

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Devaughn Thorpe	:	
	:	
v.	:	F-2019-3007338
	:	
Philadelphia Gas Works	:	
(Complaint Appellant)	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision finds in favor of the Complainant, Devaughn Thorpe, and denies the appeal of Philadelphia Gas Works from the Pennsylvania Public Utility Commission’s Bureau of Consumer Services’ decision at BCS Case No. 3672119 because substantial record evidence demonstrates that the Complainant resided at 3243 Sunset Avenue, Norristown, PA 19403 during the period in which PGW seeks to charge him for usage at 5855 Hadfield Street, Philadelphia, PA 19143.

HISTORY OF THE PROCEEDING

On December 10, 2018, Devaughn Thorpe (Mr. Thorpe or Complainant) filed an informal complaint against Philadelphia Gas Works (PGW or the Company) with the Commission's Bureau of Consumer Services (BCS), which was docketed at BCS Case No. 3672119. Mr. Thorpe alleged in the informal complaint that he requested service in his name at 5855 Hadfield Street, Philadelphia, PA 19143 (Service Address) and was told by PGW that he must pay an outstanding balance to restore service because records indicated that he resided at

the Service Address since November of 2017. Mr. Thorpe alleged that he did not reside at the Service Address as stated and denied he is liable for any outstanding balance in order to have service restored.

On January 2, 2019, the BCS issued a decision finding that PGW did not present sufficient information to show that Mr. Thorpe resided and benefitted from the service at the Service Address prior to his restoration request, and therefore, he is not responsible for any outstanding balance in order to have service restored.

On January 17, 2019, PGW filed the present formal Complaint appealing the January 2, 2019, BCS decision. Specifically, PGW alleged that they did provide sufficient evidence that linked Mr. Thorpe to the Service Address through a credit check by a commercially available consumer credit reporting service (Experian), which showed that Mr. Thorpe was linked to the Service Address as of November of 2017. As relief, PGW requested that the Commission overturn the January 2, 2019 BCS decision at BCS Case No. 3672119 and find that Mr. Thorpe is responsible for the balance that accumulated at the Service Address after November 1, 2017.

Mr. Thorpe did not file an Answer.

By Hearing Notice¹ dated February 26, 2019, a hearing was scheduled for April 4, 2019, and the matter was assigned to me.

¹ Please note, on the Hearing Notice, this case is incorrectly captioned as “Philadelphia Gas Works v. Devaughn Thorpe.” This is an appeal from an informal decision by the Bureau of Consumer Services. 52 Pa. Code § 56.403(c) states:

(c) Captions. The parties to a review will be stated in the caption as they stood upon the record of the informal complaint proceeding. If the party requesting review is a utility, the phrase “Complaint Appellant” will be added after its name.

Accordingly, this Initial Decision includes an ordering paragraph that corrects the caption to read “Devaughn Thorpe v. Philadelphia Gas Works (Complaint Appellant).”

I issued a Prehearing Order on March 7, 2019. The Prehearing Order directed the parties to comply with various procedural requirements and explained that the Complainant bears the burden of proof to establish that PGW violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

The hearing convened on April 4, 2019 as scheduled. Mr. Thorpe appeared *pro se* and testified on his own behalf. Mr. Thorpe offered the following five exhibits, all of which were entered into the record:

- Thorpe 1: Credit Denial Letter (1 page)
- Thorpe 2: Stream Phone Bills (8 pages)
- Thorpe 3: Nelnet Loan Statement (1 page)
- Thorpe 4: Tax Return Form 1040 (4 pages)
- Thorpe 5: W-2 Wage & Tax Statement 2017 (3 pages)

PGW appeared and was represented by Graciela Christlieb, Esquire, who presented the testimony of Wendy Vacca, a Manager of Customer Disputes and Complaints at PGW. During the hearing, the Respondent offered the following five exhibits, all of which were entered into the record:

- PGW 1: Screenshot of Customer Contact (1 page)
- PGW 2: Experian Report (1 page)
- PGW 3: January 2, 2019 BCS decision (4 pages)
- PGW 4: Email exchange (1 page)
- PGW 5: Statement of Account (1 page)

The record closed on May 13, 2019, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Devaughn Thorpe.

2. The Respondent and Complaint-Appellant is Philadelphia Gas Works.
3. Wendy Vacca is a Manager of Customer Disputes and Complaints at PGW. Tr. 8.
4. On November 14, 2018, Mr. Thorpe applied to PGW for gas service at 5855 Hadfield Street, Philadelphia, PA 19143 (Service Address). Tr. 10-11, 31; PGW 1.
5. Upon receiving the application, PGW requested a report on Mr. Thorpe by Experian, which is a commercially available consumer credit reporting service. Tr. 12-13; PGW 2.
6. The report generated by Experian states Mr. Thorpe was “associated” with 5855 Hadfield Street, Philadelphia, PA 19143 in November of 2017. PGW 2.
7. PGW could not provide any witnesses who could testify as to the meaning of the word “associated” within the Experian report. Tr. 47.
8. Since November of 2017, an existing account for the property at 5855 Hadfield Street has accumulated an outstanding balance with PGW in the amount of \$559.88. Tr. 44.
9. As a result of the Experian report, PGW informed Mr. Thorpe that in order to initiate service at 5855 Hadfield Street, he would be required to assume the outstanding balance. Tr. 12-13, 44.
10. The property at 5855 Hadfield Street is owned by Mr. Thorpe’s father. Tr. 30.
11. Mr. Thorpe moved into the 5855 Hadfield Street property in November of 2018. Tr. 30.

12. From approximately 2010 until November of 2018, Mr. Thorpe resided at 3243 Sunset Avenue, Norristown, PA 19403 with his mother and stepfather. Tr. 30-31.

13. Mr. Thorpe presented phone bills from October of 2017 through April of 2018, a student loan bill from May of 2018, a 2017 Tax Return Form 1040, and 2017 W-2 Wage & Tax Statements that were all sent to him at the 3243 Sunset Avenue address. Tr. 34-37; Thorpe 2-5.

DISCUSSION

A timely appeal from an informal decision of the BCS is reviewed *de novo*. 52 Pa. Code §§ 56.173(a). *De novo* means that there is no part of the record in the informal proceeding that can be relied upon in the formal proceeding.

In a *de novo* appeal from a decision of the BCS, the burden of proof remains with the party who filed the original informal complaint, except for legal or policy issues raised by the utility on appeal. *See* 52 Pa. Code §§ 56.173(f). Thus, as the party who filed the original informal complaint, Mr. Thorpe bears the burden of proving that he is entitled to the requested relief. *Id.* This standard of proof must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 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*, 413 A.2d 1037 (Pa. 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).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

In this case, Mr. Thorpe's position is that he did not reside at the 5855 Hadfield Street property before he applied for gas service from PGW in November of 2018. To this end, Mr. Thorpe testified that from 2010 until November of 2018, he resided at 3243 Sunset Avenue, Norristown, PA 19403 with his mother and stepfather. In corroboration of this, Mr. Thorpe presented phone bills from October of 2017 through April of 2018, a student loan bill from May of 2018, a 2017 Tax Return Form 1040, and 2017 W-2 Wage & Tax Statements that were all sent to him at the 3243 Sunset Avenue address. Thorpe 2-5.

PGW's position is that Mr. Thorpe resided at 5855 Hadfield Street since November of 2017. However, the only evidence PGW was able to present in support of its position was a single report generated by Experian that stated Mr. Thorpe was "associated" with 5855 Hadfield Street in November of 2017. PGW 2. PGW argues this report is sufficient pursuant to 52 Pa. Code § 56.191(e), which states,

(e) *Approval*. A public utility may establish that an applicant or customer previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission. Public utilities shall include in their tariffs filed with the Commission the methods, other than those specifically mentioned

in this subsection, used to determine liability for outstanding balances.

52 Pa. Code § 56.191(e).

I do not agree that the report alone is sufficient, substantial evidence. While Section 56.191(e) of the Commission's regulations states a utility *may* use a consumer credit reporting service to establish a customer previously resided at a property, that does not mean that any report, no matter how vague, *shall* be treated as conclusive proof of residence.

Here, PGW relies entirely on one section of the Experian report titled: "Associated Addresses," wherein it lists the 5855 Hadfield Street address as "RPTD: 11-17." However, PGW could offer no explanation as to what "Associated Addresses" actually meant. Interestingly, the report was run on November 14, 2018, and under a section titled: "ID Summary," Mr. Thorpe's address is listed as 3243 Sunset Avenue, which seems to be further proof that he was not residing at 5855 Hadfield Street. Moreover, Mr. Thorpe testified that his father owns the 5855 Hadfield Street property. Is it possible he was associated with the address through his father? Is it possible he once had something delivered to that address and became associated in that fashion? The point being, without further explanation, I do not find that one section of a credit report labeled "Associated Addresses" is substantial evidence to rebut the preponderance of evidence that Mr. Thorpe presented regarding his residence.

Based on the foregoing, the appeal of PGW from the decision of BCS Case No. 3672119 shall be denied and the Complainant shall not be held liable for any outstanding balance incurred with PGW at 5855 Hadfield Street, Philadelphia, PA 19143 prior to November 14, 2018, in order to have service restored in his name.

CONCLUSIONS OF LAW

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

2. The parties to a review will be stated in the caption as they stood upon the record of the informal complaint proceeding. If the party requesting review is a utility, the phrase “Complaint Appellant” will be added after its name. 52 Pa. Code § 56.173(c).

3. A timely appeal from an informal decision of the BCS is reviewed *de novo*. 52 Pa. Code § 56.173(a).

4. In a *de novo* appeal from a decision of the BCS, the burden of proof remains with the party who filed the original informal complaint, except for legal or policy issues raised by the utility on appeal; thus, Mr. Thorpe bears the burden of proving that he is entitled to the requested relief. 52 Pa. Code § 56.173(f).

5. A public utility may establish that an applicant or customer previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission. 52 Pa. Code § 56.191(e).

6. The Complainant has met his burden of proving that he resided at 3243 Sunset Avenue, Norristown, PA 19403 during the period in which PGW seeks to charge him for usage at 5855 Hadfield Street, Philadelphia, PA 19143.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the original caption of “Philadelphia Gas Works v. Devaughn Thorpe” at Docket No. F-2019-3007338 is hereby changed to “Devaughn Thorpe v. Philadelphia Gas Works (Complaint Appellant)” at the same Docket;

