

L/khb

MAIL DATE
1/25/96

Decision 96-01-027

January 24, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

George M. Sawaya,

Complainant,

vs.

Pacific Bell,

Defendant.

Case 91-09-038
(Filed September 17, 1991)

ORIGINAL

ORDER DENYING REHEARING OF DECISION 95-09-125

I. SUMMARY

George M. Sawaya (Sawaya) was granted intervenor compensation by D.95-05-018. In an application for rehearing of that decision, he claimed that the Commission erred by adopting the date of his completed application as the date on which interest on his compensation began to accrue. Rehearing was denied by D.95-09-125. In the instant application for rehearing of D.95-09-125, Sawaya cites a portion of a ruling by an Administrative Law Judge (ALJ's Ruling) in support of his claim that his entitlement to compensation relates back to the date of his initial filing.¹ Sawaya has misconstrued the effect of the

1. In his Application for Rehearing of D.95-09-125, Sawaya states, "If entertained, this motion should be given preferential priority in processing for the reason that the time for filing

(Footnote continues on next page)

ALJ Ruling and has presented no grounds for rehearing of D.95-09-125.

The application of George M. Sawaya for Rehearing of D.95-09-125 is denied.

II. BACKGROUND

In D.95-05-018 (Compensation Decision), the Commission granted Sawaya interest on his award of intervenor compensation, accrued from the date a supplement was filed to complete his application for compensation. Sawaya sought rehearing of that order, claiming that he was entitled to interest accruing from the date of his initial request for award of compensation. The Commission considered Sawaya's argument that because the Commission failed to advise him of deficiencies in his initial filing in a timely manner, interest on his award for compensation should have accrued from the date he filed his initial request

(Footnote continued from previous page)

appeals will expire on October 30, 1995 (Public Utility (PU) Code Sections 1731, 1756)." The application will not be entertained. The applicant is advised that the deadlines for applications to the Supreme Court set forth in section 1756 are not tolled by Commission inaction on his application for rehearing. See, also, section 1733, subsection (a) concerning the effectiveness of a Commission order during the pendency of an application for rehearing.

for compensation.² This argument was rejected in D.95-09-125, (Rehearing Decision).³

Sawaya continues to assert that his delay in completing his application for compensation was due to the ALJ's failure to issue his advisory ruling; had the ruling been issued, his application would have been completed months before it actually was; and he would be entitled to more interest on the award. The Commission previously found in the Rehearing Decision that, "Because Sawaya had not made his showing of significant financial hardship in his notice of intent to seek intervenor compensation, the ALJ was not compelled by Section 1804 (b) (1) to issue any guidance concerning Sawaya's eligibility for compensation within any time limits." (D.95-09-125, mimeo, at pages 2 and 3.)

Sawaya now claims that this conclusion "...is an erroneous conclusion of law based upon a gross misstatement of fact. It is inconsistent with the Commission's own previous finding in the 'ALJ's Ruling on Request for Compensation' issued

2. D.95-09-125 explains that Sawaya's notice of intent to claim compensation was incomplete and did not trigger the statutory requirement for a Commission ruling on his eligibility for compensation; the delay in filing the amended request was due to Sawaya's own inaction; and no legal error was committed in the decision to award Sawaya interest on the award accruing from the date his application was completed.

3. The ALJ's duty to issue a ruling within 30 days of the filing of the notice of intent to claim compensation, which advises whether the customer will be eligible for compensation, is triggered only if the customer's showing of significant financial hardship was included in the notice of intent to claim compensation. (See, PU code section 1804(b)(1).) Sawaya's notice did not include a showing of financial hardship, and a ruling setting forth deficiencies was issued after 30 days had passed.

on January 6, 1995.⁴

III. ANALYSIS

In the current Application for Rehearing, Sawaya asserts that the deficiency in his initial filing was rectified by an Administrative Law Judge's Ruling on Request for Compensation (ALJ Ruling). That ruling construed the request for award in Sawaya's complaint together with the showing of financial hardship contained in his supplemental filing as a timely notice of intent to claim compensation. Although not clearly articulated, Sawaya appears to argue that this ALJ Ruling constitutes an admission that the application was complete, and thus entitled him to a ruling on eligibility under Section 1804(b) (1), when the initial notice of intent was filed.

The portion of the ALJ's Ruling quoted by Sawaya deals with the timeliness of the request for compensation and served only to confer standing upon Sawaya to claim compensation. Absent a finding of timeliness based upon the date of his initial filing, Sawaya's ENTIRE application for compensation would have been dismissed for lack of standing. The Ruling does not alter the fact that the customer's showing of significant financial hardship was not included in the notice of intent to claim compensation.

The Commission is not bound to relate Sawaya's entitlement to compensation and interest on his award back to the

4. Sawaya quoted the following passage:

1. The request for award of compensation in Mr. Sawaya's complaint, coupled with the further request made after the issuance of D.93-04-057, together shall be deemed to be an effective and timely notice of intent to claim compensation pursuant to PU Code Sec. 1804(a) (1) for purposes of this proceeding. (Emphasis added in app.rhrg.)

date of the initial filing, for in fact, Sawaya's request for compensation was not complete until he itemized the hours spent on clerical versus advocacy work in a supplemental filing. As stated in the Rehearing Decision, the mere filing of an application for compensation does not entitle an intervenor to an award within 75 days if the applicant's showing is defective.

IV. CONCLUSION

The ALJ's finding that the combined initial and supplemental requests for compensation constituted a timely notice of intent to claim compensation did not cure the deficiencies of the initial filing. The Commission did not err by declining to relate Sawaya's entitlement to an award of intervenor compensation back to the date of his initial request for compensation. Accordingly,

Therefore, IT IS ORDERED that the Application of George M. Sawaya for Rehearing of D.95-09-125, filed October 10, 1995, is denied.

This order is effective today.

Dated January 24, 1996 at San Francisco, California.

P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

Commissioner Daniel Wm. Fessler,
is necessarily absent on official
business.