

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 CPS 03816

<p>PASCUAL D DARIA JR. PETITIONER,</p> <p>V.</p> <p>N C VICTIMS COMPENSATION COMMISSION RESPONDENT. RESPONDENT.</p>	<p>FINAL DECISION</p>
---	------------------------------

THIS MATTER came on for hearing before the Honorable J. Randall May, Administrative Law Judge presiding, on September 29, 2015, in Raleigh, North Carolina.

APPEARANCES

For Petitioner: Pascual D. Daria, Jr., *Pro Se*
1316 Marlborough Road
Raleigh, NC 27610

For Respondent: Tammera S. Hill
Assistant Attorney General
N.C. Department of Justice
Public Safety Section
9001 Mail Service Center
Raleigh, NC 27699-9001

WITNESSES

The following witnesses appeared and testified on behalf of Petitioner:

1. Pascual Daria, Jr., Petitioner
2. Eugenia Daria

The following witnesses appeared and testified on behalf of Respondent:

1. Melanie Palzatto

EXHIBITS

The following exhibits were admitted into evidence on behalf of Petitioner:

1. Exhibit 1 four page Philippine hospitalization records

2. Exhibit 2 Narrative Report from doctor in Philippines
3. Exhibit 3 Discharge Summary from Holly Hill Hospital, Raleigh
4. Exhibit 4 Insurance Declaration page
5. Exhibit 5 Geico Insurance Payout Form (\$22,922.00)
6. Exhibit 6 Attorney Ben Whitley Letter
7. Exhibit 7 Enterprise Rental Car Agreement
8. Exhibit 8 July 2015 Holly Hill hospitalization records

The following exhibits were admitted into evidence on behalf of Respondent:

1. Exhibit 5 Application for Victims Compensation
2. Exhibit 6 CVCC Case Report/Diary
3. Exhibit 7 October 21, 2013 letter Requesting Additional Information
4. Exhibit 8 May 30, 2014 Letter Requesting Additional Information
5. Exhibit 9 October 22, 2014 Letter Requesting Additional Information
6. Exhibit 10 Decision of Director: Denied

ISSUES

I. Whether Respondent substantially prejudiced Petitioner's rights and acted outside its authority, erroneously, arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule, when it denied Petitioner's claim for crime victim's compensation.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner is Pascual D. Daria, Jr., a resident of Raleigh, North Carolina. At the outset of this hearing, Petitioner knowingly and voluntarily consented to proceeding *pro se*.

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. On April 10, 2015, Respondent denied Petitioner's claim for victim's compensation, based on an investigation concluding that the "[c]laimant has failed to cooperate with or supply requested information to the Commission without lawful excuse," citing 14A NCAC 11.0502(k) (transferred to 14B NCAC 09.0302 effective June 1, 2013). Petitioner timely filed his Petition for a contested case hearing on May 22, 2015.

3. N.C.G.S. § 15B(11)(d) states that prior to awarding a claim, the commission "shall require Claimant to submit current information as to collateral sources on forms prescribed by the commission."

4 At the hearing, Respondent specifically relied on 14B NCAC 09.0302(k) as the basis for its denial of Petitioner's claim. The statute provides in pertinent part:

(k) A claimant who fails to cooperate with or supply requested information to the Director or who supplies inaccurate or incomplete information may have the claim denied or the award reduced, in the discretion of the Director or the Commission.

14B NCAC 09.0302(k).

5. On June 22, 2013, Petitioner Daria was hit by an intoxicated driver who was driving on the wrong side of the road. He sustained severe strain/sprains to his cervical and lumbosacral vertebra. He applied for Victims Compensation claim on or about October 15, 2013.

6. On October 21, 2013, a letter was sent to Petitioner requesting additional documentation, including a physician's statement indicating the days that he was unable to work; income verification, and car insurance settlement information. No response was received. (Testimony of Melanie Palzatto). See also Resp. Ex. 7.

7. On January 24, 2014, the Petitioner called Victims Compensation Services and spoke with Aida Cardenales. She informed Petitioner that they were still waiting for car insurance settlement information. Petitioner informed Cardenales that settlement had not been reached, and that he would send in the information once received. This information was never received. (Testimony of Melanie Palzatto). See also Resp. Ex. 6.

8. On May 30, 2014, Crime Victims Compensation Services sent a second letter to Petitioner requesting car insurance settlement information. The letter indicated that failure to provide the information within 10 days would result in denial of his claim. No response was received. (Testimony of Melanie Palzatto). See also Resp. Ex. 8.

9. On October 22, 2014, a letter was sent to Petitioner requesting additional documentation, including a physician's statement indicating the days that he was unable to work; income verification, and car insurance settlement information. No response was received. (Testimony of Melanie Palzatto). See also Resp. Ex. 9.

10. Petitioner introduced several exhibits in the form of medical reports and communications with an attorney in North Carolina.

11. During much of this time he had been living in Eastern Samar and receiving medical treatment there as well as in North Carolina, but he failed to show why he had neglected to respond to Respondent's requests.

12. Based on Petitioner's failure to respond to the aforementioned letters or to offer a lawful excuse for not responding, Respondent denied Petitioner's application for compensation on April 10, 2015, nearly six months after the last letter to Petitioner was sent.

BASED UPON the foregoing Findings of Fact, the undersigned hereby makes the following:

CONCLUSIONS OF LAW

1. Both parties were properly before the Administrative Law Judge, in that jurisdiction and venue are proper and both parties received notice of the hearing.
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 Victims Compensation Act.
3. 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.”
4. To meet all the requirements for an award, Petitioner must show he is a “claimant” and has incurred an “allowable expense” as or on behalf of a “victim” of “criminally injurious conduct.” N.C. Gen. Stat. § 15B-2(2), (1), (5), (13). In addition, Petitioner bears the burden of showing none of the disqualifying criteria in N.C. Gen. Stat. § 15B-11 operates to bar his claim. *See Richardson v. N.C. Dep’t of Pub. Instruction Licensure Section*, 199 N.C. App. 219, 228, 681 S.E.2d 479, 485 (“It is well-settled that a petitioner has the burden of proof at an administrative hearing to prove that he is entitled to relief from the action of the administrative agency. This burden is on the petitioner even if he must prove a negative.” (citing *Overcash v. N.C. Dep’t of Env’t & Natural Res.*, 179 N.C. App. 697, 635 S.E.2d 442 (2006), *disc. rev. denied*, 361 N.C. 220, 642 S.E.2d 445 (2007))), *disc. rev. denied*, 363 N.C. 745, 688 S.E.2d 694 (2009).
5. Substantial evidence is defined as “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” N.C. Gen. Stat. § 15B-2(12a).
6. Substantial evidence exists to show that Petitioner properly filed his application as a “victim” of “criminally injurious conduct” pursuant to N.C. Gen. Stat. § 15B-2(5) and (13).
7. Ultimately, Petitioner has not carried his burden in demonstrating that Respondent acted outside its authority, acted arbitrarily and capriciously, used improper procedure, failed to act as required by law or rule, or acted erroneously when it denied Petitioner’s claim for crime victim’s compensation based upon N.C. Gen. Stat. § 15B-11(d) and 14B NCAC 09.0302(k).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby makes the following:

DECISION

Respondent’s decision to deny Petitioner’s claim for Crime Victims Compensation is hereby **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, 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 30th day of December, 2015.

J Randall May
Administrative Law Judge