



REVIEW COMMITTEE



IBEW

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RECEIVED MAY 06 1997

CASE CLOSED
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INTERNATIONAL BROTHERHOOD OF
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R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Diablo Canyon PP Case No. NPG-704-95-043
Fact Finding File No. 6405-96-116
Pre-Review Committee No. 2087

KAREN BENTLEY
Company Member
Local Investigating Committee

MIKE HAENTJENS
Union Member
Local Investigating Committee

Subject

This grievance concerns the discharge of a Routine Plant Clerk at the Diablo Canyon Power Plant. Company stated the grievant was discharged because she was medically precluded from returning to her regular duties; a position commensurate with her reduced work capabilities could not be found; and she was not a member of Group Life and therefore not eligible for Long Term Disability.

Facts

The grievant was hired on March 18, 1985, as a Routine Plant Clerk. On July 15, 1991 she was placed on the compensation payroll. An internal 60 day job search was conducted from April 27 to June 27, 1994 but a suitable job was not found. She remained on compensation payroll until January 18, 1995, at which time she returned to work in an ergonomically sanctioned job. The payroll change tag was retroactive to January 3, 1995, for reasons not explained in the local investigation committee report.

The grievant continued to experience medical difficulties and on April 7, 1995, the Safety Health & Claims department notified the grievant's supervisor that her physician had determined her condition to be permanent and stationary. Further, her physician determined that, "She is permanently disabled from any work which requires the use of the upper extremities or which requires her to sit with her head forward flexed, to read or scan a computer. Her work restrictions preclude her working for PG&E at any office position." Following receipt of the April 7, 1995 notification from the grievant's physician, she was immediately released from work, but remained on the active payroll until being placed on compensation payroll effective May 8, 1995.

A Certified Rehabilitation Counselor was assigned to the grievant to assist in an internal job search which was set to begin May 26, 1995. The counselor initially met with the grievant on June 6, 1995. The grievant was given a number of position descriptions and instructed to identify those specific job functions which she believed she could physically perform. Based on that information, a search for a suitable job would begin. The grievant did not respond to this request. After the initial meeting on June 6, 1995, the counselor left numerous messages at the grievant's home. The counselor testified that she left messages on June 12, 19, 21, and 23. On June 26, the counselor left a message informing the grievant of the conclusion of the internal job search. Still not receiving a response, the counselor left additional messages on June 28 and 30.

Based on the medical opinion in hand, Company concluded that the grievant was medically precluded from returning to her regular duties. According to the Rehab Counselor, a position commensurate with her reduced work capabilities could not be found, Inasmuch as the grievant was not a member of the Group Life Insurance Plan and therefore not eligible for Long Term Disability, she was administratively terminated effective July 28, 1995.

Discussion

Review Committee Decision No. 1611 upheld the termination of an employee who was precluded from returning to his former position, was not a member of Group Life and where Company was unsuccessful in finding a position commensurate with his physical limitations.

In the case at hand, the grievant maintains that the termination was unjust for the following reasons; (a) her medical condition was not permanent and stationary and (b) the internal job search was inadequate.

As to the issue of her medical status, she maintains that Dr. Fryer was not her treating physician for head, neck and shoulder problems and that his conclusions were wrong. Despite this assertion, she did not provide any medical documentation to the contrary, either before or after her termination. Additionally, she declined to sign a release that would have allowed the Pre-Review Committee a more thorough review of Dr. Fryer's evaluation. The Committee notes that she was being treated by Dr. Fryer for carpal tunnel syndrome and that he was the treating physician who approved her return to work in January 1995. It is reasonable that the Company would refer her to Dr. Fryer when she was again experiencing difficulties on the job.

The Committee is faced with the task of reaching a conclusion on the basis of that information which has been made available. Based on the available information, the Committee notes there is nothing to contradict concludes that the grievant's condition is permanent and stationary and she is precluded from the activities described in Dr. Fryer's letter.

Regarding the adequacies of the internal job search, the grievant maintains that she was in regular communications with the vocational counselor and had notified the Company that she could not participate in the job search due to an automotive accident that occurred on June 15.

Her participation in the job search was critical as her input was required to identify those activities which she believes she could physically perform. Despite her claim that she was in regular contact with the counselor, she was unable to provide any dates or times of discussions. On the other hand, the rehab counselor produced a very detailed record of her unsuccessful attempts in reaching the grievant.

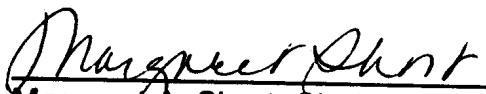
Further, while it is clear that a company representative was notified of her automotive accident, there is no documentation in the record before this Committee that she notified the Company that the accident would prevent her from participating in the job search. Additionally, the record provided to this Committee does not include any medical documentation, either before or after her termination, that she was medically unable to participate in the job search by identifying job functions that she believes she could physically perform.

The Committee concludes that the Company made an appropriate effort during the internal job search to find placement for the grievant, despite the grievant's apparent lack of cooperation.

In prior cases where there has been conflicting medical opinion regarding an individual's physical preclusion's or limitations, or where there has been disagreement between medical professionals as to whether an individual is permanent and stationary from the results of an industrial injury, the Committee has secured a third opinion from a qualified independent medical professional. In the case at hand, however, there is no conflicting or divergent medical opinion.


DECISION

The Committee agrees that the grievant's rights and benefits pursuant to the Agreement were appropriately exhausted and that her termination is not in violation of the Agreement. This case is, therefore, settled without adjustment.



Margaret A. Short, Chairman
Review Committee

4/25/97
Date



Roger W. Stalcup, Secretary
Review Committee

4/25/97
Date