

STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 CPS 08769

Jason P Long Petitioner, v. NC Department of Public Safety - Victim Services Respondent.	<b>DECISION GRANTING SUMMARY JUDGMENT FOR PETITIONER</b>
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This matter came before the undersigned upon the Respondent's Second Motion for Summary Judgment filed in the Office of Administrative Hearings on November 29, 2016. The undersigned considered the matters set out in said Motion, the Petitioner's response to the same filed on December 5, 2016, and the Respondent's Reply to Petitioner's Response filed on December 7, 2016.

The facts are not in dispute. For purposes of this decision, the undisputed material facts are as follows:

1. Jason P. Long ("Petitioner") submitted an application (the "Application") to the North Carolina Office of Victim Services seeking victim compensation on May 27, 2016. (Application for Crime Victim Compensation - Ex. A, attached to Respondent's Second Motion for Summary Judgment (hereinafter "Resp. 2<sup>nd</sup> MSJ")).

2. In his Application, Petitioner states that he was the victim of an assault which occurred on March 24, 2015, in Catawba County, North Carolina (Ex. A attached to Resp. 2<sup>nd</sup> MSJ).

3. According to the Incident-Investigation and CAD Operations Report prepared by the Catawba County Sheriff's Department ("Sheriff's Department"), Jason Long called the Sheriff's Department on March 24, 2015, in order to document that he had been assaulted by Dustin Berry. (Incident-Investigation and CAD Operations Reports - Exs. B and C attached to Resp. 2<sup>nd</sup> MSJ).

4. Petitioner advised the Sheriff's Department that he did not want to pursue charges against Mr. Berry. (Incident-Investigation and CAD Operations Reports - Exs. B and C attached to Resp. 2<sup>nd</sup> MSJ).

5. Dustin Berry was the Petitioner's daughter's step-father. (Answers to Discovery, Admission #4 - Ex. D attached to Resp. 2<sup>nd</sup> MSJ).

6. On or about March 25, 2015, the Sheriff's Department noted the call in its log, but did not complete an incident report.

7. Petitioner received medical care at Carolinas Medical Center on March 24, 2015. (Answers to Discovery, Admission #'s 12 and 13 – Ex. D attached to Resp. 2<sup>nd</sup> MSJ).

8. Dustin Berry died sometime after March 24, 2015 and before May 27, 2017.

9. On June 23, 2016, a request for a copy of the law enforcement report was mailed to the Petitioner at the address provided to the Agency. (Letter to Petitioner dated June 23, 2016 – Ex. E attached to Resp. 2<sup>nd</sup> MSJ).

10. Sheriff's Deputy C.B. Rowe spoke to the Petitioner and confirmed that he would prepare an incident report to assist Petitioner with his application for victim assistance. (Incident Investigation Report – Ex. B attached to Resp. 2<sup>nd</sup> MSJ).

11. On or about July 25, 2016, an Incident Report was submitted by Petitioner to the Agency concerning the assault that occurred on March 24, 2015. (Incident-Investigation Report – Ex. B attached to Resp. 2<sup>nd</sup> MSJ).

12. On August 12, 2016, Respondent mailed Petitioner a cover letter and a Decision of Director: Denied, explaining the denial and giving notice to Petitioner of his right to appeal. (Document Constituting Agency Decision - filed on October 24, 2016 with the Office of Administrative Hearings).

13. Respondent based the denial of Petitioner's claim on its determination that Petitioner failed, without good cause, to: 1) report the criminally injurious conduct to law enforcement within seventy-two (72) hours of its occurrence as required by N.C. Gen Stat. § 15B-11(a)(3); and 2) failed to fully cooperate with appropriate law enforcement agencies or in the prosecution of criminal cases with regard to criminally injurious conduct as required by N.C. Gen. Stat. § 15B-11 (c). (Document Constituting Agency Decision - filed on October 24, 2016 with the Office of Administrative Hearings).

14. On August 30, 2016, the Petitioner's Petition for Contested Case Hearing was filed and accepted by the Office of Administrative Hearings.

15. On October 10, 2016, ALJ Selina M. Brooks denied the Respondent's initial Motion for Summary Judgment.

16. On November 8, 2016, Petitioner answered Respondent's First Requests for Admission, First Set on Interrogatories, and First Request for Production of Documents to Petitioner, which was served on November 2, 2016. (Answers to Discovery – Ex. D attached to Resp. 2<sup>nd</sup> MSJ).

17. The issues in this case are: 1) whether Petitioner's telephone call to the Sheriff's Department on the night of the incident in question was sufficient to satisfy the requirement set forth in N.C. Gen Stat. § 15B-11(a)(3), and 2) whether Petitioner was obligated to pursue criminal charges against Dustin Berry in order to satisfy the requirement set forth in N.C. Gen. Stat. § 15B-11 (c).

Based on the foregoing undisputed material facts, and the provisions of N.C. Gen. Stat. § 15B, et. seq., the undersigned makes the following:

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case.

2. The Respondent has the authority to deny compensation if “the 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. Gen Stat. § 15B-11(a)(3).

3. Petitioner satisfied the reporting requirements set forth in N.C. Gen Stat. § 15B11(a)(3) when he called the Sheriff’s Department on the night of the assault and reported the details of assault to Sheriff Deputy C.B. Rowe.

4. The position taken by the Respondent that the telephone call Petitioner made to law enforcement was insufficient to satisfy the reporting requirement set forth in N.C. Gen Stat. § 15B-11(a)(3) is incorrect as a matter of law, and it should not be applied in this case.

5. The Respondent has the authority to deny compensation “...upon finding that the claimant or victim, without good cause, has not fully cooperated with appropriate law enforcement agencies or in the prosecution of criminal cases with regard to the criminally injurious conduct that is the basis for the award.” N.C. Gen. Stat. § 15B-11 (c).

6. Petitioner satisfied the requirements set forth in N.C. Gen. Stat. § 15B-11 (c) when he cooperated with investigation of the crime of assault perpetrated by Dustin Berry to the fullest extent required by the investigating law enforcement official. Petitioner was not obligated to pursue a criminal charge. Additionally, the investigating law enforcement official could have pursued a criminal charge against Mr. Berry of his own volition and required Petitioner to cooperate with such pursuit, however, Sheriff Deputy C.B. Rowe chose not pursue a criminal charge against Mr. Berry.

7. Respondent has not made reference to any statute, rule or applicable North Carolina case law that imposes an affirmative duty upon the victim of a crime to pursue criminal charges in order to be eligible for an award of compensation under N.C. Gen. Stat. § 15B, et.seq.

8. The position taken by the Respondent that the Petitioner was required to pursue criminal charges against Dustin Berry in order to satisfy the requirement set forth in N.C. Gen. Stat. § 15B-11 (c) is incorrect as a matter of law, and it should not be applied in this case.

9. “Summary judgment may, when appropriate, be rendered against the party moving for such judgment. Summary judgment in favor of the non-movant is appropriate when the evidence presented demonstrates that no material issues of fact are in dispute, and the nonmovant is entitled to entry of judgment as a matter of law.” *Sullivan v. Pender County*, 196 N.C. App. 726, 731 (2009) (citations omitted).

10. In the contested case before the undersigned there are no material issues of fact in dispute, and the Petitioner, the non-movant, is entitled to entry of judgment as a matter of law.

### **DECISION**

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that:

1. Respondent's Motion for Summary Judgment is DENIED.
2. Summary Judgment is granted in favor of Petitioner.
3. Petitioner's application to the North Carolina Office of Victim Services shall be evaluated according to the ruling provided in the Conclusions of Law set out above.

### **NOTICE**

**THIS IS A FINAL DECISION** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing 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 copy of the Administrative Law Judge's Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. **This Final Decision was served on the parties as indicated 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 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 December, 2016.

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David F Sutton  
Administrative Law Judge