

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Hawkins

v.

Philadelphia Gas Works

:
:
:
:
:

F-2018-3000476

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

This initial decision dismisses a formal complaint challenging the Complainant's responsibility for an outstanding balance and the utility's decision to remove the Complainant from the company's customer assistance program, due to the Complainant's failure to prove, by a preponderance of the evidence, that the Respondent violated any applicable statutes, regulations or Commission orders.

HISTORY OF THE PROCEEDING

On March 13, 2018, the Complainant, Joseph Hawkins, filed a formal complaint against Philadelphia Gas Works (PGW or company). This complaint is an appeal of a decision issued by the Commission's Bureau of Consumer Services (BCS) on January 25, 2018, at BCS Case No. 3565198. On his formal complaint form, Mr. Hawkins checked the boxes indicating that the utility is threatening to shut off his service or has already shut off his service, and that there are incorrect charges on his bills. Mr. Hawkins averred in his complaint that PGW sent two women to his house and accused him of having employment from which he made several

hundred dollars a week or month. He alleges in his complaint that he is 80 years old and has his award letter. He requests that PGW admit it is making a mistake.¹

PGW filed its answer to Mr. Hawkins' complaint on April 4, 2018. In its answer, PGW denied that it terminated the Complainant's service or that there are incorrect charges on his account. It averred that Mr. Hawkins visited a PGW office in January of 2017 to re-certify his Customer Responsibility Program (CRP) agreement and that, subsequently, in August of 2017, he was removed from the CRP due to fraud following a company investigation into his eligibility. Following his removal from the CRP, Mr. Hawkins' account was re-billed to reflect the loss of his CRP forgiveness benefit. PGW requests that the complaint be denied.

By Hearing Notice dated April 11, 2018, an initial call-in telephonic hearing was scheduled for Monday, May 7, 2018. I issued a prehearing order on April 17, 2018, in which I set forth certain procedural requirements for participation in the hearing. The initial hearing was held as scheduled. Mr. Hawkins appeared at the hearing and presented testimony in support of his allegations. He submitted one late-filed exhibit that was admitted into the record as Hawkins' Ex. No. 1. PGW presented the testimony of two witnesses, who sponsored four hearing exhibits, PGW Exs. 1-4, and three late-filed exhibits, PGW Exs. 1A, 1B and 1C, all of which were admitted into the record.

I closed the record on June 8, 2018, upon my receipt of the hearing transcript. The record consists of a transcript of 65 pages, 7 PGW exhibits and 1 Complainant exhibit.

FINDINGS OF FACT

1. The Complainant in this proceeding is Joseph Hawkins.
2. The Respondent in this proceeding is Philadelphia Gas Works.

¹ Under questioning, it became evident that Mr. Hawkins was alleging that PGW accused him of having a higher income than the amount indicated on a customer assistance program application submitted in his name. (Tr. pp. 11-12).

3. Mr. Hawkins appeared *pro se* and testified on behalf of himself.
4. Johnny Ferrer is the Director of Security and Loss Prevention for PGW and testified on behalf of the company. (Tr. p. 28).
5. Tiffany Jones is a Senior Customer Review Officer with PGW and testified on behalf of the company. (Tr. p. 43-44).
6. PGW Ex. 1 is a copy of a CRP application from Mr. Hawkins dated January 6, 2017. (Tr. p. 29).
7. PGW Ex. 1 includes a copy of a Social Security Administration (SSA) award letter indicating that Mr. Hawkins' benefit amount beginning in January of 2017 is \$526.00 per month.
8. PGW Ex. 2 is a copy of a letter from PGW to Mr. Hawkins, dated August 21, 2017, informing him that his CRP application contained fraudulent information and that he was being removed from the CRP. (Tr. pp. 44-45).
9. PGW Ex. 3 is an account statement for Mr. Hawkins' account showing consumption, billing and payment information on the account from March 2015 to April 2018. (Tr. p. 46).
10. PGW Ex. 4 is a copy of the opening and closing documents for an informal complaint Mr. Hawkins filed with the BCS at BCS Case No. 3565198.
11. PGW Late-Filed Ex. 1A is another copy of PGW Ex. 1 that more clearly shows the date of the application and Mr. Hawkins' signature.
12. PGW Late-Filed Ex. 1B is a copy of a CRP application from Mr. Hawkins dated December 7, 2015.

13. PGW Late Filed Ex. 1B includes an SSA award letter indicating that Mr. Hawkins' benefit amount beginning in January of 2015 is \$524.00 per month.

14. PGW Late-Filed Ex. 1C is a copy of a CRP application from Mr. Hawkins dated December 3, 2014.

15. PGW Late Filed Ex. 1C includes an SSA award letter indicating that Mr. Hawkins' benefit amount beginning in January of 2014 is \$520.60 per month.

16. Hawkins Ex. 1 is a copy of a letter from the Social Security Administration to Mr. Hawkins, dated November 26, 2017, informing him of a benefit increase from \$735.00 to \$750.00, beginning January 2018.

17. Mr. Hawkins is the customer of record for service provided to his residence at 5304 N. Broad Street, Philadelphia, PA 19141. (Tr. pp. 6, 47; PGW Ex. 3).

18. The house in which Mr. Hawkins resides is owned by Delores Brown. (Tr. pp. 13-14).

19. Ms. Brown also owns a home in Arizona but has resided at the Broad Street house for the past several years. (Tr. pp. 13-14).

20. Mr. Hawkins' daughter also sometimes stays at the Broad Street house. (Tr. p. 14).

21. Mr. Hawkins had been on PGW's CRP up until August 18, 2017. (Tr. p. 45; PGW Ex. 2).

22. Under PGW's CRP, the bills of eligible customers who are enrolled in the program are calculated based on a percentage of the customers' incomes, rather than on their natural gas usage. (Tr. p. 51).

23. For customers to remain eligible for the company's CRP, they must re-certify their eligibility every year. (Tr. p. 52).

24. Mr. Hawkins is aware that customers must submit an application and proof of income to be eligible for the company's CRP. (Tr. p. 19).

25. Mr. Hawkins is aware that CRP applications may either be mailed in to the company or brought to the company in person. (Tr. pp. 20-21).

26. Mr. Hawkins submitted CRP application materials in past years since he has been in the program for several years. (Tr. pp. 19-20).

27. Mr. Hawkins submitted past CRP application materials either by mail or in person. (Tr. p. 20).

28. PGW received a CRP application dated January 6, 2017 with a signature of the name Joseph Hawkins. (PGW Exs. 1, 1A).

29. The PGW CRP application dated January 6, 2017 indicates an average gross monthly income for Mr. Hawkins of \$526.00. (PGW Exs. 1, 1A).

30. Mr. Hawkins' actual monthly income during 2017 was over \$700.00. (Tr. p. 10; Hawkins' Ex. 1).

31. Mr. Hawkins does not remember re-certifying his eligibility for the CRP in 2017. (Tr. pp. 21, 23).

32. PGW witness Ferrer investigated the income information the company had for Mr. Hawkins. (Tr. p. 28).

33. Mr. Ferrer reviewed the CRP application PGW received for Mr. Hawkins in January of 2017. (Tr. p. 29; PGW Ex. 1).

34. Mr. Ferrer reviewed the award letter from the SSA that was included as proof of income with the CRP application. (Tr. pp. 32-33; PGW Ex. 1).

35. Mr. Ferrer also reviewed the CRP applications and the accompanying SSA award letters PGW had for Mr. Hawkins showing his benefit amounts for the years 2014 and 2015. (Tr. pp. 31-33; PGW Exs. 1B, 1C).

36. As part of Mr. Ferrer's investigation, he visited a SSA office and spoke with District Manager Diane Morganson. (Tr. p. 33).

37. Mr. Ferrer provided to Ms. Morganson copies of Mr. Hawkins' SSA award letters showing his benefit amounts for the years 2014, 2015 and 2017. (Tr. p. 34; PGW Exs. 1; 1A, 1B, 1C).

38. Mr. Ferrer was subsequently contacted by Theresa Bray by the Fraud Investigation Unit of the Pennsylvania Inspector General's office. (Tr. p. 34).

39. Ms. Bray reviewed the SSA award letters for the years 2014, 2015 and 2016 and determined that they were fraudulent and had not been issued by the SSA. (Tr. pp. 34-35).

40. Upon speaking to Ms. Bray, PGW concluded its investigation into Mr. Hawkins' income but the Inspector General's investigation remained open. (Tr. pp. 36-37).

41. The SSA award letters submitted with the CRP applications for Mr. Hawkins showed monthly benefit amounts of \$520.60 for 2014, \$524.00 for 2015 and \$526.00 for 2017. (PGW Exs. 1A, 1B and 1C).

42. Ms. Bray informed Mr. Ferrer that the benefit amounts shown on the SSA award letters were not correct. (Tr. p. 36).

43. Ms. Bray informed Mr. Ferrer that the SSA award letters were fraudulent and had not been issued by the SSA. (Tr. p. 35-36).

44. On August 21, 2017, PGW mailed a letter to Mr. Hawkins informing him of its findings in its income investigation and that he had been removed from the CRP on August 18, 2017. (Tr. pp. 44-45; PGW Ex. 2).

45. After Mr. Hawkins was removed from the CRP, his account was re-billed to reflect the loss of the benefits he received as part of the program, including the re-billing of all amounts set aside for forgiveness. (Tr. pp. 46, 48; PGW Ex. 3).

46. The balance on Mr. Hawkins' account as of April 2018, after the re-billing was completed, was \$7,291.81. (Tr. p. 50; PGW Ex. 3).

47. Two women with badges came to Mr. Hawkins' house to discuss the income issue with him. (Tr. pp. 6-8, 10-12).

48. These two women who visited Mr. Hawkins at his home were from the Inspector General's office, not PGW. (Tr. p. 40).

DISCUSSION

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). In order to prevail, a Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of PA*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc, denied*, 602 A.2d 863 (Pa. 1992). A preponderance of evidence is evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

For a Complainant to prevail, the offense alleged must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

A Complainant, as the party with the burden of proof, must present sufficient evidence to make out a *prima facie* case against the Respondent. If a Complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a Complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982).

Here, Mr. Hawkins alleges that PGW erred in not accepting his income information and in removing him from its CRP. He wants PGW to admit its mistake. As the party seeking affirmative relief, Mr. Hawkins bears the burden of proof in this proceeding and must prove his case by a preponderance of the evidence.

Section 1501 of the Pennsylvania Public Utility Code, 66 Pa.C.S.A. §1501, requires that public utilities provide adequate, efficient, safe, and reasonable service to their customers. The issue in this proceeding is whether PGW rendered unreasonable service in

determining that the income information it received about Mr. Hawkins was fraudulent and in removing him from its CRP. As explained below, Mr. Hawkins did not prove, by a preponderance of the evidence, that PGW's actions were unreasonable under the circumstances.

Mr. Hawkins' direct testimony was not entirely clear. He testified that the first he knew about any problem concerning his CRP eligibility was when two women with badges appeared at his house. (Tr. p. 6, 8). He claims he was not in Philadelphia in January of 2017, when his 2017 CRP application was dated and received by PGW. (Tr. p. 6). He testified that he was informed by PGW that he had additional income of \$420.00 or \$520.00 from a job. (Tr. p. 6). He stated that he is not doing this and does not know where they got this information from. (Tr. p. 6). He testified that he was getting approximately \$700.00 a month in social security benefits. (Tr. p. 6). He further testified that his monthly benefit was recently raised to \$750.00 beginning in January of 2018. (Tr. p. 10).

Under questioning by me, Mr. Hawkins explained that PGW contends that his actual income is more than he indicated on his CRP application form and the supporting SSA award letters. (Tr. p. 12). He testified that PGW accused him of trying to take advantage of the company and removed him from the CRP program. (Tr. p. 11).

As indicated above, the award letters for Mr. Hawkins indicated monthly social security payments of \$520.60 for the year 2014, \$524.00 for the year 2015 and \$526.00 for the year 2017. (PGW Exs. 1A, 1B and 1C). The letter from the SSA to Mr. Hawkins, dated November 26, 2017, stated that his monthly payments would be increased, beginning in January of 2018, from \$735.00 to \$750.00. (Hawkins Ex. 1). Accordingly, there is a discrepancy in the indicated benefit amount for the year 2017 between the award letter presented to PGW with Mr. Hawkins' CRP application in January of 2017 (PGW Ex. 1A) and the November 26, 2017 letter he received from the SSA informing him of the benefit increase from \$735.00 to \$750.00 (Hawkins Ex. 1). This letter indicates that his monthly benefit amount in 2017 was \$735.00.

PGW witness Ferrer testified that he investigated the income information submitted by Mr. Hawkins. (Tr. p. 29). He stated that, as part of his investigation, he provided copies of the award letters identifying the monthly benefit amounts for Mr. Hawkins for the

years 2014, 2015 and 2017 to a Social Security Administration District Manager. (Tr. p. 34). He testified that the Manager concluded the letters were fraudulent and referred the matter to Ms. Bray from the Inspector General's Office. (Tr. p. 34). Mr. Ferrer indicated that Ms. Bray subsequently contacted him to inform him that the letters were fraudulent and had not been issued by the Social Security Administration. (Tr. pp. 34-35). Mr. Ferrer stated that, upon receiving this report from Ms. Bray, PGW's investigation into Mr. Hawkins' income information ended but that the Inspector General's investigation remained open. (Tr. pp. 36-37). At that point, Mr. Ferrer reported the findings to the Director of PGW's Customer Review Unit. (Tr. p. 36). Mr. Ferrer stated that the two women who visited Mr. Hawkins at his home were from the Inspector General's Office and not from PGW. (Tr. p. 40).

As a result of the investigations conducted by PGW and the Inspector General's Office, PGW removed Mr. Hawkins from the CRP and re-billed his account for the amount that was forgiven under the program. (Tr. pp. 45-46). PGW witness Jones testified that the company sent a letter to Mr. Hawkins on August 21, 2017, informing him that the income information provided by him was determined to be fraudulent and that he had been removed from the CRP. (Tr. p. 45; PGW Ex. 2). Ms. Jones testified that the balance on Mr. Hawkins' account as of April 10, 2018 was \$7,291.81. (Tr. p. 50; PGW Ex. 3).

In reviewing the record evidence, I find that Mr. Hawkins failed to prove, by a preponderance of the evidence, that PGW acted unreasonably in not accepting his income information and removing him from the CRP based on fraud. As Mr. Hawkins testified, he was receiving approximately \$700.00 a month in social security benefits prior to January 2018², and his benefit amount increased to \$750.00 per month beginning in January of 2018. (Tr. pp. 7, 10; Hawkins Ex. 1). He indicated he did not have a job or another source of income other than his social security benefits. (Tr. p. 10). He testified he was not in Philadelphia in January of 2017, when the CRP application in his name and supporting SSA award letter were received by PGW. (Tr. pp. 6, 9). As noted, the application and award letter indicated a monthly income amount of \$526.00, beginning in January of 2017. (PGW Ex. 1A).

² Hawkins' Ex. 1 indicates that his monthly payment in 2017 was \$735.00.

PGW investigated the application it received for Mr. Hawkins in January of 2017. As part of its investigation, it conferred with a representative from the SSA and it provided copies of the applications it received for Mr. Hawkins in 2014, 2015 and 2017. (PGW Exs. 1A, 1B and 1C). The matter was referred to the Fraud Investigation Unit of the Inspector General's office. This office concluded and reported to PGW that the benefit amounts shown on the letters were not correct and, in fact, the letters themselves had not been issued by the SSA. (Tr. p. 35). I find that the result of the Inspector General's investigation provided sufficient justification for PGW to refuse to accept the income information it had for Mr. Hawkins as accurate and to remove him from the CRP.

As noted, Mr. Hawkins submitted in this proceeding Hawkins Ex. 1, which is a letter from the SSA, dated November 26, 2017, informing him that his monthly social security payment amount will be increasing from the current amount of \$735.00 to \$750.00, beginning in January of 2018. Accordingly, his benefit amount in 2017 was \$735.00. This amount is inconsistent with the monthly income amount for the year 2017 shown on the CRP application for Mr. Hawkins dated January 6, 2017. (PGW Ex. 1A). This application and letter show a benefit amount for 2017 in the amount of \$526.00. Clearly, the income information received by PGW in the application materials submitted in January of 2017 showed a benefit amount that was significantly less than the amount Mr. Hawkins actually received in 2017. Mr. Hawkins acknowledged that he was on PGW's CRP for part of 2017. (Tr. p. 24). PGW witness Jones testified that Mr. Hawkins was removed from the CRP on August 18, 2017. She also testified that the monthly bills of a customer in the CRP are calculated based solely on the customer's income, rather than on his or her usage. (Tr. p. 51). Mr. Hawkins received the benefit of having been enrolled in the CRP for nearly eight months in 2017 before being removed from the program due to the incorrect income information received by PGW. His monthly payment had been calculated based on the reported monthly social security income of \$526.00 which, as acknowledged by Mr. Hawkins and confirmed by Hawkins Ex. 1, was significantly lower than his actual income. I find that PGW was justified, under the circumstances, in concluding that the income information it received for Mr. Hawkins was fraudulent and in removing him from the CRP.

I finally note that, as indicated above, Mr. Hawkins testified he was not in Philadelphia in January of 2017. (Tr. p. 6). While not explicitly so stating, he seems to be suggesting he was not the one who submitted the fraudulent CRP application and SSA award letter containing the incorrect income information to PGW in January of 2017. Regardless of whether or not that is true, PGW was still fully justified, based on the results of its and the Inspector General's investigations, in concluding that the income information it received for Mr. Hawkins was fraudulent and in removing him from the CRP.

For all the above reasons, Mr. Hawkins' formal complaint will be dismissed due to his failure to prove, by a preponderance of the evidence, that PGW rendered unreasonable service or otherwise violated any applicable statutes, regulations or Commission orders.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a).

3. As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of PA*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

4. This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc, denied*, 602 A.2d 863 (Pa. 1992).

5. A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

6. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

7. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

8. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

9. As the proponent of a Commission order, Complainant has the burden of proof in this case. 66 Pa.C.S.A. § 332(a).

10. The Complainant failed to prove by a preponderance of the evidence that PGW provided unreasonable service or otherwise violated any applicable statutes, regulations or Commission orders.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Joseph Hawkins against Philadelphia Gas Works at Docket No. F-2018-3000476 is dismissed.

