

IN THE COURT OF CLAIMS OF OHIO

IN RE: BRIAN POWELL

Case No. 2024-00165VI

BRIAN POWELL

Magistrate Holly True Shaver

Applicant

DECISION OF THE MAGISTRATE

{¶1} On May 1, 2025, the court held a hearing on Brian Powell’s (“applicant”) appeal of the Attorney General’s (“AG”) February 1, 2024 Final Decision. Applicant appeared via telephone at the hearing and was represented by attorney Michael Falleur. Assistant Attorney General Yan Chen appeared on Zoom videoconferencing on behalf of the State of Ohio.

Procedural History

{¶2} On July 26, 2023, applicant filed an application seeking lost wages stemming from an assault that occurred in May 2023. In the Finding of Fact and Decision, the AG denied applicant’s claim on two bases. First, the AG asserted that applicant was not employed at the time of the alleged assault. Second, the AG found no evidence that an assault was reported to law enforcement. In applicant’s Request for Reconsideration, counsel for applicant stated that initially, applicant had provided an incorrect date for the assault. Counsel for applicant noted that the date of the assault was April 28 or 29, 2023. After further investigation, the date of the alleged assault was determined to have occurred on April 27, 2023. In its Final Decision, the AG denied applicant’s claim because even though applicant reported the incident in August 2023, the AG concluded that the delay in reporting resulted in a lack of evidence to substantiate that an assault, constituting criminally injurious conduct, occurred.

Testimony and Oral Argument

{¶3} Applicant testified that on April 27, 2023, he had been working at McDonald’s for two days. Applicant stated that he told one of his coworkers that the coworker’s son, a teenaged male named Andre, was residing at the same homeless

shelter where applicant was residing, in Lancaster, Ohio. Around lunchtime on April 27, 2023, applicant went to the shelter for lunch when Andre asked him to talk outside. Applicant testified that Andre was upset because applicant told his father that he was living at the shelter, when Andre's father thought Andre was living at a rehabilitation center for substance abuse. Applicant asserted that outside of the shelter Andre swung at him, kicked him, and broke his ankle. Applicant took the bus to the hospital where he received medical treatment. Applicant testified that while he did not remember filing a police report at the hospital, he did inform hospital staff that he was assaulted and wanted to file a police report. Applicant stayed in the hospital for a week after surgery and underwent three months of physical therapy. Applicant's medical bills were covered by Medicaid, however, he missed work due to his injuries and did not return to McDonald's.

{¶4} Applicant's mother, Sherri Stone, who lives in North Carolina, testified that applicant called her from the parking lot of the shelter after the assault. Stone asserted that she was told a report of the assault was made at the hospital and she assumed that law enforcement went to the hospital to take applicant's statement.

{¶5} Lancaster Police Sergeant James Hall testified that he took applicant's report of assault on August 30, 2023. Hall testified that applicant initially reported an incorrect date in May for the assault. Further, Hall stated that applicant told him he was reporting the assault to keep his compensation claim viable. Hall stated that upon investigation with Fairfield Medical Center, he was unable to find that a police report had been made. Further, Hall stated that all reports of crimes at the hospital are logged in the Lancaster Police Department records system, but Hall found no report of the assault in those records.

{¶6} The hospital records that were filed by counsel for applicant on May 20, 2024, show that applicant presented to the emergency department at Fairfield Medical Center on April 27, 2023. In the "History of Present Illness" section, it states that applicant appeared "complaining of injury to the left ankle prior to arrival. Patient reports he was attacked at the homeless shelter by another resident. He reports that another resident took his knee took him down and caused an injury to the left ankle." Applicant was diagnosed with a left ankle fracture and underwent surgery a few days later.

{¶7} In closing, counsel for applicant argued that applicant's testimony about the assault, applicant's statements to his mother immediately after the assault, and the hospital records prove, by a preponderance of the evidence, that an assault occurred when Andre kicked applicant and caused injury to applicant's ankle. Counsel asserted that case law allows applicant to rely on hospital staff to report an assault to law enforcement and satisfy the reporting requirement found in R.C. 2743.60(A). Further, counsel argued because applicant eventually reported the assault to law enforcement, R.C. 2743.60(A) cannot be a justification for denial of the claim.

{¶8} In contrast, the AG argued that the legislative intent behind R.C. 2743.60(A) is to increase solvability, therefore, because applicant reported the assault months after the fact, incorrectly, and only to keep his claim viable, the requirement in R.C. 2743.60(A) has not been satisfied in this case. Further, the AG argued that the uncorroborated statements of an applicant alone do not prove that criminally injurious conduct occurred. The AG asserted that applicant's testimony, his mother's testimony, and the medical records all provide conflicting ways that applicant injured his ankle. Applicant testified that Andre kicked him, the medical records state that Andre took applicant's knee out then injured his ankle, and applicant's mother testified that Andre pushed applicant to the ground then broke applicant's ankle.

Law and Analysis

{¶9} R.C. 2743.61(B) states, in pertinent part:

If upon hearing and consideration of the record and evidence, the court decides that the decision of the attorney general appealed from is reasonable and lawful, it shall affirm the same. If the court decides that the decision of the attorney general is not supported by a preponderance of the evidence or is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter judgment thereon.

{¶10} Applicant has the burden of proof 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 (Ct. of Cl. 1983). Further, the court has previously held that an uncorroborated statement of an applicant does not meet applicant's burden of proof to establish that criminally injurious conduct occurred. *In re Henderson*, 2012-Ohio-6364

(Ct. of Cl.). However, the credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. The court is free to believe or disbelieve all or any part of the testimony of each witness. *State v. Antill*, 176 Ohio St. 61 (1964).

{¶11} As stated in R.C. 2743.60(A), “[t]he attorney general or 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.” In this case, applicant did report the assault to law enforcement, although belatedly so. An oral report to a police officer satisfies the reporting requirement. *In re Rea*, 61 Ohio Misc.2d 732 (Ct. of Cl. 1989). In addition, the medical records show that applicant told medical staff that another resident at the homeless shelter attacked him and injured his ankle. Reporting criminally injurious conduct to hospital staff satisfies the reporting requirement in R.C. 2743.60(A). See, *In re Ross*, 2004-Ohio-3233 (Ct. of Cl.) Therefore, R.C. 2743.60(A) is not a valid basis for denial, despite the AG’s argument that the delay in reporting makes it difficult to investigate a claim.

{¶12} As to whether applicant is a victim of criminally injurious conduct, R.C. 2743.51(C)(1) states, in relevant part that criminally injurious conduct is “any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death.” After a review of the evidence in the claim file, the testimony and evidence presented at the hearing, and arguments of counsel, the magistrate finds that applicant has proven, by a preponderance of the evidence that he was assaulted by another individual at the homeless shelter in Lancaster, Ohio, that applicant suffered personal injury from the assault which resulted in a fractured ankle, and that an assault is punishable by fine, imprisonment, or death. The testimony of applicant’s mother and the hospital records corroborate applicant’s testimony that another resident at the homeless shelter, who was the son of applicant’s coworker, assaulted applicant and fractured applicant’s ankle outside the homeless shelter on April 27, 2023. After the assault, applicant immediately telephoned his mother and told her what had happened to him. When applicant reported to Fairfield Medical Center, he told medical personnel that he had been attacked by another resident at the shelter. When applicant belatedly reported the incident to Sergeant Hall, applicant stated the same

explanation of what had occurred: that he was assaulted outside the shelter by a coworker's son who had been upset that applicant told his father that he was not in a rehabilitation center but was staying at the homeless shelter. In addition, documentation in the claim file shows that applicant was employed at McDonald's at the time of the assault. The magistrate finds the testimony of applicant and his mother was credible about how the incident occurred. Therefore, the magistrate finds that applicant's version of events was credible, and that he has proven by a preponderance of the evidence that he qualifies as a victim of criminally injurious conduct.

{¶13} Upon review of the evidence in the case file, in consideration of the arguments and testimony presented at the hearing, and for the reasons stated above, the magistrate finds that the Final Decision of the AG is unreasonable. Therefore, the magistrate recommends that the AG's February 1, 2024 Final Decision be REVERSED and that the claim be REMANDED to the AG for economic loss calculations consistent with this decision.

{¶14} *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).*

HOLLY TRUE SHAVER
Magistrate

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

Filed 6/25/25
Sent to S.C. Reporter 9/9/25