

NORTH CAROLINA

OFFICE OF ADMINISTRATIVE HEARINGS

PENDER COUNTY

14 CPS 5077

ANNE MARIE BRANDT

Petitioner

v

**NORTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY**

Respondent

FINAL DECISION

This matter coming on to be heard and being heard on May 14, 2015 in Brunswick County, North Carolina, and the Petitioner appeared pro se, and the Respondent was represented by Assistant Attorney General Yvonne V. Ricci; based upon the evidence presented and the arguments of the parties, the undersigned makes the following findings of fact:

1. Petitioner is a citizen and resident of Pender County, North Carolina.
2. Respondent is the Division of Victim Compensation Services within the North Carolina 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. On May 28, 2014, Respondent denied Petitioner’s claim for victim’s compensation after their investigation concluded that the “victim engaged in misconduct that contributed to the circumstances which resulted in the injury from which this claim for compensation arises,” citing N.C. Gen. Stat. § 15B-11(b).
4. Petitioner timely filed her Petition for a contested case hearing on July 7, 2014.
5. Respondent relies on N.C. Gen. Stat. § 15B-11(b) and (b1) as the basis for its denial of Petitioner’s claim, which provides:
 - (b) A claim may be denied or an award of compensation may be reduced if
 - (1) The victim was participating in a non-traffic misdemeanor at or about the time that the victim’s injury occurred; or
 - (2) The claimant or a victim through whom the claimant claims engaged in contributory misconduct.

- (b1) The Commission or Director [Respondent] . . . shall exercise discretion in determining whether to deny a claim under subsection (b) of this section. In exercising discretion, the Commission or Director shall consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct, when applicable. The Director or Commission shall deny claims when it finds that there was contributory misconduct that is a proximate cause of becoming a victim. However, contributory misconduct that is not a proximate cause of becoming a victim shall not lead to an automatic denial of a claim.

N.C. Gen. Stat. § 15B-11(b)(1), (b)(2), and (b1).

6. On September 21, 2013, Pender County deputies were dispatched to a reported domestic disturbance at Petitioner's residence in Hampstead, North Carolina.

7. Deputy David Stancil testified that the Petitioner came outside the residence and told the law enforcement officers that she and her husband, Winston Brandt, had gotten into an argument about her unplugging the cable to his television.

8. The Petitioner told law enforcement that Mr. Brandt threw the television remote control at her, took her cell from her, grabbed her by the arms, threw her to the ground, banged her head on the floor multiple times, and threatened to kill her. The Petitioner told the deputies that Mr. Brandt was in the back of the residence and had multiple guns. (Resp. Ex. 2; Testimony of Deputy Stancil)

9. Deputy Stancil and Deputy Matthew Sellers went to the back of the residence to locate Mr. Brandt who was standing outside. Deputies Stancil and Sellers testified that they did not locate any weapons during their search of the scene. (Resp. Ex. 2; Testimony of Deputies Stancil and Sellers)

10. There was evidence of some type of struggle in the residence, and Mr. Brandt had two small lacerations to the left side of his forehead, a small laceration to the ring finger of his left hand, and two small lacerations to the shin area of his left leg. According to Deputy Stancil, the injuries sustained by Mr. Brandt were consistent with his version of what had occurred in the residence that evening.

11. While the Petitioner complained of an injury to her head and right thigh Deputies Stancil and Sellers did not see any visible marks on Mrs. Brandt. (Resp. Ex. 2; Testimony of Deputies Stancil and Sellers)

12. EMS was called to the scene to provide medical care to the Petitioner. Mrs. Brandt was evaluated by EMS, but she refused transport to a medical facility.

13. Deputy Stancil, a fifteen year paramedic, spoke with paramedics that reported to the scene, and they told him that they did not find any bruising to the Petitioner's head.

14. The Petitioner was taken into custody and transported to the Pender County jail where she appeared before a magistrate and was charged with simple assault.

15. Following the Petitioner being searched and processed into the custody of the Pender County jail she also was charged with misdemeanor possession of drug paraphernalia. (Resp. Ex. 2; Testimony of Deputies Stancil, Sellers, and Murray)

16. Mr. Brandt was taken into custody and charged with misdemeanor assault on a female, misdemeanor interference with emergency communication, and misdemeanor communicating threats. (Resp. Ex. 2; Testimony of Deputy Stancil)

17. Petitioner failed to cooperate with prosecutors in the charges against Mr. Brandt.

18. All the charges brought against the parties as a result of this incident were voluntarily dismissed.

19. Ms. Liddie Shropshire, a fourteen year Claims Investigator for the N.C. Department of Public Safety, Division of Victim Compensation Services was assigned to investigate and process the claim submitted by the Petitioner

20. Ms. Shropshire recommended that Petitioner's claim be denied due to contributory misconduct and misdemeanor criminal activity. (Resp. Exs. 1, 3 and 4; Testimony of Shropshire)

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.

2. Both parties received proper notice of this hearing.

3. 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.

4. To meet the requirements for an award, Petitioner must show she is a "claimant" and has incurred an "allowable expense" as or on behalf of a "victim" of "criminally injurious conduct." N.C. Gen. Stat. § 15B-2(2), (1), (5), (13).

5. 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*, 199 N.C. App. 219, 228, 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).

6. 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).

7. Substantial evidence exists to show that Petitioner properly filed her application as a purported “victim” of “criminally injurious conduct” pursuant to N.C. Gen. Stat. § 15B-2(5) and (13).

8. Pursuant to N.C. Gen. Stat. ' 15B-11(b), “[a] claim may be denied or an award of compensation may be reduced if: (1) The victim was participating in a nontraffic misdemeanor at or about the time that the victim’s injury occurred; or (2) The claimant or a victim through whom the claimant claims engaged in contributory misconduct.”

9. “The Commission or Director, whichever has the authority to decide a claim under G.S. 15B-10, shall exercise discretion in determining whether to deny a claim under subsection (b) of this section. In exercising its discretion, the Commission or Director shall consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct, when applicable. The Director or Commission shall deny claims when it finds that there was contributory misconduct that is a proximate cause of becoming a victim. However, contributory misconduct that is not a proximate cause of becoming a victim shall not lead to an automatic denial of a claim.” N.C. Gen. Stat. § 15B-11(b1).

10. In determining whether Petitioner’s claim was properly barred based upon contributory misconduct, “[t]he test . . . is two-pronged, that is, 1) was there misconduct on the part of [the victim] and, if so, 2) was that misconduct a proximate cause of his injury?” *McCrimmon v. Crime Victims Comp. Comm’n*, 121 N.C. App. 144, 148, 465 S.E.2d 28, 31 (1995).

11. “Misconduct is defined as . . . ‘[a] transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior.’ While misconduct includes unlawful conduct as a matter of law, it may be something less than unlawful conduct, though more than an act done in poor taste. Misconduct requires some deviation from the accepted norm or standard of proper behavior. Accordingly, the conduct of the claimant is misconduct if it is not within the accepted norm or standard of proper behavior, which includes unlawful conduct. Consistent with principles of tort law, the test for determining accepted norms and proper behavior is best determined by use of a reasonable man standard or what a reasonable person would have done under similar and like circumstances.” *Evans v. N.C. Dep’t of Crime Control & Pub. Safety*, 101 N.C. App. 108, 117-18, 398 S.E.2d 880, 885 (1990) (quoting Black’s Law Dictionary 901 (5th ed. 1979)).

12. For a victim’s misconduct to constitute “contributory misconduct” for purposes of N.C. Gen. Stat. § 15B-11(b)(2), the misconduct “must combine with criminal action on the part of another to become a real, efficient and proximate cause of the injury. . . . This Court has defined proximate cause as a cause which in natural and continuous sequence, unbroken by any new and independent cause, produced the plaintiff’s injuries, and without which the injuries would not have occurred, and one from which a person of ordinary prudence could have reasonably foreseen that such a result, or consequences of a generally injurious nature, was probable under all the facts as

they existed. The test of foreseeability as an element of proximate cause does not require that the actor should have been able to foresee the injury in the precise manner in which it actually occurred. Neither does the actor need to foresee the events which are merely possible, but only those which are reasonably foreseeable. Therefore, where a claimant's injuries are a direct result of the criminally injurious conduct of another, the claimant's own misconduct must have been a proximate cause of those injuries in order for the Commission to deny or reduce a claim under the statute." *Id.* at 117, 398 S.E.2d at 885.

12. "Accordingly, if there is in the record substantial evidence that a person of ordinary prudence would have reasonably foreseen that the conduct in question would lead to an injurious result, and if this conduct was unlawful or if it breached the standard of conduct acceptable to a reasonable person, the Commission should be affirmed in denying or reducing claimant's benefits. If there is not substantial evidence in the record to support such conclusions, any order of the Commission reducing or barring claimant's recovery under the Act must be reversed." *Id.* at 118, 398 S.E.2d at 885.

13. In this case, the Petitioner voluntarily participated in the dispute, and evidence suggests that she was the aggressor in the altercation.

14. Substantial evidence demonstrates that Petitioner's action resulted in law enforcement arresting her for simple assault and possession of drug paraphernalia that occurred at or about the time of the purported criminally injurious conduct.

15. The fact that she failed to cooperate in the prosecution of Winston Brandt for misdemeanor assault on a female, misdemeanor interference with emergency communication, and misdemeanor communicating threats further suggests that Mr. Brandt was not responsible for the events that transpired that evening.

16. In addition, there is not sufficient evidence in the record that Winston Brandt was the aggressor in the incident that occurred on September 21, 2013.

17. Under these circumstances, "a person of ordinary prudence would have reasonably foreseen that the conduct in question would lead to an injurious result." *Evans*, 101 N.C. App. at 118, 398 S.E.2d 885.

18. The substantial evidence, therefore, shows the victim engaged in contributory misconduct, and accordingly, the evidence supports Respondent's decision to deny Petitioner's claim for compensation based upon N.C. Gen. Stat. § 15B-11(b).

19. Ultimately, Petitioner has not carried her 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(b).

Based upon the foregoing findings of fact and conclusions of law, Petitioner is not entitled to the relief sought, and her claim is denied.

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 18th day of August, 2015.

Philip E. Berger, Jr.
Administrative Law Judge