

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
18 CPS 02239

<p>Paul A Mariano Petitioner,</p> <p>v.</p> <p>North Carolina Crime Victims Compensation Commission Respondent.</p>	<p><b>FINAL DECISION</b></p>
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THIS MATTER CAME before the Undersigned for hearing on February 5, 2019. After careful consideration of the evidence presented at the telephone hearing, legal arguments made and authorities referenced by the parties. By Order entered on February 11, 2019, Petitioner was informed that he was the prevailing part and was directed to submit a Proposed Decision on or before March 11, 2019; and Respondent was allowed 14 days after receipt to submit comments on the submission. Respondent has not filed any comments.

**FINDINGS OF FACT**

1. On or around November 7, 2017, Paul A. Mariano (“Petitioner”) submitted an application (the “Application”) to the North Carolina Crime Victims Compensation Commission (“Respondent”) seeking victim compensation for monetary damages resulting from the Assault (defined below).
2. In his Application, Petitioner states that he was the victim of an assault which occurred on September 2, 2017, in Mecklenburg County, North Carolina (“Assault”).
3. According to the Officer/Informal Incident Report dated October 24, 2017 (“Report”), which Report was prepared by the Charlotte-Mecklenburg County Police Department (“Police Department”), Petitioner called the Police Department on September 3, 2017 to document that, on September 2, 2017 at 2000 hours, Petitioner had been assaulted by an unknown suspect (“Suspect”).
4. On September 3, 2017, Officer K L Havel of the Police Department responded to 9230 Harris Corners Parkway to take the statement of Petitioner and entered such statement in the Report on or around September 3, 2017.

5. On September 3, 2017, Petitioner received medical care from an urgent care facility and, on advice of the urgent care facility, Petitioner received further care from the Emergency Department at Roanoke Memorial Hospital in Roanoke, Virginia and, as a result, incurred substantial medical bills.

6. On or around September 6, 2017, Petitioner's case was reassigned from Officer K L Havel to Officer T.R. Illuminati ("Investigating Officer").

7. Following the Assault, Petitioner maintained frequent contact with the Investing Officer and the Police Department including, but not limited to, email and phone communications related to the identification of the Suspect, obtaining a warrant for the arrest of the Suspect, and the option to seek victim's compensation from Respondent.

8. At no time did either Investigating Officer or the Police Department choose to prosecute or require Petitioner to prosecute the Suspect.

9. On February 13, 2018, 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.

10. Respondent based the denial of Petitioner's claim on its determination that Petitioner, without lawful excuse, had failed to cooperate with or supply requested information to appropriate law enforcement agencies with regard to the criminally injurious conduct that is the basis for Petitioner's claim for compensation or in the prosecution of criminal cases with regard to criminally injurious conduct as required by N.C. Gen. Stat. § 15B-11 (c).

11. On or around April 12, 2018, the Petitioner's Petition for Contested Case Hearing was filed and accepted by the Office of Administrative Hearings.

12. The issues in this case are: 1) whether Petitioner's communications with the Police Department was sufficient to satisfy the requirement set forth in N.C. Gen Stat. § 15B-11(c), and 2) whether Petitioner was obligated to pursue criminal charges against the Suspect 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. 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).

3. 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 Suspect to the fullest extent required by the investigating law enforcement official.
4. Petitioner was not obligated to pursue a criminal charge against Suspect.
5. The Investigating Officer could have pursued a criminal charge against Suspect of his own volition and required Petitioner to cooperate with such pursuit, however, the Investigating Officer and Police Department chose not to pursue a criminal charge against Suspect.
6. 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.
7. The position taken by the Respondent that the Petitioner was required to pursue criminal charges against Suspect 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.

### DECISION

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

Petitioner's application to the North Carolina Office of Victim Services for compensation in the amount of \$1,226.80 shall be approved.

### NOTICE OF APPEAL

**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 as indicated by 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 3rd day of April, 2019.



Selina Malherbe  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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Petitioner

Yvonne Bulluck Ricci  
North Carolina Department of Justice  
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Attorney for Respondent

This the 3rd day of April, 2019.



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