



Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center
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IN RE: TRACY L. SHARPLESS

TRACY L. SHARPLESS

Applicant

Case No. V2008-31002

Commissioners:
Randi Ostry LeHoty, Presiding
Gregory P. Barwell
Clarence E. Mingo

ORDER OF A THREE COMMISSIONER PANEL

{1}On January 28, 2008, the applicant, Tracy Sharpless, filed a compensation application as the result of an injury sustained while on duty as a Whitehall Police officer. On August 25, 2008, the Attorney General issued a finding of fact and decision finding the applicant had met the jurisdictional requirements in order to receive an award of reparations and granting an award in the amount of \$8,782.23, which represented work loss for the period January 26 through August 8, 2008. On September 22, 2008, the applicant submitted a request for reconsideration. The applicant asserts that the award does not accurately reflect the loss of overtime wages. On November 18, 2008, the Attorney General rendered a Final Decision granting the applicant an additional award in the amount of \$4,154.39, of which \$1,184.40 represented mileage expenses incurred to receive medical treatment and \$2,969.99 represented lost overtime wages. On December 18, 2008, the applicant filed a notice of appeal from the November 18, 2008 Final Decision of the Attorney General. Hence, a hearing was held before this panel of commissioners on March 18, 2009 at 9:30 A.M.

{2}The applicant, Tracy Sharpless, and his attorney, Jonathan Goodman appeared at the hearing, while the interests of the state of Ohio were represented by Assistant Attorney General Stacy Hannan.

{3}Both parties agreed that the only issue in contention at the hearing was the method of calculation used to determine the amount of overtime wage loss the applicant suffered. The applicant asserted the proper method of calculation is to subtract his 2008 earnings from his 2007 earnings and award him the difference, while the Attorney General contended an average of wages earned in 2006 and 2007 would more accurately reflect the loss suffered by the applicant.

{4}The applicant, Tracy Sharpless, testified that he had been employed as a Whitehall Police officer for sixteen years; he described that there were six sergeants in the Patrol Bureau and in 2006 he was ranked sixth by seniority. This seniority ranking was important since overtime work was offered to the most senior officer first. If that officer declined, it would be offered to the next senior officer and so forth. Therefore, the more seniority the better chance to have overtime pay opportunities. Officer Sharpless related that in 2007, the department experienced two retirements and two transfers, accordingly, the applicant's seniority ranking moved from fifth to second. He stated, due to his injury, he was off work from February 6 to September 15, 2008. During this seven and one half month period, the applicant lost the opportunity to work overtime. Accordingly, the applicant asserts the best measure for calculating his overtime wage loss is to subtract his 2008 earnings from his 2007 earnings. The applicant has submitted his tax returns to the Attorney General for the years in question and his regular wages were paid by the Whitehall Police Department for his period of disability. Whereupon, the applicant's testimony was concluded.

{5}The Attorney General stated based upon the applicant's testimony it appeared reasonable, in this case, to follow the calculation method outlined by the applicant, of course using the applicant's net wages to calculate any loss. Both the applicant and the Attorney General urged this panel to calculate work loss on a case-by-case basis which fairly and accurately reflects the loss suffered by the applicant in a particular case rather than adopt a general, one size fits all method of calculation. Whereupon, the hearing was concluded.

{6}R.C. 2743.51(G) states:

“(G) ‘Work loss’ means loss of income from work that the injured person would have performed if the person had not been injured and expenses reasonably incurred by the person to obtain services in lieu of those the person would have performed for income, reduced by any income from substitute work actually performed by the person, or by income the person would have earned in available appropriate substitute work that the person was capable of performing but unreasonably failed to undertake.”

{7}From review of the file and with full and careful consideration given to all information and testimony presented at the hearing, we find the applicant has incurred additional overtime work loss for the period February 6, 2008 to September 15, 2008. We adopt the method of calculation proposed by the applicant. Therefore, the applicant’s 2008 annual earnings should be subtracted from his 2007 annual earnings, reduced to net wages pursuant to the holding in *In re Eader* (1982), 70 Ohio Misc. 17, 24 O.O3d83, 434 N.E. 2d 757.

{8}We believe work loss should be calculated on a case-by-case basis, taking into consideration the specific employment situation involved. In the case at bar, based upon the testimony of the applicant concerning the increased availability of overtime hours due to his increase in rank in the Whitehall Police Department, we find the most accurate way to calculate his work loss is to use his annual earnings. The goal of all work loss calculations is to insure that applicants’ work loss accurately and fairly compensates them for the time they lost from their income producing activity.

{9}Therefore, the November 18, 2008 decision of the Attorney General is modified and the claim is remanded to the Attorney General for calculations and payment in accordance with this order.

IT IS THEREFORE ORDERED THAT

{10}1) The November 18, 2008 decision of the Attorney General is modified to grant the applicant an additional award for work loss for overtime wages lost for the period February 6, 2008 to September 15, 2008;

{11}2) This claim is remanded to the Attorney General for calculation and payment of the award in accordance with this order;

{12}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;

{13}4) Costs are assumed by the court of claims victims of crime fund.

RANDI OSTRY LE HOTY
Presiding Commissioner

GREGORY P. BARWELL
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: