

**NORTH CAROLINA**

**OFFICE OF ADMINISTRATIVE HEARINGS**

**BLADEN COUNTY**

**14 CPS 6019**

**JACK NORRIS**

**Petitioner**

**v**

**NORTH CAROLINA VICTIMS  
COMPENSATION COMMISSION**

**Respondent**

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**FINAL DECISION**

This matter coming on to be heard and being heard on February 9, 2015, and it appearing to the undersigned that the Petitioner appeared in this matter *pro se* and the Respondent was represented by Assistant Attorney General Yvonne B. Ricci, and based upon the evidence presented and the arguments of the parties, the undersigned by the greater weight of the evidence, makes the following findings of fact:

1. Petitioner is a citizen and resident of Bladen 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. Petitioner filed a Petition for a Contested Case Hearing on August 18, 2014 stemming from a denial by Respondent of his claim for compensation for injuries sustained in an assault.
4. On January 9, 2014, the Petitioner observed a Ford SUV truck on his more than seventy-five acre hog farm on CCC road in Bladen County that was pulling a trailer loaded with tin and scrap metal.
5. Petitioner testified that he observed the vehicle with two male occupants for more approximately one hour and fifteen minutes, and their behavior raised his suspicions because of criminal activity which had recently occurred at his property.
6. Petitioner was tending to business on his farm when he noticed the Ford SUV.

7. Petitioner initially saw the vehicle stationary on the side of the road. Petitioner walked towards the vehicle, and the vehicle then pulled back on the roadway and drove off. Petitioner witnessed this pattern several times over the course of approximately one hour and fifteen minutes.

8. Petitioner had recently done renovations and had metal still remaining on his property.

9. Petitioner also had approximately 50 hogs stolen from his property in the months leading up to this incident.

10. Petitioner went to his home to get medicine for his animals.

11. While in the home, Petitioner saw the Ford SUV again.

12. Petitioner pulled up alongside the passenger side of the Ford SUV while it was stationary.

13. Petitioner rolled down his window and asked the passenger, Gary Jones, if he [Mr. Norris] could help him.

14. The passenger told Mr. Norris that they could not get the vehicle out of four-wheel drive.

15. Mr. Norris then commented “are you sure that you are not trying to case out the place.”

16. As the Petitioner was attempting to leave, the driver of the Ford SUV, a Timothy McLean, responded, “What God-damned business is it of yours?”

17. Petitioner stopped his vehicle, opened the door, and replied that if they were attempting to steal property that it was his business.

18. McLean told the Petitioner that he would assault, and said that Mr. Norris should leave the area because the property did not belong to him.

19. McLean told the Petitioner again to get back in his truck or he would assault him.

20. Petitioner made a comment to McLean that could not reasonably be considered a threat or fighting words, but McLean then ran towards Mr. Norris and began taunting him.

21. Mr. Norris asked McLean to stop taunting him.

22. McLean then grabbed the Petitioner, lifted him up, and took him to the ground.

23. McLean landed on top of the Petitioner.

24. Petitioner had the breath knocked out of him and could not get up.
25. Petitioner attempted to get up, but McLean pushed him back to the ground.
26. Petitioner grabbed McLean in an effort to protect himself from the assault.
27. McLean assaulted the Petitioner, hitting him multiple times in and about the face.
28. McLean then pushed the Petitioner's face against the gravel and broken pavement on the ground and then left the scene.
29. Upon leaving, a tire on the trailer of the Ford SUV brushed against the Petitioner's neck while he was still on the ground.
30. As a result of the assault, Petitioner suffered personal injury
31. Petitioner got into his vehicle and followed the Ford SUV.
32. Petitioner called 911 to report what had just occurred. A description of the vehicle was provided.
33. Respondent's evidence demonstrated that McLean struck the Petitioner first.
34. There was no evidence that Mr. Norris assaulted McLean, other than grabbing at him in an effort to stop the assault.
35. Mr. Norris was not the aggressor in the assault.
36. Elizabethtown Police Department Officer Roger T. Davis observed a vehicle entering Elizabethtown city limits which matched that description provided by 911 communications.
37. Officer Davis initiated a traffic stop with the Ford SUV.
38. Petitioner observed the traffic stop and pulled in behind Officer Davis' vehicle.
39. Officer Davis testified that the Petitioner's eye was swollen shut. Davis advised the Petitioner to seek medical attention at the hospital.
40. Sergeant Gregory N. Bullard with the Bladen County Sheriff's Department investigated the incident involving the Petitioner. Sgt. Bullard spoke with the driver of the SUV during the traffic stop initiated by Officer Davis.
41. Sgt. Bullard also spoke with the Petitioner in the emergency room at Bladen County Hospital.

42. No law enforcement officer observed any injuries to McLean, and there was no evidence that McLean suffered any injury.

43. Bullard advised both the Petitioner and the driver of the SUV that they could take out warrants.

44. Petitioner went to the magistrate to swear out a warrant, and a warrant was issued against McLean. That case was still pending at the time of this hearing.

45. Petitioner fully cooperated with law enforcement in the investigation and prosecution of this matter.

46. Petitioner was not charged with a crime and there is no evidence that the Petitioner engaged in any criminal conduct January 9, 2014.

47. Petitioner timely submitted a claim to the North Carolina Victims Compensation Commission for the cost of medical treatment stemming from this incident.

48. The parties stipulated that the Petitioner's medical bills for the purposes of this action were \$4,691.55.

49. Liddie Shropshire, Respondent's Senior Claims Investigator, was assigned to investigate Petitioner's claim.

50. Investigator Shropshire interviewed a captain with the Bladen County Sheriff's Department about this incident. There was no evidence that the captain interviewed was actively involved in the on-scene investigation, only that he had reviewed documents relating to the January 9, 2014 incident.

51. Investigator Shropshire never spoke with the Petitioner in her investigation, as is the general practice in such investigations.

52. Investigator Shropshire never spoke with McLean in her investigation, as is the general practice in such investigations.

53. Investigator Shropshire did not speak with anyone directly involved in this matter, or the investigation thereof.

54. Investigator Shropshire relied solely on written reports of law enforcement in making her recommendation in this matter.

55. Investigator Shropshire recommended that Petitioner's "claim be denied due to contributory misconduct and participating in a non-traffic misdemeanor at or about the time the victim's injury occurred."

56. Investigator Shropshire testified that her recommendation was specifically based on her findings that both the Petitioner and McLean were involved in an escalating altercation or mutual affray. Further, Investigator Shropshire indicated that in her opinion the Petitioner approached Mr. McLean referring to the last page of the Bladen County Sheriff's Office Incident/Investigation Report as follows: "Jack Norris stated that: I was on CCC Rd on one of my farm's when I saw a truck loaded down with metal going down the road. The truck stopped several times. I thought it was suspicious so I wrote the tag down. The truck pulled off the road a couple more times so I pulled up and asked the guy what he was doing. The driver said he was trying to put the truck in four wheel drive. I told the driver that he was trying to case out metal."

57. By a letter mailed to Petitioner on June 18, 2014, Respondent denied Petitioner's claim for compensation based upon (1) Petitioner's participation in a non-traffic misdemeanor, pursuant to N.C. Gen. Stat. § 15B-11(b)(1) and (2) contributory misconduct, pursuant to N.C. Gen. Stat. § 15B-11(b)(2).

58. Petitioner has no collateral source for compensation in this matter.

59. None of the disqualifying criteria in N.C. Gen. Stat. §15B-11 operate as a bar to Petitioner's claim.

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

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

2. Petitioner timely filed this Petition for a Contested Case 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. N.C. Gen. Stat. § 15B-4(a) provides that "compensation for criminally injurious conduct shall be awarded to a claimant if substantial evidence establishes that the requirements for an award have been met."

5. Petitioner, as a victim of the assault on January 9, 2014, is a claimant pursuant to N.C. Gen. Stat. §15B-2(2).

6. As the victim of the assault, Petitioner suffered personal injury.

7. An assault in North Carolina is punishable by a fine and/or imprisonment.

8. Substantial evidence exists that the Petitioner suffered criminally injurious conduct in the January 9, 2014 incident pursuant to N.C. Gen. Stat. §15B-2(5).

9. Substantial evidence exists that none of the disqualifying criteria in N.C. Gen. Stat. §15B-11 operate to bar to Petitioner's claim.

10. While an assault is a "nontraffic misdemeanor," there is no evidence that the Petitioner assaulted McLean. To the contrary, the Petitioner was the victim of an assault who grabbed the perpetrator in an effort to stop the attack.

11. Petitioner is lawfully entitled to defend himself against an attack perpetrated by an aggressor.

12. Petitioner was not the aggressor in this incident.

13. McLean, the perpetrator of the assault, was the aggressor in this incident.

14. 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).

15. "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)).

16. 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.

17. Petitioner observed a vehicle on and around his property for approximately one hour and fifteen minutes. That vehicle had scrap metal in a trailer, and the Petitioner recently had been the victim of theft. Petitioner approached the vehicle and initially asked if the occupants needed assistance; when they responded in the negative, Petitioner merely commented on the appearance of the conduct he observed that day. Petitioner's actions cannot reasonably be considered as a deviation from proper behavior or engaging in a forbidden act.

18. In fact, and quite to the contrary, Petitioner was being a vigilant citizen and landowner, seeking to determine what was taking place on and around his property, something done by reasonable citizens and landowners.

19. A reasonable person under similar circumstances would have inquired about what was taking place on and around his property.

20. While Petitioner could have called law enforcement at any time upon seeing the suspicious activity, he was not required to, nor was he under any duty to do the same.

21. Even if the Petitioner's actions were to be considered "misconduct," which they are not, Petitioner's conduct was not the proximate cause of his injury.

22. McLean's actions of exiting his vehicle, throwing the Petitioner to the ground, and assaulting him repeatedly was not a likely outcome of the Petitioner's initial encounter. A person of ordinary prudence could not reasonably foresee that Petitioner's conduct would yield such a result.

23. Respondent's denial of Petitioner's claim is not supported by the evidence presented at the hearing of this matter.

24. Respondent has substantially prejudiced Petitioner's rights.

25. Respondent's denial of Petitioner's claim was not based on a reasoned decision and was not made after careful consideration.

26. Respondent failed to act as required by rule or law in denying Petitioner's claim.

27. Respondent acted arbitrarily and capriciously in denying Petitioner's claim.

28. Respondent acted erroneously in denying Petitioner's claim.

## DECISION

Petitioner's claim for relief is hereby granted. The Respondent shall pay \$4,691.55 to Petitioner for medical bills associated with his treatment from the January 9, 2014 incident herein, and the Respondent shall be responsible for the costs of this action.

## 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.

**IT IS SO ORDERED.**

This the 30<sup>th</sup> day of March, 2015.

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Philip E. Berger, Jr.  
Administrative Law Judge