 amount used to calculate her work loss, she should file a Supplemental Compensation Application with that documentation and we would recalculate her work loss." Mr. Fulcher acknowledged that this memorandum would have been attached to the Attorney General's Final Decision in this case. Accordingly, applicant would have received written notification that she should obtain the printout from Social Security.

{¶24} Upon re-cross examination, Mr. Fulcher stated that the Social Security Administration would have information concerning her reported income during the years 1992-1996. Whereupon, the testimony of Mr. Fulcher was concluded.

{¶25} In conclusion, applicant stated the information provided by Dr. Clemens that she was unable to work after April 1997 should be relied on. Accordingly, applicant's earnings for 1997 only revealed three months in earnings so this amount should have been calculated to include a full year of earnings. Applicant asserted she cannot obtain past earnings from the Social Security because too much time has passed. Accordingly, her annualized earnings in 1997 should be the basis for calculating her work loss.

{¶26} The Attorney General stated based on the available documentation work loss in this claim was properly calculated. While acknowledging a receipt of a 1099 form for 1997, that form does not accurately reflect applicant's income. The best evidence is the work history information supplied by the Social Security Administration. Furthermore, the letter from Dr. Clemens revealed treatment occurred in 1999, and it is unclear how he would have been able to make a determination of her inability to work in 1997. Finally, if applicant obtained the needed information concerning work history from the Social Security Administration the Attorney General would consider a supplemental compensation application. Accordingly, the Attorney General's decision should be affirmed because it was reasonable and lawful. Whereupon, the hearing was concluded.

{¶27} R.C. 2743.51(G) in pertinent part states:

"(G) 'Work loss' means loss of income from work that the injured person would have performed if the person had not been injured. . ."

{¶28} There are two elements necessary to prove work loss. First, once must prove work loss was sustained by showing an inability to work. Second, one must prove the monetary amount of work loss. Both elements must be proven by corroborating evidence. *In re Berger*, 91 Ohio Misc.2d 85, 698 N.E.2d (Ct. of Cl. 1994).

{¶29} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims 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 (Ct. of Cl. 1983).

{¶30} Black's Law Dictionary Sixth Edition (1990) defines burden of proof as: "the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court."

{¶31} Black's Law Dictionary Sixth Edition (1990) defines preponderance of the evidence as: "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not."

{¶32} From review of the evidence contained in the case file, the testimony of applicant and the Attorney General's witness and the arguments of the parties, I find the Attorney General's calculation of applicant's work loss was proper based upon the evidence supplied to the Attorney General's office. If applicant can provide information concerning her work history from 1992-1996, this would be the proper subject of a supplemental compensation application.

{¶33} Therefore, I recommend the Attorney General's decision of May 22, 2018 be affirmed.

{¶34} *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:

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Sent to S.C. Reporter 4/29/19