

[Cite as *In re Preston*, 2007-Ohio-7275.]



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: CHARITY (POWELL) PRESTON

CHARITY (POWELL) PRESTON

(V1991-91837)
Applicant

Case No. V2006-21140

DECISION

Judge J. Craig Wright

{1}This matter came on to be considered upon the Attorney General's appeal from the August 3, 2007 order issued by the panel of commissioners. The panel's determination reversed the final decision of the Attorney General, which denied applicant's supplemental compensation application based upon the finding that applicant had failed to file the supplemental compensation application within five years of the last decision; on or before February 4, 1999. The panel determined that applicant's supplemental compensation application should be allowed based upon applicant's medical condition and "the court's ability to exercise equitable powers."

{2}R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455

N.E.2d 1374. The panel found, upon review of the evidence, that applicant presented sufficient evidence to meet her burden.

{3}The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: “If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate

the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final.”

{4}The Attorney General asserts that applicant failed to show that her condition justified tolling of the statute of limitations. The Attorney General argued that the court’s equitable power resides only in a judge of the court of claims and not in a panel of three commissioners.

{5}R.C. 2743.68(B) provides as follows:

“A claimant may file a supplemental reparations application in a claim if the attorney general, a court of claims panel of commissioners, or judge of the court of claims, within five years prior to the filing of the supplemental application, has made any of the following determinations:

“(A) That an award, supplemental award, or installment award be granted;

“(B) That an award, supplemental award, or installment award be conditioned or denied because of actual or potential recovery from a collateral source;

“(C) That an award, supplemental award, or installment award be denied because the claimant had not incurred any economic loss at that time.”

{6}In its decision, the panel made a factual finding that “applicant suffers from severe medical conditions resulting from the criminally injurious conduct.” The panel specifically noted that information in the claim filed showed that applicant’s psychiatric condition had worsened, including memory loss. Additionally, the panel referenced a

letter from applicant's physician that documented "debilitating incapacity of low back pain from a shattered spine, chronic bowel problems, post traumatic stress disorder" and other symptoms resulting from a close range gunshot wound to her abdomen.

{7}Although the court has reservations regarding the panel's reference to its exercise of "equitable power," the court finds that the information in the claim file supports the panel's decision to allow applicant's supplemental reparations application.

{8}Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicant had shown by a preponderance of the evidence that she was entitled to an award of reparations.

{9}Based on the evidence and R.C. 2743.61, it is the court's opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, this court affirms the decision of the three-commissioner panel.

J. CRAIG WRIGHT
Judge



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ORDER

Judge J. Craig Wright

{10} Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and the Attorney General's appeal must be denied.

IT IS HEREBY ORDERED THAT:

{11}1) The order of August 3, 2007, (Jr. Vol. 2265, Pages 190-193) is approved, affirmed and adopted;

{12}2) This claim is REMANDED to the Attorney General for economic loss calculations and decision;

{13}3) This order is entered without prejudice to applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

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ORDER

{14}4) Costs assumed by the reparations fund.

J. CRAIG WRIGHT
Judge

AMR/cmd

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

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Jr. Vol. 2267, Pgs. 79-80
To S.C. Reporter 9-28-11