

7.1: A discharge of a Merced GSR from Long Term Disability due to the expiration of his benefit eligibility is closed without adjustment.

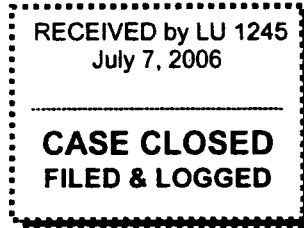


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MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

## REVIEW COMMITTEE



**IBEW**



INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, AFL-CIO  
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SALIM A. TAMIMI, SECRETARY

### Pre-Review Committee No. 16388

Margaret Franklin  
Company Member  
Local Investigating Committee

Mike Grill  
Union Member  
Local Investigating Committee

#### Subject of the Grievance

This case concerns the discharge of an employee from Long Term Disability due to the expiration of his benefit eligibility.

#### Facts of the Case

The grievant was a Gas Service Representative prior to going on LTD effective April 21, 1992. Under the terms of the LTD plan in effect at that time, the grievant was eligible for benefits through January 11, 2006.

On October 17, 2005 the grievant was the top bidder for a GSR position in Merced. An interactive discussion was held with him on October 20 to discuss the job duties and his current medical status. On November 8, Company received confirmation of the grievant's ability to perform the job duties without restriction.

The grievant took the required DOT test on December 5. The results came back positive on December 8 and were confirmed by the split sample on December 27. The grievant subsequently entered a rehabilitation program but was not released to work as of the end of his LTD eligibility and was therefore terminated.

#### Discussion

The Pre-Review Committee reviewed and discussed applicable provisions of Letter Agreement 04-16, the DOT Drug Testing Program administrative procedures. Given that the grievant was on LTD, the Pre-Employment Testing provisions of the DOT regulations applied.

"A DOT pre-employment drug test must be conducted before an individual is hired or contracted and when an individual is transferred/promoted from a non-covered to a covered position, and when an individual is on inactive status for thirty (30) days or more. Inactive status is defined by status change that generates a payroll change tag. This includes when an individual transfers back and forth from a covered position to a non-covered position and back again (i.e., going in and out of the DOT Drug and Alcohol Testing Program's random pools), and when an individual is upgraded to a covered position. This also applies to employees returning from a leave of absence who have not been participating in the program (e.g. subject to the random selection process). A negative test result is required prior to performing covered functions."

"7. MRO will inform the DER of a verified positive result to conclude the transfer request, which at this time would be rejected due to the employee testing positive."

"10. Employees who test positive the first time during a transfer request can be returned to their existing position upon authorization by the EAP. This could be during their education and/or treatment program."

"13. For purposes of this section 'transfers' include employees bidding, demoted, or displaced into covered position."

Item 7 above indicates that because of the positive test, the grievant would not be awarded the GSR in Merced. Given that his LTD eligibility expired prior to completion of rehabilitation, the grievant had no status and termination was the only recourse.

Decision

Based on the above, the Pre-Review Committee agrees to close this case without adjustment.

Margaret Short  
Margaret A. Short, Chairman  
Review Committee

7/6/06  
Date

Sam Tamimi  
Sam Tamimi, Secretary  
Review Committee

7/6/06  
Date