

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14CPS01172

ESTHER VASSER PETITIONER, V. N C CRIME VICTIMS COMPENSATION COMMISSION RESPONDENT.	FINAL DECISION
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THIS MATTER came before the Honorable J. Randall May, Administrative Law Judge, upon Respondent's Motion for Summary Judgment, filed on May 30, 2014, pursuant to N.C. Gen. Stat. § 1A-1, Rule 56 and 26 NCAC 03.0115, and was heard with oral argument on June 12, 2014. Upon consideration of Respondent's motion, as well as the attachments affixed thereto, and the oral arguments, the undersigned hereby makes the following:

FINDINGS OF FACT

1. The Petitioner, Esther Vasser, filed a Victim Compensation Application with the Respondent, North Carolina Crime Victims Compensation Commission, seeking reimbursement for lost wages, medical bills, and loss of insurance as a result of an incident that occurred on July 13, 2012, pursuant to Chapter 15B of the North Carolina General Statutes. (Respondent's Exhibit 1.)
2. On her application, Petitioner identified that she was covered by Blue Cross/Blue Shield health insurance and that she had applied for financial assistance from the North Carolina Employment Security Commission.
3. Following a thorough investigation and review of Petitioner's claim, including documents submitted by Petitioner, Respondent denied the claim pursuant to N.C. Gen. Stat. § 15B-11(d), since the Petitioner had received or had readily available sources of benefits, which provided or will provide reimbursement for the total amount requested in her application. On December 18, 2013, Respondent mailed Petitioner a cover letter and a *Decision of Director: Denied*, explaining the denial and giving notice to Petitioner of her right to appeal. (Respondent's Exhibit 2.)
4. On February 17, 2014, Petitioner's Petition for Contested Case Hearing was filed and accepted by the Office of Administrative Hearings.

5. On May 9, 2014, Petitioner answered Respondent's First Request for Admissions, First Set of Interrogatories, and First Request for Production of Documents to Petitioner, which was served on April 25, 2014. (Respondent's Exhibit 3.)
6. N.C. Gen. Stat. § 15B-11(d) states in pertinent part, that "an award that has been approved *shall* never the less be denied or reduced to the extent that the economic loss upon which the claim is based is or will be recouped from a collateral source." N.C. Gen. Stat. § 15B-11(d) (emphasis added).
7. N.C. Gen. Stat. § 15B-2(3)(b) and (e) specifically include unemployment compensation and Worker's Compensation as collateral sources. Petitioner also had medical expenses paid through a Healthcare Savings Account. N.C. Gen. Stat. § 15B-2(3)(g), payments made to a victim pursuant to proceeds of a contract of insurance constitute a collateral source, as well. *See* Opinion of Attorney General to Gary B. Eichelberger, Director, North Carolina Crime Control and Public Safety, Division of Victim and Justice Services (May 8, 1995).
8. Petitioner admitted that she was covered by Blue/Cross/Blue Shield, Medicare, Medicaid, or other health insurance for the injuries she sustained as a result of the July 13, 2012, incident. (Respondent's Exhibit 3- Admission #16.)
9. Following the July 13, 2012 incident, Petitioner settled through a Final Compromise Settlement and Release made and entered into on November 20, 2012, a Worker's Compensation claim and agreed to compensation in exchange for her resignation arising out of July 13, 2012, incident. Further, the Petitioner admitted that she settled her Workers' Compensation claim regarding the July 13, 2012, incident for five thousand (\$5,000.00) Dollars and that her medical expenses have or will be satisfied from the Workers' Compensation proceeds. (Respondent's Exhibit 3- Admission #23 and Respondent's Exhibit 3 at bate-stamped pp. 031 – 035.)
10. Petitioner admitted that her Healthcare Savings Account has paid medical expenses submitted for treatment rendered to the Petitioner as a result of the July 13, 2012, incident. (Respondent's Exhibit 3- Admission #17.)
11. Petitioner admitted that she has received unemployment compensation following her resignation from the United Veteran's Home. (Respondent's Exhibit 3- Admission #28 and Respondent's Exhibit 3 at bate-stamped pp. 037 – 041.) Pursuant to N.C. Gen. Stat. § 15B-2(14), "Compensation for work loss will be limited to 26 weeks commencing from the date of the injury, and compensation shall not exceed three hundred dollars (\$300.00) per week." Thus, having received unemployment compensation, the Petitioner's claim for wage loss beyond June 30, 2013, is well outside the twenty-six week period provided for by N.C. Gen. Stat. § 15B-2(14).
12. At no time, either after filing her Application for Victims Compensation or at the June 12, 2014, hearing on Respondent's Motion for Summary Judgment, did Petitioner present any documentation to support the assertion that Respondent should pay any allowable

expenses as defined by N.C.G.S. § 15B-2(1), economic loss as defined by N.C.G.S § 15B-2(10), or work loss as defined by N.C.G.S. § 15B-11(14).

13. Furthermore, Petitioner has presented no evidence that she has incurred losses other than those that were fully paid and settled by her settlement agreement with her employer, her Healthcare Savings Account, and unemployment compensation.

CONCLUSIONS OF LAW

1. All parties properly are before this Administrative Law Judge and jurisdiction and venue are proper. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be considered so without regard to the given labels.
2. Summary judgment is proper where “the pleadings, depositions, answers to interrogatories, and admissions on file . . . show that there is no genuine issue as to any material fact and that the party is entitled to judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56(c). The movant may meet the burden of proving the lack of any triable issue “by proving that an essential element of the opposing party’s claim is nonexistent, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of his claim or cannot surmount an affirmative defense which would bar the claim.” *Collingwood v. G. E. Real Estate Equities*, 324 N.C. 63, 66, 376 S.E.2d 425, 427 (1989).
3. Petitioner is a victim of criminally injurious conduct as defined in Chapter 15B of the North Carolina General Statutes.
4. Petitioner’s alleged losses upon which her claim is based has been or will be recouped from a collateral source pursuant to N.C.G.S. § 15B-11(d). Further, as the Petitioner admitted that she settled through a Final Compromise Settlement and Release her Workers’ Compensation claim arising out of the July 13, 2012, incident she waived any further right to compensation from the Crime Victims Compensation Fund. *See Parlier v. Burke County EMS*, 722 S.E. 2d 798 (2012) (concluding that a settlement agreement entered into by the plaintiff and the defendants, by its plain language, settled any claims by plaintiff may have had as a result of his September 4, 2007 injury).
5. Petitioner failed to forecast or present substantial evidence to establish that the requirements for an award have been met pursuant to N.C.G.S. §§ 15B-4(a) and 15B-2(12a).
6. The pleadings and attachments on file conclusively establish that there is no genuine issue as to any material fact and Respondent is entitled to judgment as a matter of law.

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

DECISION

It is hereby ORDERED that summary judgment be granted in favor of Respondent on grounds that there is no genuine issue as to any material fact and that the Respondent is entitled to judgment as a matter of law.

NOTICE

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 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.

This the 12th day of August, 2014.

J. Randall May
Administrative Law Judge