

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Clem Marable
v.
Philadelphia Gas Works

Public Meeting July 12, 2018
2609460-OSA
Docket No. C-2017-2609460

**JOINT MOTION OF COMMISSIONER DAVID W. SWEET
AND COMMISSIONER NORMAN J. KENNARD**

Before the Commission are the Exceptions filed by Clem Marable (Mr. Marable or Complainant) to the Initial Decision of Administrative Law Judge (ALJ) Benjamin J. Myers, who dismissed the formal complaint filed against Philadelphia Gas Works when the Complainant failed to appear for the hearing. Mr. Marable did not seek a continuance prior to the hearing nor did he contact the Office of Administrative Law Judge (OALJ) on the day of the hearing or even after the hearing until the record had closed and the Initial Decision had been served.

Prehearing notices and orders routinely inform parties of their duty to either attend the hearing or to seek a continuance prior to the hearing. Of course, there will be those occasions when appearance is unavoidable and last minute, which necessitates contact with the ALJ's office to provide the appropriate reasons and request for a rescheduled hearing.

Where a complainant's failure to appear at a scheduled hearing is unavoidable, the ALJ has the discretion to recognize that and to reschedule the hearing. However, when the complainant fails to bring the situation to the attention of the ALJ prior to the issuance of the Initial Decision, the record closes and the ALJ can no longer exercise that discretion. The record is closed, and the complainant is now charged with not only challenging the findings and conclusions of the Initial Decision but with providing a compelling explanation of why he failed to raise his excuses in a timely fashion so that the ALJ could determine whether or not to reschedule the hearing.

In this situation, Mr. Marable did not present any reason why he failed to contact the ALJ to explain his absence or to seek a continuance. Accordingly, the Initial Decision should be adopted.

THEREFORE, WE MOVE:

1. That the exceptions filed by Clem Marable to the Initial Decision of Administrative Law Judge Benjamin J. Myers are denied.
2. That the Initial Decision of Administrative Law Judge Benjamin J. Myers is affirmed.
3. That the Office of Special Assistants prepare an appropriate order consistent with this Motion.



DAVID W. SWEET
COMMISSIONER



NORMAN J. KENNARD
COMMISSIONER

Date: July 12, 2018