

[Cite as *In re McGill*, 2005-Ohio-812.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: BARRY D. MC GILL	:	Case No. V2002-50820
BARRY D. MC GILL	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
(2000-34215)	:	
	: : : : :	

{¶ 1} The applicant filed a supplemental compensation application seeking reimbursement of expenses incurred with respect to a February 4, 1999 assault incident. On March 24, 2004, the Attorney General denied the applicant’s claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove his inability to work from February 1, 2001 through December 31, 2001. On March 31, 2004, the applicant filed a request for reconsideration contending that he lost income from 1999 through 2003 as a result of the criminally injurious conduct. On June 1, 2004, the Attorney General denied the applicant’s claim once again. On June 9, 2004, the applicant filed a notice of appeal to the Attorney General’s June 1, 2004 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on November 17, 2004 at 11:10 A.M.

{¶ 2} The applicant, applicant’s counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel’s consideration. Barry McGill testified that he sustained a back injury as the result of the assault that occurred on February 4, 1999. Mr. McGill stated that at the time of the criminally injurious conduct, he was employed as a teacher with Columbus Public Schools. Mr. McGill testified that he held a variety of different

jobs after the assault, however he was unable to retain any of those jobs due to injuries he suffered as a result of the February 4, 1999 assault.

{¶ 3} Counsel noted that on November 3, 2001, the applicant's claim for disability benefits was approved by the State Teachers Retirement System of Ohio (STRS). Counsel noted that STRS prohibits a member on disability from obtaining employment as a teacher. Therefore according to counsel, Mr. McGill was required to terminate his employment with the Teresa Dowds School of the Homeless and the Ohio State University Law Library or face losing his disability benefits.

{¶ 4} Moreover, counsel also noted that the applicant's treating physician, Gordon J. Korby, D.O., D.C., stated, in a medical report dated July 13, 2001, that 60 percent of the applicant's inability to work was the result of the assault on February 4, 1999. Therefore, counsel asserted that the applicant should receive a work loss award based upon his 1999 earnings of \$46,000.00 minus the \$17,000.00 he earned from other jobs, reduced by 40 percent based upon Dr. Korby's assessment.

{¶ 5} The Assistant Attorney General maintained that the applicant failed to present sufficient evidence to prove that he incurred additional work loss. The Assistant Attorney General asserted that Mr. McGill's inability to work, during the time period in question, was due to unrelated back injuries and ongoing mental health issues. The Assistant Attorney General also argued that the applicant failed to present any evidence that he sought substitute employment.

{¶ 6} From review of the file and with full and careful consideration given to the information presented at the hearing, this panel makes the following determination. We find that

the applicant has proven, by a preponderance of the evidence, that he incurred additional work loss between February 1, 2001 and November 30, 2001 based upon the following calculations:

\$ 46,000.00	total income earned in 1999
<u>-\$17,000.00</u>	earned income from substitute jobs in 1999
\$ 29,000.00	net earned income in 1999
\$ 29,000.00	net earned income in 1999
<u>-\$11,600.00</u>	40 percent reduction based on Dr. Korby's assessment
\$ 17,400.00	work loss incurred from 2/1/04 through 11/30/01
\$17,400.00	work loss incurred from 2/1/01 through 11/30/01
<u>-\$ 2,900.00</u>	two months of earned income
\$ 14,500.00	gross work loss from 2/1/01 through 11/30/01

{¶ 7} We also note that the Assistant Attorney General has failed to present any expert medical testimony, which would refute the medical findings of Dr. Korby. Therefore, the June 1, 2004 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings.

IT IS THEREFORE ORDERED THAT

{¶ 8} 1) The June 1, 2004 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;

{¶ 9} 2) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings;

{¶ 10} 3) 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;

{¶ 11} 4) Costs are assumed by the court of claims victims of crime fund.

KARL H. SCHNEIDER
Commissioner

JAMES H. HEWITT III
Commissioner

GREGORY P. BARWELL
Commissioner

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

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