

Decision 97-03-051 March 18, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

George M. Sawaya,)
)
 Complainant,)
)
 vs.)
)
 Pacific Bell,)
)
 Defendant)
 _____)

Case No. 91-09-038
(Filed September 17, 1991)

DECISION DENYING REHEARING OF DECISION NO. 96-01-027

Summary

George M. Sawaya (Sawaya) was granted intervenor compensation in excess of \$35,000 by Decision No. (D) 95-05-018. This is the third in a series of his Applications for Rehearing flowing from that decision, all of which relate to the date from which interest on his compensation should be computed. In the instant application, Sawaya once again 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 his original filing. He further alleges that the Commission erred in its interpretation of that language in its Decision No. 96-01-027, which denied rehearing for a second time.

Applicant's interpretation of the relevant portions of the ALJ's Ruling and of D.96-01-027 is misapplied and the Application is denied.

Analysis

Applicant presents a single ground for rehearing, which relates to the following portions of the ALJ's Ruling and D. 96-01-027:

**"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 §1804 (a)(1) for purposes of this proceeding."
(ALJ's Ruling of January 6, 1995)**

The following language from D.96-01-027 is cited as error by Applicant:

"That ruling construed the request for award in Sawaya's complaint together with the showing of significant financial hardship contained in his supplemental filing as a timely notice of intent to claim compensation.

"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."

Applicant alleges that we erred in adopting the above two paragraphs because the "supplemental filing" referred to in the ALJ's Ruling was not made until January 18, 1995, 12 days after the ruling was issued. His argument is that he ALJ could not have been referring to the supplemental filing because it was not before him at the time of his ruling. Therefore, the ALJ must have been relying on the pleadings previously made on June 1, 1993 in support of compensation and his ruling would therefore relate back to those earlier filings, not the later date on which the request for compensation was actually completed.

The argument is without merit. As pointed out in D.96-01-027, at page 4, Applicant's initial Notice of Intent to claim compensation did not include a showing of financial hardship. The language contained in the ALJ's Ruling dealt only with the timeliness of his request for compensation and served only to confer standing to later claim it. Without this finding of timeliness, the application would have been dismissed for lack of standing. Further, no matter what interpretation is placed on the ALJ's Ruling or on the Commission's interpretation of it in D.96-01-027, the fact remains that the Applicant's showing of financial hardship was not included in his original Notice of Intent. It was therefore incomplete.

Further, a plain reading of the ALJ's Ruling at issue, here indicates that Applicant's interpretation of that Ruling and the Commission's language in D.96-01-027 is in error. Beginning at page 2 of the Ruling is the following language:

"In this proceeding Mr. Sawaya did not file a notice of intent to claim compensation after the prehearing conference; he did not have to do so, as the statute did not require it. On the other hand, his complaint included a request for compensation, and he filed a request for an award after the commission issued D.93-04-057 (but before the petition for a writ of review of that decision was denied by the California Supreme Court). As a result of these unique circumstances, Mr. Sawaya's pending request for an award of compensation is hampered by procedural irregularities which must be corrected before the Commission can properly act upon the substance of his request.

"As the statute is now structured, if the customer makes a showing of significant financial hardship in the initial notice of intent, the administrative law judge must issue a preliminary ruling addressing whether the customer will be eligible for an award of compensation. That ruling must 'address whether a showing of significant financial hardship has been made.' PU Code § 1804 (b)(1). In the instance of an

individual such as Mr. Sawaya, 'significant financial hardship' means that he 'cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation.' Although Mr. Sawaya's request contains a brief section (pp. 2-3) which claims that his case satisfies the financial hardship requirement, the grounds upon which he relies are not responsive to the statutory test. He should, however, have the opportunity to make a proper showing in light of the contribution which he has made in this proceeding.

"As a consequence of the timing of his request, Mr. Sawaya did not include a claim for compensation for any work he performed in relation to the application for rehearing or the petition for writ of review. PU Code § 1802(a) specifically provides that 'Compensation ...includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.' Mr. Sawaya should have the opportunity to request the full amount of compensation to which he may be entitled in this proceeding."
(Emphasis Added)

It is apparent that the ALJ was speaking prospectively in his ruling. His intent was to correct any procedural deficiencies in Applicant's Request for Compensation by allowing him to provide a subsequent filing outlining his financial need and further expenses.

The only reasonable construction of the Commission's interpretation of the ALJ's Ruling is that Applicant's original request for compensation together with the showing of hardship to be contained in his supplemental filing constituted a timely notice of intent to claim compensation.

IT IS ORDERED that:

The Application for Rehearing is denied.

This order is effective today.

Dated March 18, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners