

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

65 South Front Street, Fourth Floor
Columbus, OH 43215
614.387.9860 or 1.800.824.8263
www.cco.state.oh.us

IN RE: RANDALL K. REED

Case No. V2007-90455

RANDALL K. REED

Applicant

Commissioners:
Thomas H. Bainbridge, Presiding
Gregory P. Barwell
Tim McCormack

ORDER OF A THREE-
COMMISSIONER PANEL

{¶1} Randall Reed (“Mr. Reed” or “applicant”) filed a reparations application seeking reimbursement of expenses incurred with respect to an October 9, 2005 motor vehicle incident. The applicant reported that he was injured in an automobile accident caused by Brandon Carr (“offender”), an intoxicated driver. On April 10, 2007, the Attorney General denied the claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove that he qualified as a victim of criminally injurious conduct under any of the motor vehicle exceptions listed under R.C. 2743.51(C)(1). On April 17, 2007, the applicant filed a request for reconsideration asserting that the offender had been driving recklessly. On June 13, 2007, the Attorney General denied the claim once again. On June 18, 2007, the applicant filed a notice of appeal to the Attorney General’s June 13, 2007 Final Decision. On September 6, 2007 at 10:45 A.M., this matter was heard by this panel of three commissioners.

{¶2} The applicant, applicant’s attorney and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel’s

consideration. Mr. Reed testified that on October 9, 2005 he and the offender, a fellow co-worker, had been attending an OSU party when the offender asked Mr. Reed if he could drive his vehicle to the store in order to purchase more beer for the party. The applicant admitted that he did not wish to drive due to his own alcohol consumption. The applicant stated that he agreed to let the offender drive his vehicle after the offender informed him that he was able to drive. The applicant explained that he and the offender left the party at half-time. However while driving back to the party, the offender began speeding on a gravel road and lost control of the vehicle. The applicant related that the car spun, struck an embankment, rolled over, and landed upside down. The applicant explained that prior to the collision, he had warned the offender to stop speeding. Mr. Reed related that after the crash, the offender requested that they report the car as stolen because he had a family and “could not go down for it.” The offender then exited the vehicle and left the scene. The applicant stated that the police were unable to determine who was driving the vehicle and hence no criminal charges were filed.

{¶3} Mr. Reed testified that he eventually exited the vehicle and managed to walk to a nearby house, where he collapsed on the front porch. The applicant stated that he resumed consciousness two days later at the hospital. The applicant explained that he remained hospitalized after the crash for one week. Mr. Reed related that he returned to work two weeks after the incident. Mr. Reed testified that he received monies from his insurance company and from the offender’s insurance company.

{¶4} After hearing Mr. Reed’s testimony, the Assistant Attorney General conceded that he qualifies as a victim of criminally injurious conduct under R.C. 2743.51(C)(1)(e) and that she was unable to prove that the applicant acted as an accomplice to the offender on October 9, 2005 in violation of R.C. 2743.60(B). The

Assistant Attorney General requested that the June 13, 2007 Final Decision be reversed and that the claim be remanded to the Attorney General for total economic loss calculations. Applicant's counsel agreed with the Attorney General's recommendation.

{¶5} R.C. 2743.51(C)(1)(e) defines criminally injurious conduct as follows:

(1) For the purposes of any person described in division (A)(1) of this section, 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, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:

(e) The person engaging in the conduct acted in a manner that caused serious physical harm to a person and that constituted a violation of section 4549.02 or 4549.021 [4549.02.1] of the Revised Code.

{¶6} R.C. 2743.60(B)(1) states:

(B)(1) The attorney general, a panel of commissioners, or a judge of the court of claims shall not make or order an award of reparations to a claimant if any of the following apply:

(a) The claimant is the offender or an accomplice of the offender who committed the criminally injurious conduct, or the award would unjustly benefit the offender or accomplice.

(b) Except as provided in division (B)(2) of this section, both of the following apply:

(i) The victim was a passenger in a motor vehicle and knew or reasonably should have known that the driver was under the influence of alcohol, a drug of abuse, or both.

(ii) The claimant is seeking compensation for injuries proximately caused by the driver described in division (B)(1)(b)(i) of this section being under the influence of alcohol, a drug of abuse, or both.

(c) Both of the following apply:

(i) The victim was under the influence of alcohol, a drug of abuse, or both and was a passenger in a motor vehicle and, if sober, should have reasonably known that the driver was under the influence of alcohol, a drug of abuse, or both.

(ii) The claimant is seeking compensation for injuries proximately caused by the driver described in division (B)(1)(b)(i) of this section being under the influence of alcohol, a drug of abuse, or both.

{¶7} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, we find that the applicant qualifies as a victim of criminally injurious conduct under R.C. 2743.51(C)(1)(e). The offender had been operating the applicant's vehicle while under the influence of alcohol, was speeding at a rate of approximately 70-75 mph on a gravel road, and then immediately fled the scene. The applicant was in a coma for two days after the incident and remained hospitalized for one week. Therefore, we find that the offender's conduct resulted in serious physical

harm to the applicant in violation of R.C. 4549.021. We also find that the Attorney General failed to prove that the applicant acted as an accomplice to the offender who committed the criminally injurious conduct. Therefore, the June 13, 2007 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for total economic loss calculations and decision.

{¶8} IT IS THEREFORE ORDERED THAT

{¶9} 1) The Attorney General's August 23, 2007 motion for continuance is hereby GRANTED;

{¶10} 2) The June 13, 2007 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;

{¶11} 3) This claim is remanded to the Attorney General for total economic loss calculations and decision;

{¶12} 4) 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;

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

THOMAS H. BAINBRIDGE
Presiding Commissioner

GREGORY P. BARWELL
Commissioner

TIM MC CORMACK
Commissioner

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

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