



PACIFIC GAS AND ELECTRIC COMPANY
2850 SHADELANDS DRIVE, SUITE 100
WALNUT CREEK, CALIFORNIA 94598
(925) 974-4282

MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

REVIEW COMMITTEE

RECEIVED by LU 1245
January 3, 2005

**CASE CLOSED
FILED & LOGGED**



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 2547
VACAVILLE, CALIFORNIA 94696
(707) 452-2700
SALIM A. TAMIMI, SECRETARY

Review Committee No. 15015 Customer Services – North Coast – Willow Creek

Donna Rodella
Company Member
Local Investigating Committee

Rich Cowart
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a Service Representative for making “false, misleading and fraudulent material misrepresentations regarding your physical activities and abilities...”

Facts of the Case

At the time of discharge, the grievant had 23 years of service and no active discipline.

On August 19, 2003 the grievant filed a Report of Occupational Injury or Illness claiming pain in her thumbs and loss of strength in her hands. During a telephone interview on August 22, 2003 with the Workers' Compensation Representative assigned to her claim, the grievant stated she was unable to play golf and had not played golf since June 2000.

Safety, Health, and Claims hired a private investigator on October 6, 2003. The investigator found:

- A local newspaper dated August 13, 2003 containing an article about a golf tournament on July 31 in which the grievant placed second.
- The grievant was a member of a country club and the Northern California Golf Association with a published handicap as of November 1, 2003.
- The grievant posted 30 golf scores between March 23 and October 23, 2003.
- The grievant playing golf at the country club on October 23, 2003 and videotaped her.
- Again playing golf at the country club on October 25, 2003. He observed her for three hours and verified that she posted a score that day.
- When he interviewed her on November 10, 2003, the grievant stated she had not played golf since hip surgery in June 2001 and also that playing golf “kills my hands”. This interview was recorded.

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On November 14, 2003 the grievant's claim was "conditionally denied" as a supplemental doctor report was forthcoming. The grievant was seen by this doctor on September 18, 2003; the grievant did not disclose to him that she played golf.

On February 19, 2004 the grievant was interviewed by a Corporate Security Representative in the presence of a Shop Steward. The grievant told the Security Representative she did not remember what she'd told the private investigator or the Workers' Compensation Representative about her playing golf. She did state she played golf in 2003 and last in November or December 2003.

Safety, Health and Claims sent the grievant a letter dated February 2, 2004 denying her claim and advising her of the right to appeal the decision within one year. The basis of the denial was the following doctor's statement:

"After seeing her capabilities in this tape, and the inconsistencies in the interviews, it is much less likely that she sustained any significant problem with her wrist as a result of her occupation...but it certainly does not appear to me that she sustained any significant injury either to her neck or to her hands that has caused her any significant disability."

The grievant has appealed the denial and is represented by counsel.

On July 31, 2003 the date she placed second in the golf tournament, the grievant was on paid sick leave. In addition she was on paid sick leave on July 16, 2003 and April 11, 2003, dates that she also posted golf scores.

Discussion

At the outset, the Review Committee acknowledges that the determination of an industrial injury claim is not proper subject for the grievance procedure. That decision rests with Company's Safety, Health, and Claims Department and the Workers' Compensation Appeals Board.

The parties have had many and lengthy discussions of this case in the grievance procedure. It is obvious to Company that the grievant was untruthful with the Workers Comp Representative and the doctors in order to enhance her industrial injury claim. Further, Company believes that even if she is ultimately awarded her claim, that does not change the fact that she lied.

Union opined that discharge is too severe a penalty for lying given the lack of active discipline and the grievant's long service. Further, Union opined that playing golf requires different motions than key stroking; that playing golf would not be inconsistent with the grievant's claimed condition.

Union indicated it could not agree that there was just cause for discharge and would arbitrate. Company responded that the grievant was clearly guilty of sick leave abuse on multiple occasions and that it would send the grievant a second termination letter for sick leave abuse prior to an arbitration hearing. Company cited Arbitration Case 234 as the precedence for handling post discharge information. Company also cited Arbitration Case 143 and P-RC 795 as precedence for handling sick leave abuse cases.

Union responded that in light of Company's position that it will issue a second discharge letter for multiple instances of sick leave abuse, Union will agree to close the case.

Decision

The Review Committee agrees that if the grievant's Workers' Compensation claim is ultimately accepted, then she would be entitled to supplemental benefits for the period of temporary disability between the dates of August 20, 2003, the first date of absence after filing the Workers' Compensation claim, and December 3, 2004, the date this agreement was reached.

For the Company:

Margaret A. Short
Bob Lipscomb
Dave Morris
Toby Tyler

For the Union:

Sam Tamimi
William R. Bouzek
Louis Mennel
Sherrick A. Slattery

By: Margaret Short

By: Salim A. Tamimi

Date: 12/30/04

Date: 12-30-04



REVIEW COMMITTEE

IBEW



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Review Committee No. 15015 Addendum Customer Services – Willow Creek

At the request of the Review Committee, a Local Investigating Subcommittee convened to confirm through Payroll records that the grievant was absent from work on sick leave on three specific dates in 2003. The Subcommittee's report has been reviewed by the Secretary and Chairman of the Review Committee. This additional information will be included in the Review Committee File and the case will remain closed.

For the Company:

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For the Union:

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By: Margaret Short

By: Salim A. Tamimi

Date: 2/9/05

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