

STATE OF NORTH CAROLINA
COUNTY OF GATSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
File No: 12 CPS 01693

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|----------------------------|---|--------------------------------|
| GEORGE H. JAGGERS, III, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | FINAL DECISION/ORDER OF |
| |) | DISMISSAL |
| CRIME VICTIMS COMPENSATION |) | |
| COMMISSION, |) | |
| |) | |
| Respondent. |) | |

THIS MATTER came on for hearing before the Honorable Selina M. Brooks, Administrative Law Judge presiding, on October 1, 2012 in Charlotte, North Carolina.

APPEARANCES

For Petitioner: George H. Jagers, III
311 South Oakland Street
Dallas, NC 28034

For Respondent: Tamara S. Zmuda, Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699

WITNESSES

The following witnesses appeared and testified on behalf of Respondent:

1. Det. Michael Butts, Gaston County Police Department
2. Liddie Shropshire, Claims Investigator, N. C. Department of Public Safety, Division of Victim Compensation Services

EXHIBITS

No exhibits were admitted into evidence on behalf of Petitioner.

The following exhibits were admitted into evidence on behalf of Respondent:

- a. Photograph of firearm.
- b. Certified copies of the judgment in 08 CRS 60774.
- c. Decision of Director: Denied

ISSUES

I. Whether Respondent substantially prejudiced Petitioner's rights and acted outside its authority, erroneously, arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule, when it denied Petitioner's claim for crime victim's compensation.

II. Whether the victim participated in a felony, pursuant to N. C. Gen. Stat. § 15B-11(a)(6).

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following:

FINDINGS OF FACT

1. Petitioner George H. Jagers, III is the father of the deceased victim in this matter, George Isiah Jagers ("the victim"). Petitioner knowingly and voluntarily consented to proceeding *pro se*.
2. Respondent is the Division of Victim Compensation Services within the N. C. Department of Public Safety. Respondent is created under Chapter 15B of the North Carolina General Statutes and charged with administering the Crime Victims Compensation Fund in North Carolina.
3. Detective Michael Butts ("Detective Butts") supervised the criminal investigation involving the actions that took place on October 6, 2011 which ultimately resulted in the victim's death.
4. On the evening of October 6, 2011, the victim and Isaac Lynn were involved in a shooting.
5. Both the victim and Isaac Lynn possessed a firearm at the time of the shooting.

6. As a result of the shooting, Isaac Lynn suffered a non-fatal gunshot wound and the victim suffered a fatal gunshot wound.
7. The victim was a convicted felon at the time the shooting took place.
8. By order signed and mailed to Petitioner on January 11, 2012, Respondent denied Petitioner's claim for compensation based upon the victim participating in a felony, pursuant to N. C. Gen. Stat. § 15B-11(a)(6). The felony consisted of possession of a firearm by a convicted felon, pursuant to N. C. Gen. Stat. § 14-415.1.
9. On March 12, 2012, Petitioner filed his *Petition for a Contested Case Hearing*. (Petition).

BASED UPON the foregoing Findings of Fact, the Undersigned hereby makes the following:

CONCLUSIONS OF LAW

1. Both parties were properly before the Administrative Law Judge, in that jurisdiction and venue are proper and both parties received notice of the hearing.
2. Respondent has the authority and responsibility under Chapter 15B of the North Carolina General Statutes to investigate and award or deny claims for compensation under the Crime Victims Compensation Act.
3. N.C. Gen. Stat. § 15B-4(a) provides that "compensation for criminally injurious conduct shall be awarded to a claimant if substantial evidence establishes that the requirements for an award have been met."
4. To meet all the requirements for an award, Petitioner must show he is a "claimant" and has incurred an "allowable expense" on behalf of a "victim" of "criminally injurious conduct." N.C. Gen. Stat. § 15B-2(2), (1), (5), (13). In addition, Petitioner bears the burden of showing none of the disqualifying criteria in N.C. Gen. Stat. § 15B-11 operate to bar his claim. *See Richardson v. N.C. Dep't of Pub. Instruction Licensure Section*, ___ N.C. App. ___, ___, 681 S.E.2d 479, 485 ("It is well-settled that a petitioner has the burden of proof at an administrative hearing to prove that he is entitled to relief from the action of the administrative agency. This burden is on the petitioner even if he must prove a negative." (citing *Overcash v. N.C. Dep't of Env't & Natural Res.*, 179 N.C. App. 697, 635

S.E.2d 442 (2006), *disc. rev. denied*, 361 N.C. 220, 642 S.E.2d 445 (2007)), *disc. rev. denied*, 363 N.C. 745, 688 S.E.2d 694 (2009).

5. Substantial evidence is defined as “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” N.C. Gen. Stat. § 15B-2(12a).
6. Substantial evidence exists to show that Petitioner properly filed his application on behalf of a “victim” of “criminally injurious conduct” pursuant to N.C. Gen. Stat. § 15B-2(5) and (13).
7. Pursuant to N.C. Gen. Stat. § 15B-11(a)(6), “[a]n award of compensation shall be denied if . . . [t]he victim was participating in a felony at or about the time that the victim’s injury occurred.”
8. N.C. Gen. Stat. § 14-415.1 designates the possession of a firearm by a convicted felon a class G felony.
9. The victim was in possession of a firearm in violation of N.C. Gen. Stat. § 14-415.1 at the time of the shooting, which resulted in his death.
10. Ultimately, Petitioner has not carried his burden in demonstrating that Respondent acted outside its authority, acted arbitrarily and capriciously, used improper procedure, failed to act as required by law or rule, or acted erroneously when it denied Petitioner’s claim for crime victim’s compensation based upon N.C. Gen. Stat. § 15B-11(a)(6).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby makes the following:

DECISION

Respondent’s decision to deny Petitioner’s claim for Crime Victims Compensation is hereby **AFFIRMED**.

NOTICE

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 Wake County or in the Superior Court of the county in which the party resides. **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 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on 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.

IT IS SO ORDERED.

This the 17th day of October, 2012.

Selina M. Brooks
Administrative Law Judge