

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 CPS 00696

<p>Filiberto Feliciano Petitioner,</p> <p>v.</p> <p>Crime Victim Compensation Respondent.</p>	<p>FINAL DECISION ORDER OF DISMISSAL</p>
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On May 10, 2022, Respondent “Crime Victim Compensation,” (“Respondent”) filed various motions, including a Motion for Summary Judgment (“Motion”). Petitioner Filiberto Feliciano (“Petitioner”) made filings in response on May 13, 2022. The Motion is ripe for disposition.

SUMMARY OF UNCONTESTED MATERIAL FACTS

1. It is inappropriate for the Tribunal to contain detailed findings of fact and conclusions of law in a case decided upon a summary judgment motion. War Eagle, Inc. v. Belair, 204 N.C. App. 548, 551-52, 694 S.E.2d 497, 500 (2010). These recitations of uncontested facts are included as a guide to the Tribunal’s reasoning in ruling on the present motion.

2. Petitioner filed a petition for a contested case hearing (“Petition”) in the North Carolina Office of Administrative Hearings (“OAH”) on February 24, 2022, claiming that Respondent erred by denying Petitioner compensation for being the victim of a crime.

3. Petitioner’s response demonstrates that the criminally injurious conduct for which he claims compensation occurred while Petitioner was incarcerated in the custody of the North Carolina Department of Public Safety.

CONCLUSIONS OF LAW

1. On a motion for summary judgment, the question before the Tribunal is whether the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact, and that a party is entitled to judgment as a matter of law. Meadows v. Cigar Supply Co., Inc., 91 N.C. App. 404, 371 S.E.2d 765 (1988). Only a fact, resolution of which would prevent the party against whom it is resolved from prevailing, is material. Bone International, Inc. v. Brooks, 304 N.C. 371, 374, 283 S.E.2d 518, 520 (1981).

2. To the extent that the Findings of Fact contain Conclusions of Law, and vice versa, they should be so considered without regard to their given labels. Charlotte v. Heath, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946). A court, or in this case an administrative Tribunal, need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).

3. The burden of establishing a lack of any triable issue resides with the movant. Pembee Mfg. Corp. v. Cape Fear Constr. Co., Inc., 313 N.C. 488, 329 S.E.2d 350 (1985). Here, the burden rests with Respondent.

4. Respondent is the agency created under Chapter 15B of the North Carolina General Statutes charged with administering the Crime Victims Compensation Fund in North Carolina. Mary D. Malone v. State of North Carolina, Department of Crime Control, Victims Compensation Service, 2009 WL 2871469, 08 CPS 2463.

5. N.C.G.S. 15B-11(a)(5) states that an award of compensation shall be denied if, among other factors, “the criminally injurious conduct occurred while the victim was confined in any State, county, or city prison, correctional, youth services, or juvenile facility, or local confinement facility, or half-way house, group home, or similar facility.”

6. “As used in statutes, the word ‘shall’ is generally imperative or mandatory.” Silver v. Halifax Cty. Bd. of Commissioners, 371 N.C. 855, 863-64, 821 S.E.2d 755, 761 (2018).

7. As it is uncontested that the criminally injurious conduct at issue occurred while Petitioner was incarcerated in the custody of the State of North Carolina, the law specifically prohibits Petitioner’s claim for victim’s compensation in this case.

8. Respondent has established both the absence of a genuine issue of material fact as well as entitlement to judgment as a matter of law.

FINAL DECISION

Respondent’s Motion for Summary Judgment is **ALLOWED**. This contested case is **DISMISSED** with prejudice.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within**

30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

SO ORDERED.

This the 25th day of May, 2022.



Michael C. Byrne
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Filiberto Feliciano #1422978
Maury CI - LEGAL MAIL
PO Box 506
Maury NC 28554
Petitioner

Jaren E. Kelly
NCDOJ
jkelly@ncdoj.gov (served electronically on May 25, 2022)
Attorney For Respondent

This the 26th day of May, 2022.



Jerrod Godwin
Law Clerk
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