

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14CPS05567

<p>Shamika Mack Petitioner</p> <p>v.</p> <p>N C Department of Public Safety Victim Services Respondent</p>	<p>FINAL DECISION</p>
--	------------------------------

THIS MATTER came on for hearing before Hon. J. Randolph Ward, Administrative Law Judge, on November 14, 2014 in Fayetteville. Following review of the Parties' written submissions, this Final Decision was prepared.

APPEARANCES

For Petitioner: Shamika Mack, Petitioner, *Pro Se*
Fayetteville, N.C.

For Respondent: Yvonne B. Ricci
Assistant Attorney General
N.C. Department of Justice
Raleigh, N.C.

WITNESSES

For Respondent: Aurelya Randle
Detention Officer Micah Patterson
Deputy Phillip D. Rogers
Lieutenant Roberto Reyes
Antonette Douglas

EXHIBITS

Petitioner: None

Respondent: Cumberland Co. Sheriff's Office Investigation Report (R. Ex. 1)

ISSUES

Whether the victim engaged in contributory misconduct within the meaning of N.C. Gen. Stat. § 15B-11(b)(2) which was a proximate cause of his death.

STATUTES

N.C. Gen. Stat. §§ 150B-1; 15B-2; 15B-2 (2) c. & d.; 15B-2 (12a); 15B-4 (d); 15B-11(b)(2)

UPON DUE CONSIDERATION of the submissions and arguments of counsel, the documents and other exhibits admitted, and the sworn testimony of each of the witnesses, considering their opportunity to see, hear, know, and recall the relevant facts and occurrences; any interests they may have; and whether their testimony is reasonable and consistent with other credible evidence; and assessing the greater weight of the evidence from the record as a whole, in light of the applicable law, now therefore, based upon the preponderance of the credible evidence, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Petitioner Shamika Mack, the Claimant in an application for victim's compensation benefits, is the daughter of the decedent victim, Christopher Lloyd Williams (hereinafter, "the victim" or "Mr. Williams"). She appeared at the hearing with the victim's next of kin and other relations, with apparent authority to speak on behalf of the victim's survivors. Additionally, Petitioner had assisted with the victim's final expenses, unrelated to Petitioner's employment, business, or profession.
2. Respondent is the N.C. Department of Crime Control and Public Safety, Division of Victim Compensation Services. Respondent is created under N.C. Gen. Stat. § 15B-1 *et seq.* and is charged with administering the North Carolina Crime Victims Compensation Fund in North Carolina. On May 19, 2014, Respondent denied Petitioner's claim for victim's compensation, based upon an investigation concluding 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). Petitioner/Claimant timely filed her Petition for a contested case hearing on July 15, 2014.
3. At the hearing and in its subsequent written submission, Respondent specifically relied on N.C. Gen. Stat. § 15B-11(b)(2) as the basis for its denial of Petitioner's claim. The statute provides, in pertinent part:

(b) A claim may be denied or an award of compensation may be reduced if:

* * *

(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 Commission or Director [Respondent] shall deny claims upon a finding 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.

(Emphasis added.)

4. In the early morning hours of February 26, 2014, the victim was at his residence at 5035 Doc Bennett Road in Fayetteville, where he and his “girlfriend,” Ms. Aurelya Randle, had lived together since 2003. During most of that period, Ms. Randle’s son, Derrick Randle, also lived in this home. The victim and Ms. Randle were in bed together, and Mr. Williams had been drinking heavily. Investigators later found two empty pint-size liquor bottles in the room, and a toxicology report verified that the victim was intoxicated at the time of the incident. Mr. Williams became upset with Ms. Randle and began choking her. There had been choking incidents in the past, but the ferocity of this assault and her inability to calm him frightened Ms. Randle to an unusual degree, and she described him as seeming possessed. Her son, who had been sleeping in a bedroom across the hall, heard Ms. Randle’s screams for help and came into their bedroom with his handgun. Derrick Randle told Mr. Williams to let go of his mother, and the assault stopped.
5. Mr. Randle remained concerned, however, that there might be further difficulty with Mr. Williams. He went into the front yard of the residence with his cell phone and called his sister to request that she get their brother to come to the residence and help Mr. Randle control the situation. He then reentered the house to talk to his mother alone, asking her why she put up with Mr. Williams’ abusive behavior. Ms. Randle testified that their conversation was interrupted by Mr. Williams coming down the hall, cursing and calling her son names. She recounted that Mr. Williams said to Mr. Randle, “Do you want to hurt me, you SOB,” to which he replied, “No, I do not want to hurt you. I just don’t want you to hurt my mother; she is all that I got.” The victim then shoved Ms. Randle, and she fell over a chair. She ran down the hall looking for her mobile phone to call for help. Mr. Williams blocked Mr. Randle from leaving the room, yelling at him repeatedly, “You want to shoot me mother f---r, shoot me!” while Mr. Randle denied wanting to hurt him. When Mr. Williams came at him “aggressively” and tried to grab him, Mr. Randle shot the victim three times in the chest.

6. Following the shooting, Mr. Randle went to the home of a neighbor, who contacted law enforcement. When a Deputy Sheriff arrived at the scene, Mr. Randle left his gun in the house, came outside, and surrendered, telling the Deputy that he had acted in self-defense. He was charged with felonious involuntary manslaughter and as of the date of this hearing, remained in jail awaiting trial. The victim died at Cape Fear Valley Medical Center of his gunshot wounds. Ms. Randle received medical treatment for the injuries she sustained during the victim's assaults.
7. When interviewed by the law enforcement officers, Derrick Randle creditably alleged that he felt threatened by the victim's aggressive advance towards him and, as a result, fired his weapon at the victim, resulting in the victim's death. This evidence could support a finding that Mr. Randle acted in self-defense and in defense of his mother. However, the facts that Mr. Randle left his mother with Mr. Williams and left the house shortly before the fatal confrontation; that Mr. Williams was impaired; and that Mr. Randle shot the victim three times in the chest could support a finding that Mr. Randle used excessive force and, thus, should be held criminally liable for the victim's death. Respondent reasonably concluded that the act of Derrick Randle firing his weapon at the victim was criminally injurious conduct, i.e., conduct that by its nature posed a substantial threat of causing personal injury or death, and is punishable by fine or imprisonment.
8. Based on the foregoing relevant evidence, specifically the victim's assault on Mr. Randle's mother and subsequent physical threats to Mr. Randle while he held a handgun, Respondent reasonably concluded that the victim's misconduct would foreseeably provoke the use of force against the victim and was a proximate cause of his fatal injury.
9. To the extent that portions of the following Conclusions of Law include findings of fact, such are incorporated by reference into these Findings of Fact.

Upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include conclusions of law, such are incorporated by reference into these Conclusions of Law.
2. Petitioner Shamika Mack is a proper Claimant within the meaning of N.C. Gen. Stat. § 15B-2 (2) c. & d.
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 by victims of crime or their surviving dependents and to reimburse those who have provided benefits to such victims or dependents, other than in the course or scope of their employment, business, or profession, pursuant to the North Carolina Crime Victims Compensation Act, § 15B-1 *et seq.*

4. The parties and the subject matter of this contested case hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §§ 15B-10 (d); 150B-1(e).
5. Subject to the availability of appropriated funds, compensation for victims of criminally injurious conduct shall be awarded to a claimant if substantial evidence establishes that the requirements for an award have been met. N.C. Gen. Stat. § 15B-4(a). “Substantial evidence” is “[r]elevant evidence that a reasonable mind might accept as adequate to support a conclusion.” N.C. Gen. Stat. §§ 15B-2 (12a); 150B-2 (8c).
6. The law of “perfect self-defense” applies to force resulting in death, if four elements existed: (1) it appeared to defendant and he believed it to be necessary to kill the deceased in order to save himself or another from death or great bodily harm; (2) that a person of ordinary firmness would reasonably develop this belief, based on the circumstances as they appeared to the defendant at the time; (3) that defendant was not the aggressor and did not willingly enter into the fight without legal excuse or provocation; and, (4) defendant did not use more force than was necessary or reasonably appeared to him to be necessary under the circumstances to protect himself or others from death or great bodily harm. However, if the defendant satisfies the first two elements but, although without intent to murder, was the aggressor causing the fight, or defendant used excessive force, he has only the “imperfect right of self-defense,” and is guilty of at least voluntary manslaughter. *State v. Norris*, 303 N.C. 526, 530, 279 S.E.2d 570, 572-73 (1981); *State v. Blue*, 356 N.C. 79, 89, 565 S.E.2d 133, 139 (2002); *State v. Moore*, 363 N.C. 793, 797, 688 S.E.2d 447, 450 (2010).
7. To award victims compensation, it must be found that the victim’s injury resulted from “criminally injurious conduct,” 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[].” Respondent did not err in finding that the victim, Christopher Williams, died as a proximate cause of criminally injurious conduct. N.C. Gen. Stat. § 15B-2; 15B-4 (5); *State v. Blue*, 356 N.C. 79, 89, 565 S.E.2d 133, 139 (2002).
8. A claim may be denied or reduced if the victim was engaged in “contributory misconduct.” N.C. Gen. Stat. § 15B-11(b)(2). “[W]here 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 [this] statute.” Misconduct includes unlawful conduct -- including assaults -- as a matter of law. *Evans v. N.C. Dept. of Crime Control & Public Safety*, 101 N.C. App. 108, 117, 398 S.E.2d 880, 885 (1990).
9. Respondent “shall deny claims upon a finding that there was contributory misconduct that is a proximate cause of becoming a victim.” N.C. Gen. Stat. § 15B-11(b1). “Proximate cause” can be found if the victim was involved at the time of his injury in actions or activities of the nature that would cause a person of ordinary prudence to foresee that “consequences of [a] generally injurious nature” were a “probable” result under the circumstances. *Evans*, 101 N.C. App. at 117, 398 S.E.2d at 885; *McCrimmon v. Crime victims Compensation Com'n*, 121 N.C.App. 144, 149, 465 S.E.2d 28, 31 (1995).

10. The victim's contributory misconduct was a proximate cause of his injury, and consequently, victim's compensation must be denied. N.C. Gen. Stat. § 15B-11 (b1).

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

FINAL DECISION

Respondent's decision to deny Petitioner's claim for Crime Victims Compensation must be, and hereby is, **AFFIRMED**.

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 30th day of January, 2015.

J. Randolph Ward
Administrative Law Judge