

# Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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Columbus, OH 43215

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IN RE: MICHAEL K. DAVIS

Case No. V2008-30219

MICHAEL K. DAVIS

Applicant

Commissioners:

Thomas H. Bainbridge, Presiding

Gregory P. Barwell

Randi Ostry LeHoty

ORDER OF A THREE-  
COMMISSIONER PANEL

{¶ 1} On June 25, 2007, the applicant, Michael Davis, filed a reparations application as the result of an assault which occurred on September 22, 2006. On October 23, 2007, the Attorney General issued a Finding of Fact and Decision determining that the applicant was a victim of criminally injurious conduct however all medical expenses and work loss had been reimbursed from the Bureau of Workers' Compensation, a readily available collateral source. The applicant's claims for replacement services loss and evidence replacement expense were denied due to the lack of supporting documentation. On November 16, 2007, the applicant submitted a request for reconsideration. On January 18, 2008, the Attorney General rendered a Final Decision determining that a modification was appropriate in this situation. The Attorney General found that the applicant incurred unreimbursed work loss in the amount of \$5,696.72, for the period September 22, 2006 through December 31, 2007. On February 19, 2008, the applicant filed a notice of appeal from the Attorney General's January 18, 2008 Final Decision. The applicant asserts that the Attorney General erroneously used benefits received from Sickness and Accident Benefits and Temporary Total benefits - which the applicant has not received - to offset the

applicant's work loss. The applicant argues the appropriate offset would be to use only one benefit as a collateral source: the use of both sources would be contrary to law.

{¶ 2} On April 8, 2008, the Attorney General filed a brief. In the brief, the Attorney General conceded that the offset of the two sources of benefits was contrary to law in R.C. 4123.36(A). Accordingly the Attorney General chose the benefits expected to be received from the Bureau of Workers' Compensation as the collateral source. The Attorney General calculated that the applicant sustained net wage loss in the amount of \$63,697.03 for the period from September 22, 2006 through September 21, 2007, which was offset by expected benefits from the Bureau of Workers' Compensation in the amount of \$36,608.00 for a work loss of \$27,089.03. Hence a hearing was held before this panel of three commissioners on May 8, 2008 at 10:18 A.M.

{¶ 3} The applicant's attorney, James Yavorcik and Assistant Attorney General Jaime Klausner attended the hearing and presented brief comments for the panel's consideration. Attorney Yavorcik related that the calculations used by the Attorney General for the Final Decision were erroneous. The parties related that they are now in agreement for the period September 22, 2006 through September 21, 2007 that the applicant sustained a net wage loss in the amount of \$63,697.03 offset by \$36,608.00 the highest possible benefit that the applicant could receive from the Bureau of Workers' Compensation for a work loss of \$27,089.03. The applicant's attorney reserved the right to file a supplemental compensation application if he does not prevail in his Workers' Compensation appeal or if the applicant incurs additional unreimbursed expenses. Assistant Attorney General Klausner concurred with the recommendations of applicant's counsel.

{¶ 4} From review of the file and with full and careful consideration given to all the information presented at the hearing, we find that the January 18, 2008 decision of

the Attorney General should be modified and the applicant should be granted an award of reparations in the amount of \$27,089.03.

{¶ 5} IT IS THEREFORE ORDERED THAT

{¶ 6} 1) The January 18, 2008 decision of the Attorney General is MODIFIED to render judgment in favor of the applicant in the amount of \$27,089.03;

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

{¶ 8} 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;

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

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THOMAS H. BAINBRIDGE  
Presiding Commissioner

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GREGORY P. BARWELL  
Commissioner

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RANDI OSTRY LE HOTY  
Commissioner

**[Cite as *In re Davis*, 2008-Ohio-4268.]**

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

Filed 7-2-2008  
Jr. Vol. 2269, Pg. 29  
To S.C. Reporter 8-20-2008