

STATE OF NORTH CAROLINA
COUNTY OF MOORE

IN THE OFFICE OF ADMINISTRATIVE
HEARINGS
FILE NO. 14 CPS 02397

KAREN TATE)	
)	
)	
Petitioner,)	
v.)	FINAL DECISION – ORDER OF
)	DISMISSAL
VICTIMS COMPENSATION)	
COMMISSION,)	
)	
Respondent.)	

THIS MATTER came before the Honorable Julian Mann, III, Chief Administrative Law Judge, upon Respondent’s Motion for Summary Judgment, filed on August 8, 2014, pursuant to N.C. Gen. Stat. § 1A-1, Rule 56 and 26 NCAC 03.0115. Petitioner was ordered to file a response to Respondent’s Motion for Summary Judgment on or before August 18, 2014. Petitioner did not file a response. Having reviewed the pleadings and Respondent’s Motion for Summary Judgment in the light most favorable to Petitioner, the Court hereby enters the following:

FINDINGS OF FACT

1. On August 27, 2013, Petitioner took out warrants with the Magistrate’s office in Moore County for misdemeanor assault on a female and communicating threats (13 CR 052524) and misdemeanor assault on a female, communicating threats, and assault with a deadly weapon (13 CR 052525). Neither warrant included allegations that Heath Oxendine threw a metal chair at the Petitioner striking her on her leg on or about August 24, 2013.
2. Petitioner filed a Victim Compensation Application seeking reimbursement for medical expenses.
3. Following an investigation and review of Petitioner’s claim, including documents submitted by Petitioner, Respondent denied the claim because the alleged incident could not be substantiated and the injuries allegedly suffered by the Petitioner as an economic loss were not the direct and proximate result of criminally injurious conduct within the meaning of Chapter 15B of the North Carolina General Statutes.
4. On March 6, 2014, 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.
5. On April 14, 2014, Petitioner’s Petition for Contested Case Hearing was filed and accepted by the Office of Administrative Hearings. In her Petition for Contested Case Hearing the Petitioner indicated that she sought medical care related to injuries she

sustained as a result of Heath Oxendine throwing a chair at her for which he pled guilty and served time in Moore County jail.

6. On or about June 25, 2014, Petitioner answered Respondent's First Request for Admissions, First Set of Interrogatories, and First Request for Production of Documents to Petitioner.
7. Petitioner admitted that on August 24/25, 2013, she was involved in a verbal and physical confrontation with Heath Oxendine.
8. Petitioner admitted that the police responded to her residence on August 25, 2013.
9. Petitioner answered in response to Interrogatories Nos. 1 and 17 that no one was at her home on the date of the incident other than herself and Heath Oxendine.
10. Petitioner admitted that on August 25, 2013, she did not press charges against Heath Oxendine.
11. Petitioner admitted that on August 25, 2013, she had no obvious signs of injury and no photographs were taken of her by law enforcement.
12. Petitioner admitted that she did not seek medical treatment until September 4, 2013.
13. Petitioner submitted to Respondent medical notes and expenses from the Hope Family Center for treatment on September 4, 2013. In the symptom area of the medical note from September 4, 2013, it provided: "Patient . . . presents today with complaints of a left lower leg and foot pain. Patient states she was walking down her stone passed [path] to the leg when she slipped. Patient states she did not actually fall car [caught] herself and thinks she twisted her lower leg and foot. Patient states she's been having pain ambulating now for about one to 2 weeks." Further, in a medical note from Hope Family Center for treatment on October 7, 2013, the Petitioner continued to report, "Patient has been having the pain at least 6 weeks since she had an incident where she slipped on the slate going down to her leg and twisted her back and leg. . . . Patient also reports that there has been an assault on her in her home but she does not believe she was hit in the leg at that time. The patient also states her dogs of been jumping on the leg."
14. Petitioner admitted that she did not seek medical treatment from Moore Regional Hospital until October 25, 2013 and October 31, 2013.
15. 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 August 25, 2013 incident.

16. Petitioner admitted that as a result of the injuries she sustained, she applied for financial assistance other than an application to the Crime Victim Compensation Commission.

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. Under North Carolina’s Crime Victims Compensation Act, Respondent is permitted to compensate only victims or those who file claims on behalf of victims. “Victim,” in turn, is defined as “[a] person who suffers personal injury or death proximately caused by criminally injurious conduct.” N.C. Gen. Stat. § 15B-2(13). Pursuant to N.C. Gen. Stat. § 15B-4(a), “compensation for criminally injurious conduct shall be awarded to a claimant if substantial evidence establishes that the requirements for an award have been met.” Further, N.C. Gen. Stat. § 15B-4(a) provides, “[t]he Commission shall follow the rules of liability applicable to civil tort law in North Carolina.” The Petitioner bears the burden of showing that the victim’s injury was based on criminally injurious conduct within the meaning of N.C. Gen. Stat. § 15B-2(5). *See Holly Ridge Assocs., LLC v. N.C. Dep’t of Env’t & Natural Res.*, 176 N.C. App. 594, 606-608, 627 S.E.2d 326, 336-337 (2006). (Unless a statute provides otherwise, the petitioner has the burden of proof in all contested cases.) *See also, Peace v. Employment Sec. Comm’n*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998). “Criminally injurious conduct,” is defined as “[c]onduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State.” N.C. Gen. Stat. § 15B-2(5). Also, “substantial evidence,” is defined as “[r]elevant evidence that a reasonable mind might accept as adequate to support a conclusion.” N.C. Gen. Stat. § 15B-2(12a).
4. The uncontroverted evidence demonstrates that the medical expenses incurred by the Petitioner were due to a fall and not because Heath Oxendine threw a metal chair at her.

Accordingly, Petitioner is not a victim of criminally injurious conduct as defined in Chapter 15B of the North Carolina General Statutes.

5. Petitioner's alleged losses upon which her claim is based have been or will be recouped from a collateral source pursuant to N.C.G.S. § 15B-11(d).
6. N.C. Gen. Stat. § 15B-4(a) states, in pertinent part, that "compensation shall **only** be paid for **economic loss** and not for non-economic loss." N.C. Gen. Stat. § 15B-4(a) (emphasis added). Additionally, N.C. Gen. Stat. § 15B-2(11) expressly states pain and suffering is considered non-economic detriment. 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).
7. 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.
8. Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby makes the following:

DECISION

IT IS HEREBY ORDERED, for the reasons stated above, Respondent's Motion for Summary Judgment is **GRANTED** and this matter is **DISMISSED**.

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, in the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within thirty (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, North Carolina 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.** 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 thirty (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 3rd day of September, 2014.

The Hon. Julian Mann, III
Chief Administrative Law Judge