

STATE OF NORTH CAROLINA
COUNTY OF ROCKINGHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 CPS 03213

KAREN A TUCKER PETITIONER, v. VICTIMS ASSISTANCE NC RESPONDENT.	FINAL DECISION
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THIS MATTER came before the Honorable J. Randall May, Administrative Law Judge, upon Petitioner's contested case petition, filed May 4, 2015; Petitioner's Motion for Summary Judgment, filed on April 18, 2016, pursuant to N.C. Gen. Stat. § 1A-1, Rule 56 and 26 NCAC 03.0115; and Respondent's renewed motion for Summary Judgment made in open Court on April 29, 2016. Having reviewed the pleadings, and heard the testimony of the Petitioner, the Court hereby enters the following:

FINDINGS OF FACT

1. Karen A. Tucker ("Petitioner") alleges she was the victim of an incident of breaking and entering at her home located at 506 S. Tipton Place, Reidsville, North Carolina on **June 3, 2013**. Petitioner was not home at the time of the alleged crime. Upon arriving home, Petitioner alleged she suffered medical issues that necessitated a trip to the hospital.
2. Petitioner remained in the hospital for four days. The medical issues Petitioner claims resulted from the alleged breaking and entering were preexisting and had been recommended for treatment on prior occasions by her physicians.
3. Even when Petitioner was released from the hospital on June 7, 2013, she did not report the alleged breaking and entering to law enforcement authorities. Petitioner did not offer good cause for her failure to report the incident at this time. Petitioner did not report the alleged incident for which she seeks victim compensation to the Reidsville Police Department until **April 8, 2015**, or more than one year after the alleged criminal activity. The police report notes that the date of the incident was actually June 18, 2013.
4. On March 2, 2015, Petitioners' victim compensation application – based upon the June 3, 2013 incident for which Petitioner was seeking reimbursement for property damage and medical expenses – was received and filed with the Division of Victim Compensation Services ("Respondent").
5. Following a review of Petitioner's claim and all applicable laws, Petitioners' application was denied for failure to report to law enforcement within seventy-two (72) hours of its

occurrence pursuant to N.C.G.S. § 15B-11(a)(3), and further denied because the injuries allegedly suffered by the Petitioner were not the direct and proximate result of criminally injurious conduct within the meaning of Chapter 15B of the North Carolina General Statutes. Accordingly, on April 15, 2015, Respondent mailed Petitioner a cover letter and a *Decision of Director: Denied*, informing Petitioner of the basis for the denial and of the right to appeal to the Office of Administrative Hearings. (“OAH”)

6. Petitioner’s Petition for Contested Case Hearing was filed and accepted by the OAH on May 4, 2015 appealing the denial of benefits from Respondent.
7. Petitioner reported the alleged crime over one year after its occurrence, and, there is no genuine issue of material fact that “[t]he criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence.”
8. Pursuant to N.C.G.S. § 15B-11(a), “[a]n award of compensation *shall* be denied if . . . [t]he criminally injurious conduct was not reported to a law enforcement officer or agency within **72 hours** of its occurrence, and there was no good cause for the delay.” N.C.G.S. § 15B-11(a)(3) (emphasis added).

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. Pursuant to N.C.G.S. § 15B-11(a), “[a]n award of compensation *shall* be denied if . . . [t]he criminally injurious conduct was not reported to a law enforcement officer or agency within **72 hours** of its occurrence, and there was no good cause for the delay.” N.C.G.S. § 15B-11(a)(3) (emphasis added). Petitioner did not report any criminally injurious conduct until over one year after its occurrence, and she has not established any good cause for the delay; Summary Judgment in favor of Respondent is appropriate.
4. Additionally, under North Carolina’s Crime Victims Compensation Act, Respondent is permitted to compensate only victims or those who file claims on behalf of victims. “Victim,” in turn, is defined as “[a] person who suffers personal injury or death proximately

caused by criminally injurious conduct.” N.C. Gen. Stat. § 15B-2(13). Pursuant to N.C. Gen. Stat. § 15B-4(a), “compensation for criminally injurious conduct shall be awarded to a claimant if substantial evidence establishes that the requirements for an award have been met.” Further, N.C. Gen. Stat. § 15B-4(a) provides, “[t]he Commission shall follow the rules of liability applicable to civil tort law in North Carolina.” The Petitioner bears the burden of showing that the victim’s injury was based on criminally injurious conduct within the meaning of N.C. Gen. Stat. § 15B-2(5). *See Holly Ridge Assocs., LLC v. N.C. Dep’t of Env’t & Natural Res.*, 176 N.C. App. 594, 606-608, 627 S.E.2d 326, 336-337 (2006). (Unless a statute provides otherwise, the petitioner has the burden of proof in all contested cases.) *See also, Peace v. Employment Sec. Comm’n*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998). “Criminally injurious conduct,” is 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, 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). Also, “substantial evidence,” is defined as “[r]elevant evidence that a reasonable mind might accept as adequate to support a conclusion.” N.C. Gen. Stat. § 15B-2(12a).

5. N.C. Gen. Stat. § 15B-4(a) states, in pertinent part, that “compensation shall **only** be paid for **economic loss** and not for non-economic loss.” N.C. Gen. Stat. § 15B-4(a) (emphasis added). Petitioner failed to establish that the requirements for an award have been met pursuant to N.C.G.S. § 15B-4(a) and 15B-2(12a). The crux of this case is whether the Petitioner can legally claim to be the victim of criminally injurious conduct, and therefore, claim medical expenses as a result of that conduct. Because the Petitioner cannot present credible evidence to show that her injuries were the result of criminally injurious conduct summary judgment should be granted to Respondent.
6. The pleadings and testimony presented at hearing conclusively establish that there is no genuine issue as to any material fact and Respondent is entitled to judgment as a matter of law.
7. 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, that Petitioner’s Motion for Summary Judgment is DENIED. Respondent’s Renewed 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, 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.

This the 14th day of June, 2016.

J Randall May
Administrative Law Judge