

[Cite as *In re Perkins*, 2007-Ohio-4508.]

**IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION**

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IN RE: VICKIE L. PERKINS	:	Case No. V2006-20721
VICKIE L. PERKINS	:	Commissioners:
Applicant	:	Gregory P. Barwell, Presiding
_____	:	Tim McCormack
_____	:	Clarence E. Mingo II
	:	<u>ORDER OF A THREE-</u>
	:	<u>COMMISSIONER PANEL</u>
	: : : : :	

{¶1} Vickie Perkins (“applicant” or Ms. Perkins”) filed a reparations application seeking reimbursement of expenses incurred as a result of a September 1, 2004 assault incident. On December 2, 2005, the Attorney General denied the claim pursuant to R.C. 2743.60(A) contending that the applicant failed to report the matter to law enforcement officials. On February 2, 2006, the applicant filed a request for reconsideration indicating that she had filed a police report on September 1, 2004. On July 18, 2006, the Attorney General granted the applicant an award of reparations totaling \$4,310.42, of which \$289.07 represented allowable expense and \$4,021.35 represented work loss incurred from September 1, 2004 through September 29, 2004 and from June 6, 2005 through August 1, 2005. On July 27, 2006, the applicant filed a notice of appeal to the Attorney General’s July 18, 2006 Final Decision. At 10:30 A.M. on May 24, 2007, this matter was heard by this panel of three commissioners.

{¶2} The applicant, applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral argument for the panel's consideration. Ms. Perkins testified that at the time of the assault she was employed with National Security working an eight hour shift as a security officer. Ms. Perkins explained that as a result of the assault, she sustained injury to her right knee and was unable to work. The applicant stated, as a veteran, that she was referred to and treated by Dr. Matthew Lawless ("Dr. Lawless"), an orthopedic surgeon, at the VA Hospital in Dayton, Ohio. Ms. Perkins explained that Dr. Lawless informed her that she had two treatment options: rehabilitation or surgery. The applicant stated that she opted for rehabilitation first, but was eventually advised that surgery would be necessary to repair the damage to her knee.¹

{¶3} Ms. Perkins testified that she attended her December 27, 2004 pre-op appointment in order to undergo surgery on January 6, 2005. However, Ms. Perkins testified that she was advised two or three days prior to the January 2005 surgery by someone from Dr. Lawless's office that the surgery was being postponed. The surgery was rescheduled for April 2005, but the applicant stated that she cancelled that surgery to attend a pre-planned cruise in celebration of her daughter's graduation in May 2005.

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The applicant was diagnosed as having a right knee anterior cruciate ligament (ACL) tear with lateral meniscus anterior horn tear.

The applicant testified that she eventually underwent surgery on June 6, 2005 and was not released to return to work until August 31, 2005.

{¶4} Applicant's counsel stated that based upon Ms. Perkins' testimony, she should be granted an award for total work loss incurred from September 1, 2004 through August 31, 2005, since the applicant's work loss stemmed from the September 1, 2004 assault. After hearing the applicant's testimony, the Assistant Attorney General conceded to only reimbursing the applicant an award for work loss incurred from September 1, 2004 through December 27, 2004, (based upon the September 23, 2005 medical report submitted by Dr. Lawless), and from June 6, 2005 through August 31, 2005.

{¶5} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. We find that the applicant incurred work loss from September 1, 2004 through December 27, 2004 and from June 6, 2005 through August 31, 2005. The applicant failed to sufficiently demonstrate how her claimed work loss between December 28, 2004 and June 5, 2005 relates to the criminally injurious conduct. This panel finds that a determination of whether a victim of criminally injurious conduct is entitled to an award for economic loss requires application of the principles of traditional proximate cause standards. The quantum of evidence required is a preponderance of competent, material, and relevant evidence of record on that issue. Furthermore, damages are recoverable only for the natural and probable consequences of the injury sustained. The evidence must tend to show that reasonable certainty of such a result exists. See

In re Toney, V79-3029jud (9-4-81), *In re Saylor* (1982), 1 Ohio Misc.2d 1, and *In re Bailey*, V78-3484jud (8-23-82). Therefore, the July 18, 2006 decision of the Attorney General shall be modified and the claim shall be remanded to the Attorney General for economic loss calculations and decision.

{¶6} IT IS THEREFORE ORDERED THAT

{¶7} 1) The July 18, 2006 decision of the Attorney General is MODIFIED to render judgment in favor of the applicant;

{¶8} 2) This claim is remanded to the Attorney General for payment of the July 18, 2006 award totaling \$4,310.42;

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

{¶10} 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;

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

GREGORY P. BARWELL
Presiding Commissioner

TIM MC CORMACK

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Commissioner

CLARENCE E. MINGO II
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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ORDER