



Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

IN RE: JEFFREY A. CHILDERS

Case No. 2014-00409 VI

JEFFREY A. CHILDERS

Applicant

Commissioners:
Daniel R. Borchert, Presiding
Anderson M. Renick
Holly True Shaver

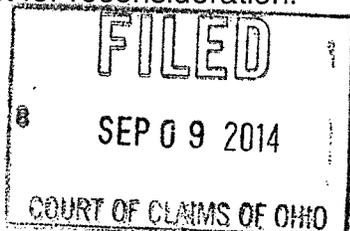
ORDER OF A THREE-
COMMISSIONER PANEL

On August 20, 2012, applicant, Jeffrey Childers, filed a compensation application as the result of an assault which occurred on August 15, 2011. On December 7, 2012, the Attorney General issued a finding of fact and decision determining that applicant qualified as a victim of criminally injurious conduct and granting an award in the amount of \$318.93, which represented \$313.60 for reimbursement of related medical expenses and \$5.33 for travel expenses.

The Attorney General denied applicant's claim for counseling expenses, work loss, replacement services loss, and dental expenses due to the lack of supporting documentation. Applicant's claim for evidence replacement was denied since none of applicant's clothing was retained by police as evidence nor was applicant's clothing damaged by medical personnel making medical assessment. Finally, applicant's request for replacement of his broken cell phone was denied since property loss is not a compensable expense.

On September 17, 2013, applicant filed a supplemental compensation application. On January 3, 2014, the Attorney General issued a finding of fact and decision for the supplemental compensation application. The Attorney General again denied applicant's claims for work loss and dental expenses. On January 27, 2014, applicant submitted a request for reconsideration.

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BY *Trisha Dailey*



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On March 25, 2014, the Attorney General rendered a Final Decision finding no reason to modify the decision of January 27, 2014. On April 22, 2014, applicant filed a notice of appeal from the March 25, 2014 Final Decision of the Attorney General. Hence, a hearing was held before this panel of commissioners on July 10, 2014 at 10:05 a.m.

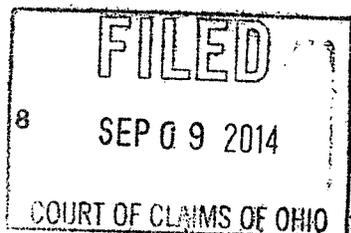
Applicant, Jeffrey Childers appeared at the hearing, while Assistant Attorney General Megan Hanke represented the state of Ohio.

Jeffrey Childers testified that prior to the criminal incident he had his dentures. However, prior to the start of the altercation he removed his dentures from his mouth and after he was assaulted he did not know what happened to them. He stated he told the police about the missing dentures but the police did not memorialize this fact in the police report. Mr. Childers stated he had been without his dentures for three years and cannot afford to replace them. He related he had the dentures in his hand prior to the beating and had no idea where the dentures were after he regained consciousness after the fight.

Upon questioning by the panel, applicant described in detail how the assault took place. He related that he received the dentures over twenty years ago so he did not have any dental records concerning the dentures. The Attorney General chose not to cross examine applicant. Whereupon applicant rested.

The Attorney General conceded that applicant was a victim of criminally injurious conduct as the result of the assault which occurred on August 15, 2011. However, the Attorney General stated no medical documentation supports damage to his dentures as the result of the assault and he has not incurred any expenses for the replacement of his dentures. Furthermore, the Attorney General contends that such expense represents property loss, which is not compensable under the Crime Victims Compensation Program. Accordingly, the Attorney General requests the Final Decision be affirmed.

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Upon questioning by the panel, the Attorney General agreed that dentures are included as being compensable pursuant to R.C. 2743.51(F)(1), however, since the dentures were lost, this claim should be considered a property loss claim. While the Attorney General conceded that the pictures included in the claim file reveal injury to the applicant's mouth, applicant received no medical treatment concerning this injury.

In reply, applicant admitted he did not see a dentist after the assault since he did not have the money to replace his dentures. Whereupon, the hearing was concluded.

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

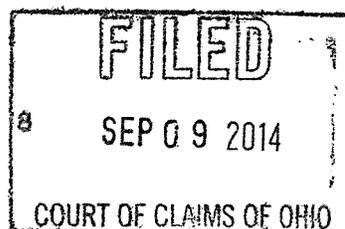
"Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care and including replacement costs for hearing aids; dentures, retainers, and other dental appliances; canes, walkers, and other mobility tools; and eyeglasses and other corrective lenses."

Black's Law Dictionary Sixth Edition (1990) defines preponderance of the evidence as: "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not."

Black's Law Dictionary Sixth Edition (1990) defines burden of proof as: "the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court."

The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St. 2d 230, 227 N.E.2d 212, (1967), paragraph one of the syllabus. The court is free to believe or disbelieve all or any part of each witness's testimony. *State v. Antill*, 176 Ohio St. 61, 197 N.E. 548 (1964).

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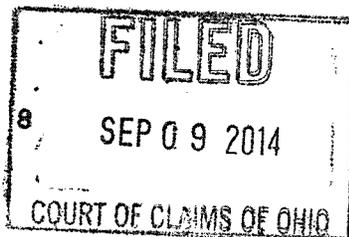
From review of the claim file and upon full and careful consideration given to the testimony of applicant and the arguments of the parties, we find applicant has proven, by a preponderance of the evidence, that he sustained the loss of his dentures as a direct result of the criminally injurious conduct. We found applicant's testimony credible and are convinced but for the assault his dentures would not have been lost. Furthermore, the language of R.C. 2743.51(F)(1) does not contain a requirement that dentures have to be damaged at the time of the incident for their replacement not to be compensable.

Therefore, the Attorney General's Final Decision of March 25, 2014 shall be reversed.

IT IS THEREFORE ORDERED THAT

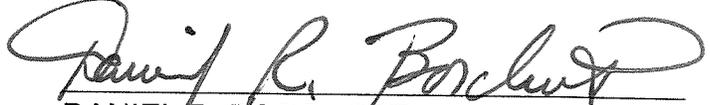
- 1) The March 25, 2014 decision of the Attorney General is REVERSED;
- 2) This claim is remanded to the Attorney General to calculate the economic loss incurred by the applicant for replacement of his dentures and accordingly issue a decision;
- 3) This order is entered without prejudice to applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

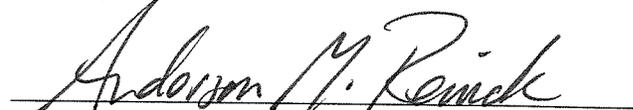
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- 4) Costs are assumed by the court of claims victims of crime fund.


 DANIEL R. BORCHERT
 Presiding Commissioner


 ANDERSON M. RENICK
 Commissioner


 HOLLY TRUE SHAVER
 Commissioner

ID #2014-00409/9-4-14 panel decision/DRB-tad

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

JEFFREY CHILDERS
 2234 MILLER AVENUE
 ALLIANCE, OHIO 44601

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 8 SEP 09 2014
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