

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 CPS 06627

<p>RODGER L. ACKERSON, Petitioner,</p> <p>v.</p> <p>JANICE W. CARMICHAEL, NC CRIME VICTIMS COMPENSATION COMMISSION, Respondent.</p>	<p style="text-align: center;">FINAL DECISION ORDER OF DISMISSAL</p>
---	---

THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Respondent’s Motion for Judgment on the Pleadings or Summary Judgment filed with the Office of Administrative Hearings (“OAH”) on October 2, 2014. Having reviewed Respondent’s Motion as well as Petitioner’s responses and matters of record, it is concluded as a matter of law that this matter is appropriate for disposition by summary judgment.

Petitioner’s daughter was brutally murdered on July 24, 2011. The two people responsible for her death have been tried and convicted of the murder in the Superior Courts of North Carolina. Petitioner submitted his application to Respondent for victim’s compensation on August 3, 2014.

While summary judgment specifically excludes discourse on factual issues, this Tribunal feels that Petitioner’s concerns should be addressed to some degree, while recognizing the risk of not answering all of Petitioner’s questions and/or not answering all of Petitioner’s questions to his satisfaction.

Petitioner is very frustrated at North Carolina’s “system” for compensation, more particularly in part because the Respondent did not notify him of the possibility of compensation. Most if not all prosecutorial districts in North Carolina have a victim/witness coordinator who offers assistance to victims and witnesses during the prosecution of criminal cases. Such persons are employed by the District Attorney’s office and are not associated with Respondent in any way; however, the coordinator may provide information about the Respondent’s office to victims. Petitioner was also contacted by the North Carolina Victims’ Assistance Network (“NCVAN”) which is a 501(c)(3) non-profit organization which also is not affiliated with Respondent at all. NCVAN is a wonderful organization which offers a myriad of very valuable services to crime victims in North Carolina. One such service is a referral service and Respondent could be a service referred by NCVAN.

While NCVAN and the DA's victim's assistant or coordinator are merely two means by which Petitioner might have been informed of the Respondent's service, there are other possible means by which Petitioner might have been alerted. Unfortunately that did not happen.

The controlling law is found in North Carolina General Statutes, Chapter 15B. N.C.G.S. §15B-25 states in part: "This Article shall not be construed to create a right to receive compensation. Compensation payable under Chapter 15B shall only be available to the extent that the General Assembly appropriates funds that purpose."

The funds allocated to Respondent are not such that would allow Respondent to seek out victims even if it wanted to. Every agency in North Carolina government, including Respondent, has been subjected to budget cuts. Respondent is not funded to provide staff to track victims of crimes and to offer assistance. To do so would be extremely burdensome and extremely expensive with the large volume of criminal cases prosecuted across the state. It is believed that Wake County alone has in excess of 100,000 criminal cases pending at any given time, which includes traffic and misdemeanor cases. Thus the statutes put the burden on the crime victim to affirmatively seek out the services offered by Respondent. That does not change with the magnitude of the crime nor the notoriety associated with the crime.

It should also be noted that not every victim of crime desires the compensation offered by Respondent, even if they are aware of the possibility of compensation.

N.C. Gen. Stat. § 15B-11(a)(1) states: "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 or death for which the claimant seeks the award." It is the controlling law of this contested case. It clearly states that the claim must be filed within two years of the event or the compensation shall be denied. In this case the "criminally injurious conduct" was in July 2011. Thus the application was not filed within the statutory deadline.

The Office of Administrative Hearings is a statutorily created quasi-judicial agency tasked with providing independent due process hearings through the administrative branch of government. As a statutorily created agency, it must interpret and rule upon the law as given. OAH is a court of law and specifically is not a court of equity. The death of Petitioner's daughter was an awful set of circumstances which no parent should have to suffer. However, this Tribunal, as with Respondent, is without legal authority to grant the compensation Petitioner seeks.

Now, therefore, it is ORDERED that Summary Judgment is ALLOWED and this contested case 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, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 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 03.0102, and the Rules of Civil Procedure, N.C. 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.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. 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 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 14th day of November, 2014.

Donald W. Overby
Administrative Law Judge