

[Cite as *In re Staaf*, 2005-Ohio-5673.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: JOHN D. STAAF : Case No. V2004-61012
JOHN D. STAAF : ORDER OF A THREE-
Applicant : COMMISSIONER PANEL

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{¶ 1} John Staaf (“Mr. Staaf” or “applicant”) filed a reparations application seeking reimbursement of expenses incurred regarding a September 5, 2002 assault incident. On July 25, 2003, the Attorney General denied the claim under R.C. 2743.60(C) contending that the applicant had failed to fully cooperate with law enforcement officials in the investigation of the assault. The Attorney General also denied the claim under R.C. 2743.60(F) contending that the applicant had engaged in conduct that contributed to his assault. The Attorney General asserted that the applicant admitted to a police officer that he was in the area attempting to purchase crack cocaine when he was assaulted. On August 19, 2003, the applicant filed a request for reconsideration. On October 7, 2003, the Attorney General issued a Final Decision denying the claim once again. On September 28, 2004, the applicant filed a notice of appeal to the Attorney General’s Final Decision. Hence, a panel of three commissioners, in the interest of justice, heard this matter on July 27, 2005 at 10:40 A.M.

{¶ 2} Neither the applicant nor anyone on his behalf appeared at the hearing. An Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel’s consideration. Lieutenant Ronald Shank (“Lt. Shank”), a police officer with the

Canton Police Department, testified via telephone concerning his knowledge of the case. Lt. Shank explained that he conducted the follow-up investigation concerning the assault upon Mr. Staaf. Lt. Shank stated that he spoke with Mr. Staaf via telephone shortly after the incident. Mr. Staaf admitted to him that he had been in the area to obtain crack cocaine when he was robbed of approximately \$150.00 and assaulted. Lt. Shank noted for the panel that the scene of the assault was in a high crime and drug area. Finally, Lt. Shank stated that Mr. Staaf was uncooperative and that eventually he listed the case as inactive due to the applicant's unwillingness to assist in the investigation.

{¶ 3} Revised Code 2743.51(M) states:

(M) 'Contributory misconduct' means any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim.

{¶ 4} Revised Code R.C. 2743.60(F) states in part:

(F) In determining whether to make an award of reparations pursuant to this section, the Attorney General or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. The Attorney General, a panel of commissioners, or a judge of the court of claims shall reduce an award of reparations or deny a claim for an award of reparations to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or the victim.

{¶ 5} According to the statutory definition of “contributory misconduct” there are three elements that must be established before a prima facie case of contributory misconduct can be met: (1) conduct by the victim/applicant; (2) conduct that is unlawful or intentionally tortious; and (3) the conduct must have a causal relationship to the criminally injurious conduct.

{¶ 6} In this case, the applicant admitted to a law enforcement officer that he was at the scene of the assault to purchase crack cocaine. In *In re Paige* (1994), 66 Ohio Misc. 2d 156, 643 N.E. 2d 629, the court held that the victim’s admission of heroin possession within ten years of the criminally injurious conduct proved, by a preponderance of the evidence, that the victim had engaged in felonious conduct. Following the rationale in *Paige*, we believe the applicant’s admission to a police officer that he was in the area to engage in an unlawful act is sufficient proof that the applicant was engaging in contributory misconduct at the time of the assault. Lt. Shank testified that the area where the applicant was assaulted was a high crime and drug area. The applicant’s admission was also a statement against interest, which we deem to be reliable. We find that the applicant’s conduct was both intentionally tortious and unlawful, since he was attempting to purchase a controlled substance from an unauthorized seller. Based on the uncontradicted evidence presented, we find that the applicant’s claim for an award of reparations must be denied under R.C. 2743.60(F). Therefore, the October 7, 2003 decision of the Attorney General shall be affirmed under R.C. 2743.60(F).

IT IS THEREFORE ORDERED THAT

- 1) The October 7, 2003 decision of the Attorney General is AFFIRMED under to R.C. 2743.60(F);

- 2) This claim is DENIED and judgment is rendered for the state of Ohio;
- 3) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

LLOYD PIERRE-LOUIS
Commissioner

RANDI OSTRY LE HOTY
Commissioner

ID #\10-dld-tad-081205

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

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