

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Eric Hudson
v.
PECO Energy Company

Public Meeting June 14, 2018
2555083-OSA
Docket No. C-2016-2555083

MOTION OF COMMISSIONER JOHN F. COLEMAN, JR.

Before the Commission are Exceptions and Reply Exceptions to the Initial Decision of Administrative Law Judge (“ALJ”) Darlene D. Heep of June 28, 2017 dismissing the above-captioned formal complaint for failure to prosecute and meet the burden of proof. The Complainant alleged that PECO Energy Company had threatened to terminate service over an unpaid balance and requested a payment arrangement as well as review of past charges. PECO filed an Answer and New Matter denying all allegations.

The Office of Administrative Law Judge (“OALJ”) initially scheduled an evidentiary hearing in this matter for October 14, 2016. On October 4, the Commission was informed by PECO that the Complainant had filed for bankruptcy, and accordingly the presiding ALJ issued an Order that stayed any action on the case. On January 9, 2017, the Commission was informed by PECO that the bankruptcy petition had been dismissed. In response, the OALJ rescheduled the evidentiary hearing for April 7, 2017.

The Complainant was sent the standard hearing notice with the date, time, and location of the April 7, 2017 telephonic hearing. The notice also stated that the case would be dismissed if the Complainant did not appear at the scheduled hearing. Approximately two weeks before the hearing, the Complainant telephoned the OALJ and requested that the hearing be converted to an in-person hearing. This request was approved by the Commission.

The day before the scheduled hearing, the Complainant telephoned the OALJ and requested that the in-person hearing be converted back a telephonic hearing. Again, the Commission accommodated the Complainant’s request relating to participation in the hearing process.

On April 7, 2017 the ALJ convened the hearing as scheduled. PECO’s counsel was present in person with one witness and ready to proceed. The Complainant was not. The Complainant was called three times over the next twenty-one minutes at the cell phone number that had been provided to the OALJ but did not answer. After the third call, PECO moved to dismiss the case for failure to appear, and the ALJ said she would grant the Motion and issue an Initial Decision. At 11:30 am, the Complainant called the OALJ and explained that he did not participate in the hearing because his daughter had a medical emergency, and that he had “taken her in for treatment.”¹ The Complainant was advised to submit a request for a new hearing in writing and any documentation to support his absence at the hearing.

¹ Initial Decision, pg. 4.

On April 13, 2017, the Complainant faxed a letter to the OALJ that he was the caretaker for his daughter and responsible for managing her medical issues. However, this letter did not document any medical emergency on April 7, 2017. In response to this request, PECO filed a letter on April 19, 2017, objecting to a new hearing. The OALJ contacted the Complainant again on May 4, 2017, requesting information that would justify his non-attendance at the hearing. After receiving no reply, the OALJ sent the Complainant an email one week later giving him until May 16, 2017 to provide information that would support his claimed reason for non-attendance. In response, the Complainant provided medical records from January 2017 documenting that his daughter had a medical condition but provided no records that he had “taken her in for treatment” on April 7, 2017, and therefore could not participate in the hearing. Though the Complainant sent a letter to the ALJ that stated that he could provide documentation about “*details regarding the medical occurrence and situation as needed,*” he never did.

The presiding ALJ issued an Initial Decision that granted PECO’s Motion to Dismiss the case with prejudice. The Complainant filed Exceptions in which he reiterated his position that his daughter had a medical emergency the morning of the hearing, maintained that he had been responsive in communicating with the OALJ, and requested a new hearing. PECO filed a Reply to Exceptions requesting that the ALJ be affirmed. PECO observed that the Complainant had received actual notice of the hearing as evidenced by the telephone calls the day before and the day of the hearing, that no valid reason for non-attendance was documented, that dismissal with prejudice was a lawful result, and that both its rights and the rights of the public would be prejudiced by further reopening this matter.

To expand on this last point, PECO stated it should not be prejudiced by having to expend an inordinate amount of its resources to prepare for hearings in which the Complainant does not appear. It objected to what it saw as the Complainant’s delaying tactics, including the filing of a bankruptcy petition approximately 10 days before the first scheduled evidentiary hearing in this case, which was later dismissed, and then the non-attendance at the second hearing. PECO has also maintained that the Complainant was relitigating issues already decided in a prior Complaint resolved in 2015. PECO stated that it has been unable to pursue collections on the outstanding \$22,259 balance due to the Complainant’s past actions, which include the filing of eighteen informal or formal complaints.

In reviewing this matter, I am guided by the provisions of the Public Utility Code and our regulations that provide that parties who fail to participate in scheduled conferences be deemed to have waived the opportunity to participate and not later be allowed to reopen the matter.² The Commission is permitted, however, to excuse the absence if it finds that the failure to appear was “unavoidable” and that the interests of other parties and the public would not be prejudiced.³

Based on a review of the record, I cannot conclude that the Complainant’s non-participation in the April 7, 2017 hearing was unavoidable. The Complainant had opportunities before the issuance of the Initial Decision, and through its Exceptions, to document that his non-participation was unavoidable, but has failed to do so. Additionally, PECO is persuasive that further delay of this case is prejudicial to its interests and the public. A large portion of the

² 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a).

³ 52 Pa. Code § 5.245(b)

arrearage represents a balance transferred from a prior address for which a Complaint was previously adjudicated on the merits.⁴ The presiding ALJ agreed that the Complainant was barred from relitigating responsibility for the amounts that had accrued at the time of the commencement of the prior Complaint in early 2014, which was \$13,507. The Complainant did not file an Exception to the Order granting the Motion for Judgment on the Pleadings.

Overall, I conclude that the Complainant was afforded sufficient notice and opportunity to be heard on this matter. The initial hearing was delayed by the filing of a bankruptcy petition less than two weeks before the hearing date, which was October 14, 2016. This bankruptcy petition was subsequently dismissed. Following this, the Complainant received notice of the time, date and location of the rescheduled hearing. The Complainant called the OALJ twice regarding this hearing, first to request that it be in person, and then to request that it be changed back to a telephonic hearing. The OALJ accommodated both requests. The Complainant was telephoned three times on his cell phone at the time of the hearing but did not answer. The ALJ delayed issuing an Initial Decision that would have dismissed the Complaint after being informed of an alleged medical emergency. Despite being provided multiple opportunities to document that a medical emergency requiring treatment occurred on the morning of April 7, 2017, the Complainant has failed to do so.

Accordingly, I move that the Exceptions be denied, and the Initial Decision be affirmed in its entirety.

THEREFORE, I MOVE THAT:

1. The Initial Decision of Administrative Law Judge Darlene D. Heep be affirmed.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

Date: June 14, 2018


JOHN F. COLEMAN, JR.
COMMISSIONER

⁴ *Eric Hudson v. PECO Energy Company*, Docket C-2014-2418563 (Order entered May 13, 2015).