

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 CPS 01803

<p>Nathaniel J. Bartlett and Jerry M. Tolson Petitioner,</p> <p>v.</p> <p>NC Victims Compensation Commission Respondent.</p>	<p>FINAL DECISION</p>
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The contested case of Nathaniel J. Bartlett and Jerry M. Tolson, Petitioners herein, was heard before Administrative Law Judge Stacey Bice Bawtinheimer on December 7 and 8, 2020 via Microsoft Teams. Petitioners contested Respondent's denial of victim compensation. For reasons stated herein, the Undersigned **REVERSES** that decision and finds that the Victim is entitled to victim's compensation.

APPEARANCES

For Petitioners: Nathaniel J. Bartlett, *pro se*
1801 Summit Hills Way, Apt D.
Raleigh, NC 27607

Jerry M. Tolson
5645 Thisleton Lane
Raleigh, North Carolina 27606

For Respondent: Adrina G. Bass
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27609

ISSUE PRESENTED

Whether Petitioner either without good cause¹ or willfully failed/refused to cooperate with or supply requested information to any appropriate law enforcement agency with regards to the criminally injurious conduct that is the basis for his award?

¹ Respondent's denial letter held that "Claimant, without lawful excuse, has failed to cooperate ...". Resp. Ex. 3. The standard is "without good cause". See N.C. Gen stat. § 15B-11(c).

WITNESSES

For Petitioner: Nathaniel James Bartlett, Petitioner
Jerry M. Tolson, Petitioner's Mother
Timothy Bartlett, Petitioner's Father

For Respondent: Nathaniel James Bartlett, Petitioner
Officer Britt Kuchen, Raleigh Police Department ("RPD")
Officer Christian Dahmke, RPD
Officer Logan Ferguson, RPD
Detective Douglas Bacon, RPD
Detective Scott Myers, RPD
Detective Jared Silvious, RPD
Nytisha Lee-Wright, Respondent's Claim Investigator

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner ("Pet'r Ex."): A - IEP
B - Olive Garden Pay Stud
C - Note from Deanne Thurber re: vehicle
D - Wake Orthopaedics Treatment Note
E - Map of Designation

For Respondent ("Rest. Ex."): 1 - Application
2 - Original and Supplemental Police Reports
3 - Decision Denying Claim

PRE-HEARING MOTIONS

On 11 June 2020, Respondent filed Motion to Dismiss seeking to have Petitioner's case dismissed for lack of standing as Petitioner was not the victim. At the hearing, Respondent's renewed Motion to Dismiss was denied. Nathaniel J. Bartlett was the victim of a criminal incident and seeks victim's compensation from the Respondent. However, this contested case petition was filed by his mother, Jerry M. Tolson. On 3 August 2020, Administrative Law Judge Melissa Owens Lassiter denied that Motion. Respondent orally renewed that Motion at the beginning of the contested case hearing on December 7, 2020. Because neither misjoinder nor nonjoinder of parties is ground for dismissal of an action, the presiding administrative law judge denied that Motion and ordered the joinder of Nathaniel J. Bartlett as a party. N.C. Gen. Stat. § 1A-1, Rule 21.

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 and Conclusions of Law. In making the Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

BASED UPON the foregoing and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

FINDINGS OF FACT

The Parties:

1. On or about December 22, 2018, Nathaniel James Bartlett (the “Victim” or “Petitioner”) was robbed at gunpoint and shot four (4) times at close range by an unknown assailant.

2. Based on this aggravated assault and battery, Jerry M. Tolson, the Victim’s mother, applied on his behalf to the North Carolina Victims Compensation Commission for victim’s compensation.

3. The North Carolina Victims Compensation Commission (“Respondent” or “Commission”) denied the Victim compensation because he was purportedly noncooperative with the Raleigh Police Department’s investigation. (Resp. Ex. 3)

4. Nytisha Lee-Wright is the Claims Adjuster for the Respondent (“Adjuster Lee-Wright”).

5. Adjuster Lee-Wright reviewed all the police reports. She reviewed the initial Police Report dated December 22, 2018 prepared by Officer Britt Kuchen and the Supplemental Police Reports dated: December 22, 2018 prepared by Officers Christian Dahmke and Logan Ferguson; December 26, 2018 prepared by Officer Scott Meyers; and December 28, 2018 prepared by Detective Douglas Bacon. (Resp. Ex. 2)

6. As of December 28, 2018, the case had been put on inactive status. (Resp. Ex. 2, p. 15)

7. Three months after the incident on March 19, 2019, Detective Jared Silvius wrote his Supplemental Report. (Resp. Ex. 2, pp. 17-21) Adjuster Lee-Wright reviewed this report also prior to making her recommendation to deny victim’s compensation.

8. Although Adjuster Lee-Wright received documentation of the Victim's medical bills, she did not personally speak with either the Victim or his parents.

9. Detective Silvius was the only law enforcement officer that Adjuster Lee-Wright interviewed.

10. According to Adjuster Lee-Wright, the Victim was denied compensation for only one reason: he failed to cooperate with law enforcement during the investigation. (T of Lee-Wright)

11. The Undersigned questioned Adjuster Lee-Wright about whether the Victim's failure to give a DNA sample (three months after the incident) was another reason his claim was denied. Adjuster Lee-Wright testified that the Victim's failure to give a DNA sample was not the reason for the denial. (T of Lee-Wright)

The Incident:

12. On the evening of December 21, 2018, around 11:00 pm to 12:00 midnight, the Victim was meeting up with his friend "Scotty Jackson" after work. The Victim drove from the Olive Garden Restaurant where he worked as a server to a midway point to meet with his friend. (See Pet. Ex. E - Map Showing Halfway Point from original location to downtown Raleigh nightclubs). The Victim was not sure of their *rendezvous* point. (T of Victim)

13. Since his friend was not answering his phone, the Victim stopped his truck to avoid wasting gas near 1400 N. Raleigh Blvd across from the Food Lion. Because the evening was warm and his vehicle had no air conditioning, the Victim stepped outside his car to text and call his friend. He waited by his car for approximately 5 to 10 minutes. *Id.*

14. While standing by his car, the Victim noticed two Black males approaching him from the Food Lion but thought nothing of it when they disappeared further down the road. The time was now almost 12:00 a.m. (midnight) on December 22, 2018. *Id.*

15. While waiting for his friend to return his calls, the Victim hears a "clicking" noise behind him and noticed that "one of the guys" was behind him fumbling with a jammed pistol. Because the Victim was experienced with guns, he lunged at the assailant to try to get the pistol before it was cleared. The assailant mumbled something like "I'm not playing around with you. This is not a joke." The Victim was about 2 feet away when the assailant cleared the chamber and loaded another round. The assailant shot the Victim in the groin and lower abdomen. As the Victim attempted to flee, he was shot in the chest and the leg. The last bullet shattered the Victim's femur and he fell to the ground. *Id.*

16. When the assailant approached, the Victim threw his wallet at the assailant which had approximately \$500.00 in it. The assailant looked in the wallet, took it, and ran across the street. During the incident, the assailant never physically touched the Victim or his clothing. *Id.*

17. Immediately afterwards, the Victim left a message for his friend Scotty to call his parents because they would be asleep at this time and would not answer their phones. At this point, a crowd had gathered around the Victim and were calling 911. A bystander with medical training applied pressure on his wounds and she stopped others from stealing his shoes and cell phone. During this time, someone gathered all the gun castings from the site. *Id.*

18. The Victim was hospitalized for ten (10) days and medicated with pain medication during that period. (Ts of Tolson and Victim) The fracture of the Victim's right femur required a right femoral shaft intramedullary nailing procedure. (Pet'r Ex. D) The Victim's doctor permitted him to do sedentary work only starting on August 22, 2018. (Pet'r Ex. D)

The Victim Cooperated With Law Enforcement's Investigations

From December 22, 2018 to December 27, 2018.

19. Immediately upon their arrival at the scene on December 22, 2018, the Raleigh Police Department ("RPD") began its investigation. Various Officers and Detectives questioned the Victim at the scene, in the ambulance, and during his stay in the hospital. The investigation was inactive from December 28, 2018 until March 14, 2019 when Detective Silvius contacted the Victim's father inquiring if the Victim would give a DNA sample. No one from RPD communicated directly with the Victim after December 27, 2018.

20. All of the investigating officers and detectives testified that the Victim cooperated with their investigation during the period from December 22, 2018 through December 27, 2018. (Ts of Kuchen, Dahmke, Ferguson, Bacon, and Silvius)

21. Of note, none of the Officers and Detectives' body cameras were functioning during their questioning of the Victim.

Officer Britt Kuchen's Investigation

22. Officer Britt Kuchen was the first officer to arrive at the scene.

23. According to Officer Kuchen, it is most important to object suspect information as soon as possible to apprehend the suspect and to be "BOLO" which means "Be On the Look Out." (T of Kuchen)

24. When Officer Kuchen tried to get suspect information, the only thing he recalled the Victim saying was "I can't." Officer Kuchen misinterpreted this response to mean that the Victim knew the suspect but could not reveal the suspect's identity. (T of Kuchen)

25. The Victim, however, explained that he could not respond to Officer Kuschen's questions because he did not know the shooter, not that he was unwilling to name the assailant. The Victim recalled that he gave Officer Kuchen a description of the suspect and had indicated which way the suspect went. (T of Victim)

26. Officer Kuchen kept asking the Victim questions along the lines of: “who were you buying drugs from?” and “why were you in the area if not to buy drugs?” (T of Victim)

27. On cross-examination, Officer Kuchen “could not recall” asking the Victim these questions. (T of Kuchen)

28. By the time Officer Kuchen arrived there were no shell casings, firearms, or other items of evidentiary value located at the scene. Moreover, there was no evidence on the Victim or visible in his truck to prove that the Victim had stopped to buy drugs. (T of Kuchen)

29. Officer Kuchen testified that the Victim never refused to answer any of Officer Kuchen’s questions to the extent that the Victim could at the time. According to Officer Kuchen, the Victim cooperated with the investigation. (T of Kuchen)

Officer Christian Dahmke’s Investigation

30. Officer Christian Dahmke next arrived on the scene, located the Victim lying on the ground, and applied pressure to the Victim’s chest wound and leg wound which were bleeding heavily. (T of Dahmke)

31. At that time, the Victim thought he was dying, was bleeding heavily; and having difficulty breathing because of the abdomen wound. (T of Victim)

32. Like Officer Kuchen, Officer Dahmke’s initial objective was to secure the area to avoid any further assaults and to keep the area safe for the Victim, EMS, and other officers. Officer Dahmke asked the crowd around the Victim which direction did the suspect go and other critical information needed to apprehend the suspect as soon as possible. (T of Dahmke)

33. Officer Dahmke did not recall what questions Officer Kuchen had asked the Victim. *Id.*

34. According to Officer Dahmke, the Victim cooperated to the best he was able and did not refuse to answer any questions. According to Officer Dahmke, the Victim cooperated with the investigation. *Id.*

Officer Logan Ferguson’s Investigation

35. The last officer to arrive on the scene before the Victim was transported to the hospital was Officer Logan Ferguson. Officer Ferguson rode with the Victim in the ambulance to the hospital. The trip took only 5 minutes. (T of Ferguson)

36. Initially, the Victim was unable to talk to Officer Ferguson but once the Victim was stabilized, the Victim began answering questions and said what occurred during the robbery. *Id.*

37. The Victim described both the suspects. *Id.*

38. According to Officer Ferguson, the Victim cooperated in his investigation and answered all his questions once the Victim was stabilized and on pain medication. *Id.*

Detective Douglas Bacon's Investigation

39. Detective Douglas Bacon arrived at the scene after the Victim had been transported to the hospital. Officer Bacon did not speak to the Victim, but he did speak with other potential witnesses. (T of Bacon)

Detective Scott Meyers' Investigation

40. The following day, Detective Scott Meyers interviewed the Victim. According to Detective Meyers, the Victim answered all of his questions even though he was in "quite a bit of pain." (T of Meyers)

41. The Victim remained in the hospital over the Christmas holidays. (T of Victim)

Detective Jared Silvius' Investigation

42. On December 27, 2018, Detective Jared Silvius was assigned this case and conducted a follow-up interview that day. Detective Silvius first attempted to call the victim but the call went to voicemail since RPD had confiscated the Victim's cell phone. (T of Silvius)

43. Detective Silvius went to the hospital and around 10:40 pm-11:00 p.m. knocked on the Victim's room door (T of Silvius) and woke up both the Victim and the Victim's mother, Jerry Tolson. (T of Tolson)

44. Detective Silvius' arrival so late at night was not well received by Ms. Tolson. (T of Tolson)

45. Detective Silvius began by introducing himself and asking the Victim questions about what occurred the night of the incident. (T of Silvius) He also stated that the area where the Victim was shot had had quite a few shootings with gang members and drive by shootings. (Ts of Tolson and Victim) Detective Silvius asked the Victim if "any nefarious activity was actually going on." (Ts of Silvius and Victim)

46. Based on the tenor of Detective Silvius' questions, the Victim felt like he was the suspect. (T of Victim)

47. During this questioning, Jerry Tolson interrupted Detective Silvius and advised him that she did not appreciate her son being asked the same questions over and over and at this time of the night. Ms. Tolson accused the Raleigh Police Department of being ineffective and that they were treating the Victim as though he was the criminal. Detective Silvius once again attempted to explain the importance of gaining information regarding the incident, but Ms. Tolson continued to yell at Detective Silvius so he left his business card and began to exit the hospital room. (Ts of Silvius and Tolson)

48. Before Detective Silvius left the room, Ms. Tolson changed her mind. (T of Tolson) She contacted her husband, Timothy Bartlett, by phone and proceeded to hand the phone to Detective Silvius (T of Tolson) at which time the husband started yelling at Detective Silvius. (T of Silvius) Detective Silvius again explained the process for an investigation and that all questions were important. (T of Silvius) After a few minutes, the argument subsided and Timothy Bartlett let the Victim speak to the police. (T of Silvius)

49. At that time, the Victim provided a description of the suspect but denied knowing the suspect and denied stopping to purchase narcotics. (T of Victim)

50. While the Victim's parents admitted they were initially uncooperative (Ts of Tolson and Bartlett), according to Detective Silvius, the Victim was cooperative with the investigation and answered all of the Detective's questions. (T of Silvius)

December 28, 2018 through March 14, 2019

51. The case was placed on inactive status on December 28, 2019.

52. At some point between December 28, 2018 and March 14, 2019, Detective Silvius sent a request to the SBI to have the Victim's pants tested for DNA transfer from the suspect but was advised that he would need a sample from the Victim.

53. Three (3) months after the aggravated assault and battery, on March 14, 2019, Detective Silvius contacted the Victim's father, not the Victim himself, to request a DNA sample from the Victim in order to try and test for DNA transfer. (T of Silvius)

54. The last contact the Victim had with Detective Silvius was the night of December 27, 2018. (T of Victim)

55. The Victim did not follow up because he expected Detective Silvius to follow up with him on the investigation results. (T of Victim) Moreover, since the assailant never touched the Victim or his clothing, the Victim did not understand how a transfer of the suspect's DNA could have occurred. (T of Victim)

56. During this entire period, RPD had the Victim's blood stained clothing and could have sought the Victim's consent to test his clothes for his DNA. (T of Victim) It is not clear why Detective Silvius did not seek the Victim's consent for this testing rather than treat the Victim as a suspect and ask for a DNA sample.

The Victim Compensation Denial

57. On or about December 16, 2019, Petitioner, Jerry Tolson, filed an application on behalf of the Victim for compensation of his claims due to this criminal incident. (Resp. Ex. 1)

58. At the time of the accident, the Victim did not have health insurance. After the shooting, he was unable to return to work as a waiter because the permanent nerve damage to his right leg required him to wear a brace and he walked with a limp. (Resp. Ex. 1)

59. Nytisha Lee-Wright is the Claims Investigator for the Respondent. During her review of the claim, Adjuster Lee-Wright received the police report and then contacted law enforcement to confirm that the report was consistent with the actual investigation. (T of Lee-Wright)

60. In this case, Adjuster Lee-Wright made her decision based solely on her discussion with Detective Silvius and hearsay contained in the police report. She did not contact the other officers or detectives who had written the initial and supplemental reports. She also did not contact the Victim or the Victim's parents. (T of Lee-Wright)

61. Although the medical bills were not introduced, Adjuster Lee-Wright acknowledged that the Victim had submitted all necessary medical documentation and invoices in support of his compensation request. (T of Lee-Wright)

62. Following the investigation, Respondent denied the Victim's claim because the Victim willfully failed or refused to give investigating law enforcement officer necessary information regarding the incident at issue; or, willfully provided inaccurate or untruthful information to law enforcement officers regarding the incident at issue; or, willfully failed or refused to cooperate in the prosecution to the offender charged in the incident. N.C. Gen. Stat. § 15B-11 (c) (*See* Resp. Ex. 3, p. 2)

63. Respondent also asserted that the Victim, without lawful excuse, failed to cooperate. *Id.*

64. Adjuster Lee-Wright testified that the Victim's unwillingness to give a DNA sample, requested by Detective Silvius three months after the incident, was not the reason that his claim was denied. (T of Lee-Wright)

65. However, after this admission, during reexamination by Respondent's counsel and in response to a leading question, Adjuster Lee-Wright changed her answer and said the DNA refusal combined with inconsistencies in the Victim's answers were the grounds for the denial. (T of Lee-Wright)

66. On March 2, 2020, the Respondent mailed Ms. Tolson a Decision of Director's Denial. The accompanying cover letter explained the denial and notified the Victim of his right to appeal to the Office of Administrative Hearings. The Victim timely appealed the denial.

The Respondent's Denial for the Victim's Failure to Cooperate Is Inconsistent with the Sworn Testimony at Hearing

67. All of the law enforcement witnesses, including Detective Silvius, who investigated the Victim's case testified that the Victim answered all their questions and cooperated

to the extent he was able in light of his severe pain after being shot 4 times. (Ts of Kuchen, Dahmke, Ferguson, Meyers, and Silvious)

68. Only the Victim's mother, Jerry Tolson, was initially uncooperative late at night (11:00 p.m.) when Detective Silvious sought to question her son while he was recovering in the hospital. However, even she, after the situation was defused by the Victim's father, cooperated.

69. That night the Victim himself never refused to answer Detective Silvious' questions. (Ts of Victim and Sivilious)

70. With respect to the DNA sample, the Victim was never directly contacted or asked by Detective Silvious to consent to DNA testing of his blood-stained clothing or to give a DNA sample. (Ts of Silvious and Victim)

71. The Undersigned finds that the Victim did cooperate with law enforcement during their investigation and that victim's compensation should be awarded.

BASED UPON the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before this Administrative Law Judge and jurisdiction, venue, and joinder are proper.

2. 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 so considered without regard to the given labels.

3. A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611,612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).

4. The Crime Victims Compensation Commission established by G.S. 15B-3 and compensates victims of criminally injurious conduct subject to limitations set by G.S. 15B-22 and not to exceed thirty thousand dollars (\$30,000.00). N.C. Gen. Stat. § 15B-11(g).

5. Compensation can be awarded for reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically related property, and other remedial treatment and care. N.C. Gen. Stat. § 15B-2.

6. Jerry Tolson, on behalf of her son, properly filed an application for victim compensation with the Director and submitted all the required documentation supporting compensation. N.C. Gen. Stat. § 15B-7.

Denial of the Victim's Award

7. An award of compensation shall be denied for various reasons. *See* N.C. Gen. Stat. § 15B-11(a)-(c).

8. In this case, the Victim's claim was denied based on N.C. Gen. Stat. § 15B-11(c) which states:

A claim may be denied, an award of compensation may be reduced, and claim that has already been decided may be reconsidered upon a 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. (emphasis added)

9. Respondent's denial letter asserted that the:

Claimant, **without lawful excuse**, has 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 this claim for compensation, and the claim should be denied in accordance with G.S. 15B-11(c). (Resp. Ex. 3, p. 2) (emphasis added)

10. Respondent criticized the Victim for failing to answer questions from investigating officers immediately after the shooting. While the Undersigned recognizes that the time immediately after the shooting was critical to locating a suspect, other factors affected the Victim's ability to be fully responsive.

11. This is such a situation where a Victim had been shot 4 times, was bleeding profusely, and was in severe pain. Moreover, the Victim thought he was dying and was having difficulty breathing. The Undersigned finds that, to the extent that the Victim was uncooperative during that time, he had "good cause" for not responding adequately.

12. Once he was medically stable in the ambulance, the Victim did answer all of Officer Ferguson's questions about what occurred and gave critical suspect information.

13. Here, the preponderance of evidence shows that the Victim did cooperate in providing information about the case and the events that happened on the night when he was shot.

14. Moreover, the Victim continued to cooperate with law enforcement after being medically stabilized on the night he was shot, and during his subsequent interactions with the police while hospitalized even when he was in significant pain and heavily medicated for his injuries.

15. All the Officers and Detectives testified that the Victim cooperated in the investigation.

16. Notably, although, based on the questioning by law enforcement, the officers/detectives suspected that the Victim, a White male, was in the location to buy drugs, the Victim was not denied compensation because he was involved in any illegal activity. Nor was there any evidence supporting their suspicions. These suspicions continued to influence the investigation and assumptions were made that the Victim was being purposefully evasive and untruthful.

17. RPD essentially closed the case as of December 28, 2018 when the case was placed on inactive status.

18. On January 17, 2019, Detective Silvious reported to the Victim's father that "there were no suspects and no witnesses with additional information." (Resp't Ex. 3, p. 19)

19. Three (3) months later on March 14, 2019, just days before he wrote his Supplemental Report on March 19, 2019, Detective Silvious spoke with the Victim's father and asked the Victim's father to inquire if the Victim would give a DNA sample.

20. DNA samples are to be collected from convicted defendants, and those who have been arrested for certain offenses. The DNA Database and Databank Act, N. C. Gen. Stat. § 15A-266. As the Victim in this case was not charged with any offense in this case, he was not required by law to provide a DNA sample. Further, the Victim had "good cause" for his unwillingness to provide highly sensitive, personally identifiable information of him and his family to become a matter of public record and stored in a database where others have the potential to access his DNA.

21. Even if the Victim had been directly contacted, his refusal to provide a DNA sample was reasonable in light of the fact that the suspect never touched the Victim nor any evidence remaining at the scene of the crime, as the shell casings had been removed.

22. Moreover, the tardiness of this request was questionable because this request, along with the line of questioning by law enforcement, cast the Victim as the suspect. Based on the totality of the circumstances, the Victim had "good cause" to not respond to Detective Silvious's request.

23. The Victim met his burden of proof, by a preponderance of the credible evidence, that he cooperated to the best of his ability with law enforcement's investigation and should be awarded victim's compensation.

BASED ON THE FOREGOING Findings of Fact and Conclusions of Law, the Undersigned makes the following:

DECISION

The Undersigned **REVERSES** Respondent's denial of Petitioner's claim for failure to cooperate with law enforcement and **ORDERS** Respondent to compensate Petitioner the amount he is entitled to under the Victim's Compensation Act not to exceed the statutory limit.

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 11th day of February, 2021.



Stacey Bice Bawtinheimer
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:

Nathaniel J Bartlett
bartlettn10@ecualumni.ecu.edu
Petitioner

Jerry M Tolson
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Petitioner

Adrina G. Bass
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Attorney for Respondent

This the 11th day of February, 2021.



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