



goes to great detail to provide a thorough and accurate timeline of much of the evidence presented at the hearing. Moreover, the Commission provides a lengthy Discussion and Conclusion section to its January 27<sup>th</sup> Entry in support of his opinion and order. The Commission did not fail to consider Mr. Snell's case. On the contrary, the Commission fully considered Mr. Snell's case and rejected his arguments – the same arguments he seeks to make in his Application for Rehearing. The Commission should again reject Complainant's arguments and deny Complainant's Application for Rehearing.

**b. Complainant attempts to supplement the record with information not presented at hearing.**

Complainant's Application for Rehearing sets forth nine numbered paragraphs whereby he attempts to re-state and at times re-create the record. The problem with Mr. Snell's re-stating and re-creating the record is twofold: First, many of the events that Mr. Snell re-states are inconsistent with the testimony he provided at the October 1, 2009 hearing. For example, Mr. Snell states in the first two sentences of paragraph #2 of his Application for Rehearing the following: "In 1996 I moved back to 719 Victoria Avenue at Rita Tanners request. After ten year's with no income, in 1996 I was awarded Worker's Compensation benefits . . ." However, contrary to this new account Mr. Snell provides for purposes of his Application for Rehearing, Mr. Snell admitted during cross-examination at the October 1<sup>st</sup> hearing that before receiving Worker's Compensation he received Social Security:

Q. Are you still receiving SSI benefits?

A. No.

Q. When did you stop receiving those?

A. Oh, this was years ago. Years ago. SSI? Probably stopped receiving that in '93-'94.

Q. So around the same time you start receiving Workers' Compensation?

- A. I guess. You can't receive them both. So my sister and I took my last check that I received from SSI, we took it back down to the office to make sure we weren't in trouble for it. And I started receiving disability, Workers' Comp disability in '96.

Tr. at 21-22.

Thus, it was not ten years as Mr. Snell claims – it was from 1993/1994 to 1996.

The second issue, which is far more problematic, is Mr. Snell's re-creation of the record. In one instance to adjust the timing in which he allegedly discovered the electric bills and in a number of other instances to add additional information not provided at hearing (such as matters of personal circumstance and checks from Rita Tanner returned insufficient). The problem with the latter is that Mr. Snell never raised such issues at the hearing where his testimony would be subject to cross-examination. The problem with the former is that Mr. Snell (recognizing that the Commission based its decision in part on the fact that he did not mention theft of electric service on his police report) re-created the sequence of events to make it appear that he discovered the electric bills after he filed the police report. In essence – Mr. Snell lied in an effort to get the Commission to reconsider his case. Mr. Snell states in his Application for Rehearing at paragraph #5:

Attorney Ebony Miller, stated that First Energy was not noted on the police report I explained in my brief about the police report, when the manager at the apartment complex pulled up my credit report, on the computer the electric account wasn't in the credit unions data base It hadn't been turned in for collection, all that was in the data base was fraudulent credit cards so that what I reported to the police after returning back to the house, and searching through bags of mail is when I discovered the fraudulent electric bill I spoke to First Energy representatives on many occasion they never once ask for a police report during that time because they refuse to except this fraudulent electric account as identity theft..

In stark contrast to Mr. Snell's statements above, Mr. Snell stated in his sworn testimony before the hearing examiner on October 1, 2009 the following:

Q. You state that after Rita Tanner's death you discovered the electric service was in your name, correct?

A. Correct.

Q. Was in your name?

A. I discovered that it was in my name?

Q. Correct.

A. Yes.

Q. Did Ohio Edison advise you to file a police report?

A. I didn't understand that.

Q. Did Ohio Edison, the electric company, advise you to file a police report?

A. They did not.

Q. But you did file a police report, correct?

A. Yes.

Q. And you filed a police report after the point you discovered the electric service was in your name?

A. After I discovered all the fraudulent things were in my name.

Q. Including the electric service?

A. Everything, yes.

Tr. at 31-32.

Q. Is this an accurate police report?

A. This is as accurate as I could see.

Q. You provided police accurate information, correct?

A. Well, I think I did, yes.

Q. This incident does not state a claim that Ms. Tanner ordered electricity in your name without your knowledge, does it?

A. Well, I didn't -- why would I put it in there? All I want to do is report that I've been -- I didn't try to pick no specific thing that was done.

Q. But it's correct to state that it does not say that in this report.

A. No, it doesn't state that, no.

Tr. at 36-37.

Although it may be more advantageous to his case for Mr. Snell to claim that he did not include theft of electric service on his police report because he "discovered" the electric bills after filing his police report – It simply is not true. Complainant's Application for Rehearing does not change the fact that Complainant failed to present credible, probative evidence supporting his burden of proof. Therefore, Complainant's Application for Rehearing should be denied.

## II. CONCLUSION

The Commission should deny Complainant's Application for Rehearing because it reargues the same claims fully considered and rejected by the Commission. The Application raises no new issues and fails to present any evidence that the Commission's January 27<sup>th</sup> Entry was unreasonable or unlawful. Complainant presented no evidence at the October 1, 2009 hearing nor in his Application for Rehearing to alter the Commission's conclusions that Ohio Edison did not provide inadequate service or that it acted unreasonably. Consequently, the Commission should deny Complainant's Application for Rehearing and affirm its January 27<sup>th</sup> Entry.

Respectfully submitted,



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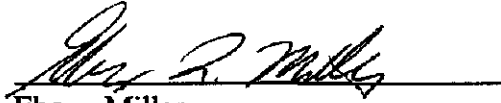
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On behalf of Ohio Edison Company

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Respondent's Memorandum Contra to Complainant's Application for Rehearing was served by U.S. mail, upon Joseph E. Snell, 2561 Romig Road, Apt. 14, Akron, Ohio 44320, this 8<sup>th</sup> day of March, 2010.

  
Ebony Miller  
Attorney