



REVIEW COMMITTEE



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RECEIVED by LU 1245
June 4, 2009

**CASE CLOSED
FILED & LOGGED**

JOHN MOFFAT, CHAIRMAN

BOB CHOATE, SECRETARY

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Pre-Review Committee No. 18638 Customer Care – Customer Service - Oakland

Bryan Kaufman
Company Member
Local Investigating Committee

Lula Washington
Union Member
Local Investigating Committee

Subject of the Grievance:

This case concerns the discharge of a Customer Services Representative.

Facts of the Case:

The grievant was hired on October 6, 1995 and was terminated on September 26, 2008 for falsification of her time card.

On January 23, 2008 the grievant was issued a Sick Leave abuse letter. The grievant called in a FMLA day on December 10, 2007. It was determined that the grievant went to Las Vegas for the weekend and made the reservation to return on Tuesday following the weekend, which she missed a day of work.

On Friday August 15, 2008, the grievant missed a Worker's Compensation appointment. The grievant requested time off from 12:30 p.m. for a doctor's appointment from 1:00 p.m. to 2:00 p.m. to be followed by FMLA through the rest of her workday. The grievant testified that she actually left work at 11:30 a.m. the beginning of her scheduled lunch period. She anticipated at 8:22 a.m. based on an email to her supervisor that her FMLA condition might require her to be home the rest of that afternoon as a result of the treatment. She never attended the doctor's appointment because as she claims she was washing her car and running errands.

On August 19, 2008 the Lead Clerk stated that she approached the grievant and told her that she had corrected the grievant's timecard from the previous week. The grievant only indicated one hour for the appointment when she actually left at 12:30 p.m. so it should have been 1.5 hours off. The grievant responded "oh, okay". No mention was made of the missed appointment.

The grievant's Workers Compensation claim was denied and she is appealing that decision. Additionally, the grievant did not have any sick leave to cover her time off.

Discussion

The Union believes that discharge is clearly not warranted in this case. The grievant states that the lead clerk never approached her about the timecard. There is animosity between the grievant and the lead clerk and the Union believes the lead clerk may have fabricated the story. This is a case of an honest mistake. Even if this could be characterized as timecard falsification, discharge is excess and inconsistent with how other timecard cases have been addressed. The grievant did have a scheduled doctor's appointment and was off the rest of the day on approved FMLA time.

The Company noted that the grievant requested time off on a Friday from 1:00 to 2:00 to attend a doctor's appointment, to be followed by FMLA through the rest of her workday because she anticipated that "her condition might require her to be at home that afternoon". She never attended her doctor's appointment because (as she claims) she was busy washing her car and running errands.

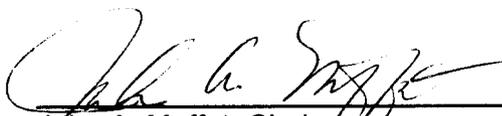
The grievant's explanation that she forgot to correct her time card for sick leave that she did not have coming to her or inform her supervisor to change her time card has no merit. The lead clerk advised her that she corrected her timecard to reflect 1 1/2 hours (not 1 hour) for her doctor's appointment in order to account for her travel time to her appointment from 12:30 to 1:00. This was the perfect opportunity for her to report to her supervisor that she did not make her appointment. Instead she took no action to correct the record.

The grievant clearly committed timecard fraud and her offense is either (1) Worker's Compensation fraud (as the appointment was related to a Workers' Compensation claim she had filed), or (2) her second occurrence of sick leave abuse (as the Workers Compensation claim was denied and her time off falls under the Sick Leave provisions of Title 8). Her first sick leave abuse occurred in December of 2007. Either offense warrants discharge.

Decision

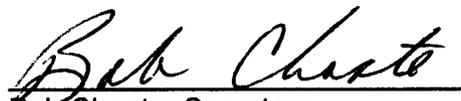
The PRC agree that the grievant had ample opportunity to correct her absence and chose not to.

This case is closed without adjustment



John A. Moffat, Chairman
Review Committee

5/20/09
Date



Bob Choate, Secretary
Review Committee

5/20/09
Date