

STATE OF NORTH CAROLINA
COUNTY OF COLUMBUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
File No: 14 CPS 05569

MITCHELL KENT WILSON,)	
)	
Petitioner,)	
)	
v.)	FINAL DECISION
)	ORDER OF DISMISSAL
N. C. CRIME VICTIMS)	
COMPENSATION COMMISSION,)	
)	
Respondent.)	

THIS MATTER came before the Honorable Craig Croom, Administrative Law Judge, upon Respondent’s Motion for Summary Judgment, filed on September 10, 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 October 6, 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 September 8, 2011, Mitchell Kent Wilson (“Petitioner”), alleged he was the victim of an assault and battery resulting in injuries.
2. On June 9, 2014, Petitioner filed with the Division of Victim Compensation Services, North Carolina Department of Public Safety, now the Office of Victim Services, North Carolina Department of Public Safety (“Respondent”) a victim compensation application based upon the September 8, 2011 incident.
3. Following a review of Petitioners’ claim and all applicable laws, Petitioners’ application was denied for failure to file an application within two (2) years of the date of injury, pursuant to N.C.G.S. § 15B-11(a)(1).
4. On June 30, 2014, Respondent mailed Petitioner a cover letter and a *Decision of Director: Denied*, explaining the denial and giving notice to Petitioner of his right to appeal.
5. On August 6, 2014, Petitioner’s Petition for Contested Case Hearing was filed and accepted by the Office of Administrative Hearings.

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, an “award of compensation shall be denied if . . . [t]he claimant fails to file an application for an award within two years after the date of the criminally injurious conduct that caused the injury for which the claimant seeks the award.” N.C. Gen. Stat. § 15B-11(a)(1).

4. The uncontroverted evidence demonstrates that Petitioner’s application was filed after the statutory deadline of September 8, 2013, since the criminally injurious conduct constituting the basis for Petitioner’s claim occurred on September 8, 2011. Therefore, Petitioner’s claim must be denied. *See, e.g., Vick v. N.C. Victims Comp.*, No. 10 CPS 7825 (N.C. OAH Jan. 14, 2011) (Gray, ALJ); *Palmer v. N.C. Victim & Justice Servs.*, No. 10 CPS 3604 (N.C. OAH Sept. 8, 2010) (Lassiter, ALJ).

5. 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.

6. 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 6th day of November, 2014.

Craig Croom
Administrative Law Judge