

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Vertis Dillon
v.
UGI Penn Natural Gas, Inc.

Public Meeting held April 5, 2018
2583960-ALJ
Docket No. C-2017-2583960

MOTION OF CHAIRMAN GLADYS M. BROWN

Before the Commission today is the Complaint of Vertis Dillon filed on January 9, 2017. Complainant challenges the transfer of an arrearage for service to a prior address to the current address because that arrearage arose due to identity theft while Complainant was incarcerated. UGI Penn Natural Gas' (PNG) Answer denied the allegations. A telephonic hearing was initially scheduled for April 21, 2017. The Initial Decision states that on April 18, 2017 a counselor from Lackawanna County Prison notified the Office of Administrative Law Judge (OALJ) that the Complainant would not be able to appear telephonically because he was incarcerated.¹ Despite this information, the ALJ convened a hearing on April 21, 2017. When the Complainant failed to appear for reasons communicated to the Commission, PNG's counsel moved for dismissal. Complainant's subsequent May 5, 2017 signed answer to that Motion to Dismiss repeated the request for a hearing and reiterated the counselor's statements of April 18, 2017.²

The ALJ then issued an Interim Order on May 25, 2017, which granted a continuance to August 31, 2017, to provide the Complainant with an opportunity to arrange telephone access and/or provide sentencing information. The Complainant did not respond to the Interim Order. The ALJ then convened another hearing on January 18, 2018. The Complainant did not appear. The ALJ dismissed the Complaint, with prejudice, for failure to appear. The record is devoid of evidence showing if Complainant's appearance was unavoidable or not.

Section 5.245(b) of our regulations, 52 Pa. Code § 5.245(b), provides that dismissal with prejudice for failure to appear is inapplicable if the failure to appear is unavoidable. In this case, Complainant's failure to appear was unavoidable due to record evidence that the internal rules of the prison precluded Complainant from telephonic participation. The record also fails to explain whether the ALJ's limited continuance timeline coincided with Complainant's ability to be present or heard on the matter.

It has been nearly a year since the counselor at the Lackawanna County Prison informed the OALJ that Mr. Dillon was not able to place or receive calls, that he had not been sentenced, and, that therefore, no discharge date could be set. The record does not establish the Complainant's current incarceration status or location. However, if Complainant has been released or transferred to a facility other than Lackawanna County, the OALJ has extensive experience with scheduling telephonic hearings with inmates, particularly those incarcerated at SCIs. The OALJ schedulers know to coordinate the hearing date and time with the counselor assigned to an inmate at the SCIs prior to issuing a hearing notice.

¹ Initial Decision at 2. *Accord* Complainant's signed Response to the Motion to Dismiss (May 5, 2017).

² Complainant's signed Response to the Motion to Dismiss (May 5, 2017) received May 11, 2017.

Accordingly, this matter should be remanded to the OALJ for them to make a reasonable attempt to locate Mr. Dillon. If OALJ is successful, then OALJ will work with his counselor to schedule a telephonic hearing. These efforts should be memorialized and the memo placed in the record. If OALJ's efforts fail to locate Mr. Dillon, then the ALJ can author an Initial Decision on Remand which dismisses the case.

THEREFORE, I MOVE:

1. That the Initial Decision of Administrative Law Judge Katrina Dunderdale is reversed.
2. That the matter is remanded to the Office of Administrative Law Judge for proceedings consistent with this Motion.
3. That the Office of Special Assistants prepare an opinion and order consistent with this Motion.

April 19, 2018
Date



Gladys M. Brown, Chairman