

Court of Claims of Ohio Victims of Crime Division

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IN RE: VICKI A. KRANCEVIC

VICKI A. KRANCEVIC

Applicant

Case No. V2007-90757

Commissioners:
Randi Ostry LeHoty, Presiding
Thomas H. Bainbridge
Tim McCormack

ORDER OF A THREE COMMISSIONER PANEL

{¶1} On April 21, 2003, the applicant, Vicki Krancevic, filed a compensation application as the result of an assault which occurred on May 20, 2002. On February 17, 2004, the Attorney General issued a finding of fact and decision finding the applicant was a victim of criminally injurious conduct. However, the applicant's claim for work loss was denied and a \$14.00 expense incurred for allowable expense could not be paid since it did not exceed \$50.00 as required by R.C. 2743.191(B)(1).

{¶2} On July 26, 2005, the applicant filed a supplemental compensation application. On November 22, 2005, the Attorney General issued a supplemental finding of fact and decision and awarded the applicant \$6,571.39 of which \$14.00 represented parking expenses and \$6,557.39 represented work loss for the period May 3, 2003 through November 30, 2005.

{¶3} On March 13, 2007, the applicant filed a second supplemental compensation application. On August 10, 2007, the Attorney General issued a second supplemental finding of fact and decision. The Attorney General's investigation revealed that the applicant had received excess benefits from the Bureau of Workers' Compensation ("BWC") and the State Teachers Retirement System ("STRS"). The excess benefits amounted to \$9,263.25. On the supplemental compensation application the applicant asserted she incurred additional allowable expenses in the amount of \$5,313.68. Accordingly, the Attorney General asserted the applicant received excess benefits in the amount of \$3,949.57 which should be offset against additional future economic losses. The applicant also sought an award for the costs for the installation of a whole house air conditioning unit. The Attorney General found this expense was not causally related to the injuries she suffered at the time of the criminally injurious conduct. On September 5, 2007, the applicant submitted a request for reconsideration.

{¶4} On November 5, 2007, the Attorney General rendered a Final Decision. The Attorney General rejected the applicant's request for whole house air conditioning since the applicant had provided no documentation to establish by a reasonable degree of medical certainty that the air conditioning unit was necessary for her remedial treatment and care. The Attorney General also denied the applicant's claim for health insurance premiums and additional work loss, since these expenses would be offset by the overpayments received from BWC and STRS. On November 21, 2007, the applicant filed a notice of appeal from the November 5, 2007 Final Decision of the Attorney General.

{¶5} On May 15, 2008, the Attorney General filed a brief. The Attorney General stated after further investigation it was evident that the applicant did not receive excess

collateral source benefits in the amount of \$9,263.25. Based on the Attorney General's new calculations the applicant received excess benefits in the amount of \$1,851.86. However, because she incurred additional economic loss in the amount of \$5,313.68, the Attorney General recommended that she should be granted an additional award in the amount of \$3,461.82, which includes work loss through December 31, 2006. Nevertheless, with respect to the air conditioning unit and payment for the loss of a fourteen-percent employer contribution to STRS, the Attorney General reaffirmed its denial. Hence, on June 12, 2008, a hearing was held before this panel of commissioners at 10:50 A.M.

{¶16}The applicant, Vicki Krancevic, the applicant's attorney, Daniel DePiero and Assistant Attorney General Stacy Hannan attended the hearing and offered testimony and statements for the panel's consideration. The applicant's attorney stated that the parties had reached an agreement with respect to the allowable expenses incurred, including the air conditioning unit. The only issues that remained concerned an alleged overpayment from BWC and STRS and the loss of the fourteen percent employer contribution to STRS. Assistant Attorney General Hannan stated the Attorney General's office is now satisfied based on medical documentation submitted by the applicant's treating doctors, to a reasonable degree of medical certainty that the air conditioning unit is medically necessary. However, since the expense has not been incurred it was agreed the best approach to follow was for the applicant to file a Remedial Treatment and Care Agreement. Ms. Hannan also stated in accordance with the brief previously filed that the applicant should be granted an additional award for economic loss in the amount of \$3,461.82. Finally, the Attorney General asserted the

fourteen-percent employer contribution to STRS should not be considered an economic loss.

{¶7} Mr. DePiero called the applicant, Vicki Krancevic as a witness. Ms. Krancevic testified concerning the events surrounding the criminally injurious conduct and the subsequent medical treatment she has been receiving. The applicant's attorney related that they were in agreement with the Attorney General's Exhibit A which provided information concerning collateral source reimbursement.

{¶8} Mr. DePiero then presented Exhibit 1, the applicant's projected salary and Exhibit 2, a copy of the applicant's Master's Degree. Based upon these exhibits the applicant contends if she would have been able to continue teaching and not have been injured she would have been able to earn additional income in the amount of \$56,000.00. Finally, the applicant declared that her employer contributed ten percent per pay to her pension benefits. The applicant's attorney then presented Exhibit 4, a document dealing with the percent her employer contributed to STRS. The applicant related that her pension plan has the option of converting it to an annuity combined with timed benefits. The applicant stated that due to the nature of her injuries she did not expect to have a long tenure in the teaching profession. Accordingly, she felt the best pension option for her would be a joint and survivor annuity with a partial lump sum payment. The applicant asserted that an annuity would be calculated based on her lifetime contributions plus annual compound interest plus her employer's contributions. The joint and survivor annuity can be divided so a portion would be available to her surviving children after her death and she could also take a partial lump sum and combine the other features of the annuity. The applicant testified due to the continuing nature of her injuries, she will opt to take a partial lump sum benefit and divide the

remaining annuity between a monthly benefit and a survivor's annuity for the benefit of her children after her death. The applicant asserted as of June 30, 2007 if she had not been injured, the balance of the cash value of her annuity would have been \$115,000.00. However, due to her injury and the loss of her and her employer's contribution plus the loss of compound interest of these sums the cash value of her annuity was \$25,079.32. Accordingly, she contends she had a monetary loss of \$89,920.68.

{¶9} Upon cross examination, the applicant related that she was able to return to work on a part-time basis (sixty percent) during the second semester of last school year 2006-2007 and that she returned to work full time for school year 2007-2008, with Americans with Disabilities Act (ADA) accommodations. The applicant asserted she would be able to continue working on a full-time basis as long as she continues to receive ADA accommodations. Whereupon the applicant's testimony was concluded.

{¶10} Assistant Attorney General Hannan called John Martin, economic loss supervisor, to testify. Mr. Martin testified that he calculated the economic loss suffered by the applicant in this case. The applicant received collateral source benefits from STRS and BWC. BWC paid benefits to the applicant in the amount of \$104,772.48 for the period March 8, 2003 through December 31, 2006, while STRS paid \$62,845.80, for the same disability period. Mr. Martin outlined prior problems with calculation of collateral source benefits which had been done in the past. Mr. Martin summarized the problems dealing with income tax filing status, incorrect start date of the disability period, and failure to consider new contract terms and start date. While the applicant received excess collateral source benefits, they were initially improperly calculated,

which resulted in an excess overpayment. Ms. Hannan presented Exhibit B, a document showing the calculations for the excess collateral source benefits.

{¶11}Mr. Martin then testified concerning the employer's contribution to STRS. He related he spoke with Nicole Wilson from STRS concerning this matter. Based on Mr. Martin's conversation with Ms. Wilson, he related that the only situation where an employer's contribution would result in money received by the applicant, would be where the applicant chose to cash out of the system and receive a lump sum payout rather than receive a pension. Mr. Martin stated the fourteen percent employer contribution contributes to the solvency of the retirement fund as a whole and does not relate to an individual employee receiving a pension. Ms. Hannan presented states Exhibits C and D, which reflect the economic losses incurred by the applicant.

{¶12}Upon questioning by Commissioner Bainbridge, Mr. Martin testified that during the years the applicant was off work neither the applicant nor her employer contributed to the pension fund. However, this would not affect the amount she received in pension funds since this would be based on her earnings history. She would not have any access to the employer's contributions nor would the lack of employer's contribution affect the amount of pension she would receive in the future.

{¶13}Commissioner LeHoty questioned Mr. Martin concerning the years of service credit the applicant accumulated while she was off work. Mr. Martin stated he did not know whether or not the applicant would receive five years of service credit for the time period she was unable to work due to her disability.

{¶14}Assistant Attorney General Hannan clarified that the Attorney General's calculations included the employee's contribution into STRS for the years she was unable to work, however, the employer's contributions were not considered. Mr. Martin

stated that was correct, however, since the employer's contributions are not considered when calculating a pension, the lack of employer's contributions would have no effect on the total amount of the pension received when the applicant elects to retire.

{¶15} Commissioner McCormack then addressed the issue of whether the air conditioning unit was an allowable expense. Commissioner McCormack expressed interest in a September 29, 2007 memorandum written by economic loss investigator Stephanie Howard wherein both BWC and the victim's program stated whole house air conditioning did not qualify as an allowable expense. Commissioner McCormack also noted that the Final Decision of the Attorney General dated November 5, 2007, reached the same conclusion. Ms. Hannan stated that if supported by medical documentation air conditioning could be considered an allowable expense. In this case, letters from two physicians were submitted by the applicant indicating that the air conditioning was medically necessary. Commissioner McCormack asserted if this panel is to find that a whole house air conditioning unit is an allowable expense the following questions should be addressed in writing: 1) the causal connection between the injuries sustained at the time of the criminally injurious conduct and the medical necessity of the air conditioning unit; 2) the onset of the disability and whether or not there were any pre-existing conditions; and 3) the extent and the continuing nature of the disability. Commissioner Bainbridge stated in addition to the above mentioned factors he would also request that the memorandum address the diagnosis, symptoms, and background of the applicant's medical condition over the years.

{¶16} Whereupon the hearing was concluded.

R.C. 2743.51(F)(1) in pertinent part states:

“Allowable expense’ means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care . . .”

{¶17}R.C. 2743.51(G) in pertinent part states:

“Work loss’ means loss of income from work that the injured person would have performed if the person had not been injured . . .”

{¶18}The applicant has the burden of proof, by a preponderance of the evidence, to establish the economic loss sustained was causally related to the criminally injurious conduct. *In re Clark*, V82-32238jud (5-8-84).

{¶19}From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determinations. We find the applicant has failed to prove by a preponderance of the evidence that she lost five years of service time due to the injuries sustained. Also, the applicant has failed to meet her burden with respect to the loss of the fourteen percent employer contribution to STRS. We adopt the calculations contained in the Attorney General’s Exhibits B, C, and D with respect to the overpayment from BWC and STRS the applicant received plus the additional allowable expenses the applicant incurred. Accordingly, the applicant should be granted an additional award in the amount of \$3,461.82.

{¶20}On August 14, 2008, the Attorney General filed a post-hearing memorandum addressing the whole house air conditioning issue. The Attorney General recommended, based on letters supplied by the applicant’s treating physicians, John K. Maskarinec, D.O. and Marek Buczek, M.D., Ph.D, that an award for the installation of the air conditioning unit be granted. Dr. Maskarinec, in a letter dated

November 20, 2007, stated in pertinent part: “Victoria Krancevic had no medical need for central air conditioning prior to her [sic] May 20, 2002. The medical necessity of a climate controlled environment and central air conditioning is needed in order to control exacerbations of the symptoms during times of high heat and humidity. High heat and humidity directly affect the onset of symptoms of Ms. Krancevic’s RSP symptoms.”

{¶21} Dr. Buczek in a letter dated April 16, 2007, stated in pertinent part:

{¶22} “Unfortunately, (the applicant) does not have air conditioning at home, which would greatly benefit her condition and prevent any future flare-ups. . . She will definitely benefit from staying in a climate-controlled environment throughout the summer.”

{¶23} The Attorney General found that this medical evidence met the “remedial treatment and care” standard found in R.C. 2743.51(F)(1).

{¶24} After careful review of the Attorney General’s post-hearing memorandum and the letters presented by the applicant’s treating physicians, we make the following determination. We find the only evidence presented with respect to the issue of the compensability of the air conditioning unit has been presented by the applicant’s treating physicians. No evidence to contradict or rebut the opinions of the physicians has been presented or can be found in the claim file. Accordingly, the applicant has satisfied her burden of proof and the air conditioning unit qualifies as an allowable expense. Therefore, this portion of the claim shall be remanded to the Attorney General for calculation of the economic loss incurred. Therefore, the November 5, 2007 decision of the Attorney General shall be reversed.

IT IS THEREFORE ORDERED THAT

{¶25}1) The November 5, 2007 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;

{¶26}2) This claim is remanded to the Attorney General for payment of the award in the amount of \$3,461.82 and remanded for calculation of the expense associated with the purchase of the air conditioning unit;

{¶27}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;

{¶28}4) The court costs shall be assumed by the court of claims victims fund.

RANDI OSTRY LE HOTY
Presiding Commissioner

THOMAS H. BAINBRIDGE
Presiding Commissioner

TIM MC CORMACK
Commissioner

Case No. V2007-90757

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ORDER

Filed 1-29-09

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To S.C. Reporter 7-13-11