

STATE OF NORTH CAROLINA
COUNTY OF CHOWAN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 CPS 01838

<p>Sakiyah Shambry, Petitioner,</p> <p>v.</p> <p>NC Victims Compensation Commission, Respondent.</p>	<p>FINAL DECISION SUMMARY JUDGMENT</p>
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THIS MATTER is before the undersigned on *Respondent's Motion for Summary Judgment[,]* *Motion to Compel and/or Dismiss* filed August 7, 2015.

RECITATION OF UNDISPUTED FACTS

1. On September 24, 2014, the Petitioner Sakiyah Shambry filed a Victim Compensation Application with the Respondent North Carolina Crime Victims Compensation Commission, seeking compensation for an alleged assault on August 24, 2014.

2. Petitioner's claim for benefits under the North Carolina Crime Victim's Compensation Act, N.C. Gen. Stat. § 15B-1, *et seq.*, was denied by Respondent because the assault alleged could not be substantiated by the police.

3. A Petition for a contested case hearing on this issue was accepted in the Office of Administrative Hearings ("OAH") on March 16, 2015.

4. On August 7, 2015, a discovery conference ordered by the undersigned was held, during which it was discussed that the police investigation concerning the allegedly criminal incident giving rise to this matter was ongoing, and of particular interest, a DNA analysis was pending. Consequently, with the consent of both parties, the matter was STAYED pending the results of that test.

5. On July 1, 2016, the Department of Justice notify this office that the DNA testing did not support the allegation of sexual assault on August 24, 2014. Because there was also a property crime alleged, prosecutors had not yet closed their file.

6. It appearing that prosecutors concluded there was no evidence to support a charge that Petitioner was sexually assaulted, the STAY was dissolved on September 9, 2016, and Petitioner was allowed an additional 15 days to respond to Respondent's motions to dismiss.

7. On July 1, 2015, Respondent served Petitioner with discovery requests, including *Respondent's First Request for Admissions*, pursuant to N.C. Gen. Stat. § 1A-1, Rule 36(a) of the N.C. Rules of Civil Procedure, made applicable to contested case hearings by 26 NCAC 03 .0101(a). Petitioner failed to respond to these requests and, consequently, the following matters were conclusively established, pursuant to Rule 36(b) of the N.C. Rules of Civil Procedure:

The criminal conduct giving rise to Petitioner's Application for Compensation occurred on August 23/24, 2014. On or about August 23/24, 2014, Petitioner consumed alcohol at a party located in apartment 323 of the campus Crossing apartment complex. Two individuals took Petitioner home on August 23/24, 2014 and put her on her bed. Jocelyn Williams and Rodney Turner helped Petitioner get home after the party on August 23/24, 2014. Police responded to Petitioner's residence on August 24, 2014. Petitioner informed officer T. J. West that she had drank a "significant amount" of dark liquor and became very intoxicated. Because of Petitioner's intoxication on August 23/24, 2014, Petitioner did not have a clear recollection of being brought back to her apartment on August 23/24, 2014. Petitioner woke up and saw Rodney Turner looking through her wallet. After seeing Rodney Turner looking through her wallet, she went back to sleep. Petitioner's roommate did not see anyone enter or exit Petitioner's room. Petitioner's roommate did not hear any disturbances on August 23/24, 2014. A surveillance camera captured Mr. Turner enter and exit Petitioner's apartment. Based on the video surveillance, police determined there would not have been enough time for Mr. Turner to sexually assault and rob Petitioner. Rodney Turner was charged with felony first degree burglary. Assault charges were not filed against Rodney Turner. The felony first degree burglary charge was voluntarily dismissed. All known medical expenses incurred as a result of the alleged incident, have been submitted to the Crime Victims Compensation Commission. All known medical expenses incurred as a result of the alleged incident, have been paid and/or written off. The Rape Victim Assistance Program paid \$750.00 to Duke University Health System. Petitioner is currently covered by Medicaid or other health insurance. At the time of the incident giving rise to Petitioner's claim for compensation, Petitioner was covered by Medicaid or other health insurance. Petitioner has not initiated a lawsuit or civil action against Rodney Turner. As a result of the injuries sustained by Petitioner on August 23/24, 2014 Petitioner has applied for financial assistance other than an application to the Crime Victims Compensation Commission.

Respondent's Motion for Summary Judgment[,] *Motion to Compel and/or Dismiss*, Exhibit 3, pgs. 6-8.

APPLICABLE LAW

1. The Office of Administrative Hearings has jurisdiction of the parties and the cause. N.C. Gen. Stat. §§ 15B-10(d); 15B-12(a).

2. 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 Victim's Compensation Act, N.C. Gen. Stat. § 15B-1, *et seq.*

3. Under North Carolina's Crime Victim's Compensation Act, Respondent is permitted to compensate only victims "who suffer[] personal injury or death proximately caused by criminally injurious conduct," for "economic loss and not for noneconomic detriment," proven under "the rules of liability applicable to civil tort law in North Carolina." N.C. Gen. Stat. §§ 15B-2(13); 15B-4(a).

4. The Petitioner bears the burden of showing that she was a "victim" who suffered injury caused by "criminally injurious conduct," that "by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State." N.C. Gen. Stat. § 15B-2(5) and (13).

5. Any award of compensation otherwise due shall be offset by payments from collateral sources. N.C. Gen. Stat. § 15B-11(d).

6. Pursuant to N.C. Gen. Stat. § 1A-1, Rule 36(a), and 26 NCAC 03.0112(b), all matters for which an admission is requested are deemed admitted unless a timely written answer or objection is made. The facts stated in the foregoing paragraph 7 of the "Recitation of Undisputed Facts" are conclusively established, as a matter of law, pursuant to these rules. N.C. Gen. Stat. § 1A-1, Rule 36(b).

7. The established facts show that any compensation that the Petitioner would otherwise be due would be offset by payments from collateral sources. N.C. Gen. Stat. § 15B-11(d).

8. The established facts will not support a finding that Petitioner is a victim of criminally injurious conduct, as defined in N.C. Gen. Stat. § 15B-2(5).

9. 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 any 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); *Harrison v. City of Sanford*, 177 N.C.App. 116, 118, 627 S.E.2d 672, 675 (2006).

Based on the foregoing, the undersigned hereby makes the following:

DECISION

As there is no genuine issue as to any material fact, the Respondent is entitled to summary judgment as a matter of law, the Petition must be **DISMISSED**, and the Respondent's decision to deny compensation must be **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, 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 7th day of October, 2016.

J Randolph Ward
Administrative Law Judge