

REVIEW COMMITTEE

108.1 P
7.1 P

PG and E

PACIFIC GAS AND ELECTRIC COMPANY
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SAN FRANCISCO, CALIFORNIA 94106
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CASE CLOSED FEB 11 1981
LOGGED AND FILED

IBEW

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RECEIVED FEB 11 1981

D.J. BERGMAN, CHAIRMAN

REVIEW COMMITTEE DECISION

- DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

General Construction Grievance Nos. 3-698-79-187 and
3-699-79-188
Review Committee File No. 1496-80-22

Subject of the Grievance

This case involves two grievances filed on behalf of an employee in the General Construction Gas Department. The first grievance contests the grievant's termination of employment on November 29, 1979 following unsuccessful outside rehabilitation training. Subsequently, the grievance was broadened to also contest the Company's refusal to reinstate the grievant in his previous Company job when, after his termination, he demonstrated that he may have been medically fit to resume full work status.

The second grievance concerns the grievant's entitlement to receive supplemental benefits pursuant to the provisions of Title 108 of the Physical Agreement following his termination of employment.

Facts of the Case

The grievant was initially employed as a Helper in the Gas Department of General Construction on October 31, 1972. He rose to the position of Miscellaneous Equipment Operator B several times but due to lay offs and demotions for lack of work, he was last rehired as a Helper on July 19, 1976. On April 6, 1977 the grievant sustained an industrial injury to his lower back and legs and on April 11, 1977 was placed on the Compensation Payroll. His physical condition appeared to improve until May 6, 1977 when he apparently suffered further injury to his back when an object fell on him during a visit to a hardware store. During the remainder of 1977 and into 1978, the grievant continued to evidence no physical improvement through a series of examinations and conservative treatment. On February 6, 1978 Dr. Schilling examined the grievant and considered his condition as "stationary and suitable for disability rating" and he recommended "less strenuous work that would require less heavy lifting". On March 8, 1978 the grievant was examined by a neurological surgeon, Dr. J. L. Mathis, who reported:

I recommend that the patient undergo a lumbar myelogram. He stated that he did not wish any further studies or treatment at this time and he was going to return to Dr. Schilling for further conservative treatment.

It is unfortunate that he does not feel the need for a myelogram at this time, as it is my feeling that he does probably have a central herniation of the L4 intervertebral disc which has been irritating his L5 nerve roots and causing the alternating leg symptoms which are outlined in this report and the medical

file. It is my impression that he has received the maximum benefit of conservative treatment. It appears that the only solution at this time, as he does not want to undergo lumbar myelogram, is to proceed with a rating.

I agree with Dr. William Mathews that at the present time he has a rating which is a residual disability precluding him from heavy lifting, contemplating that he has lost approximately half of his pre-injury capacity for lifting.

On July 30, 1979, the grievant was examined by Dr. W. C. McIvor, who stated:

I would agree completely with the diagnosis that this man has an L4-5 disc and still has some objective findings of disability. I discussed the problem with him at considerable length and his desires seem to be that he work outside and he is not adamantly opposed to surgery, but quite obviously doesn't consider it the first choice.

The patient is stationary and ratable at this time, if no other treatment is pursued. (emphasis added) I think he can return to work that does not require repeated bending and stooping and lifting in excess of 25 lbs.

On June 29, 1978, the Company's Rehabilitation Committee searched the Company for available work for which the grievant was physically and appropriately qualified. There were no such openings available.

On June 30, 1978, the grievant was referred through the State Division of Industrial Accident Rehabilitation Bureau to an outside agency for rehabilitation training. At first, the grievant appeared to be motivated to complete the rehabilitation, but as time progressed it became apparent that he only wanted to return to employment with PG&E.

In November, 1978, another search of the Company's inside employment possibilities was made by the Company Rehabilitation Committee, and again nothing suitable was available.

On December 3, 1978, he was again examined by Dr. Schilling who found him to have "no residual disabilities" and released him to full work status.

On February 8, 1979, the State Rehabilitation Bureau held a conference on the grievant's problems with his outside rehabilitation program. At this meeting, the grievant announced that he was moving to Madisonville, Kentucky to accept a job offer in water inspection.

On March 5, 1979, the Company discontinued the payment of supplemental benefits to the grievant.

On April 6, 1979, the grievant was placed back on the Compensation Payroll when the outside rehabilitation agency was contacted by the grievant who had not left the State and wanted to continue his program.

On April 26, 1979, PG&E was once again examined for a suitable job for the grievant, without success. The grievant continued to receive outside rehabilitation which included job referrals, and schooling, all of which he either started but did not complete or would not follow up on.

On July 17, 1979 the State Rehabilitation Bureau ordered the grievant to "fully cooperate with the Rehabilitation counselor". The outside agency continued to try to place the grievant in many jobs, some of which were training positions but he continued his attitude of non-cooperation.

On October 25, 1979, the State Rehabilitation Bureau again held a conference with the grievant and decided to refer his case to another outside agency with the proviso that "If within 45 days there is not a concrete plan of action developed, that the State Bureau will consider a finding that PG&E has met their obligation for the fulfillment of rehabilitation services to the grievant". On this date, the Company's Rehabilitation Committee made their final search for employment within the Company for the grievant and they could find nothing open.

On November 9, 1979, in pursuit of a Worker's Compensation Claim, the grievant was referred by his lawyer to Dr. Reiswig in Sacramento, California. Dr. Reiswig, after examining the grievant reported, "I do not believe the patient can return to his previous work activity and should be precluded from heavy lifting repetitive bending and stooping."

On November 26, 1979, the second outside rehabilitation agency attempted to arrange placement for the grievant in a Water Treatment Plant Operator's job in Martinez, California. The grievant stated that "he was not sure that he wanted to return to work at all."

On November 27, 1979, the grievant notified the outside agency that "he was not interested in further rehabilitation efforts, and that he would probably return to work with PG&E". The agency acted to close his file.

On November 30, 1979 the grievant's employment with PG&E was terminated and supplemental benefits were cancelled. Subsequent to this the State Rehabilitation Bureau issued a decision that the grievant was "not a Qualified Injured Worker pursuant to Article 12 Section 1003 (c) (2)."

Normally the case would have ended at this point; however, following the grievant's termination he was examined by Dr. Schilling on December 7th and again on December 12th. At both of these visits the grievant claimed full physical recovery and the doctor could find no residual disabilities and thus approved a return to full work status. On February 1, 1980 Dr. McIvor examined the grievant and could find no demonstratable disability, and as late as May 1, 1980, Dr. Mathis found the grievant to be asymptomatic.

Discussion

In discussing the second issue in this case, the discontinuance of supplementary benefits following the grievant's termination of employment, the Review Committee noted one of its previous decisions in R/C 1200-72-78 which clarifies that supplemental benefits, as provided in Section 108.1 of the Physical Agreement, "terminate when it is medically determined that the employee has reached the stage where his injury is stationary and ratable, and if such conclusion is

affirmed, the employee is not longer entitled to receive supplemental benefits." This decision, standing by itself, makes it clear that the grievant was not entitled to be receiving supplemental benefits at the time of his termination and therefor is not entitled to their continuance following his termination.

The other issue in this case is whether or not the grievant's termination of employment was for just and sufficient cause. The Review Committee could be placed in the awkward position of attempting to determine which of the reports from the 5 doctors involved in this case are inaccurate, inasmuch as they, on occasion, range from a recommendation for Myelogram testing to identify surgical need to the other extreme of no residual disability - return to full work status. However, because each of these doctor's reports are reflective of the way of which the grievant described his symptoms or lack thereof, this Committee placed great weight upon the grievant's record of credibility. In this regard, it was noted that up until being examined by Dr. McIvor on March 28, 1978, the grievant had continuously reported his condition as painful with discomfort. When Dr. McIvor recommended a lumbar Myelogram and possible back surgery, the grievant refused and said that he would return to Dr. Schilling for conservative treatment. Later upon visiting Dr. Schilling, the grievant informed the doctor that he was feeling good and was performing some athletic activities without great difficulty. Following an examination, the doctor cleared the grievant for return to full duty status.

Two other doctors examined the grievant after this and were told by the grievant that he was still experiencing occasional back pain. Both of these doctors, including the grievant's doctor, who was examining him for a Workers Compensation Claim, restricted the grievant from lifting and/or bending or stooping. Later, following the grievant's termination, he demonstrated to three doctors that he was completely recovered and pain free. Additionally, the Review Committee considered the grievant's record of non-cooperation with the two outside rehabilitation agencies assigned to his case. These records evidence a series of broken assurances by the grievant that he would go on job referrals accept training and schooling, keep in close contact, etc.

In evaluating the above, the Committee is of the opinion that the grievant has, by his own actions, cast serious doubt upon his credibility in this case. The Review Committee is also of the opinion that the Company acted in a conscientious manner in attempting to locate the grievant in a job within the Company which was within his reduced work capabilities, within his skill level, and which was vacant.

In response to questions from the Committee, it was determined that the grievant had not been a participant in the Group Life Insurance Plan; therefore, there was no entitlement to or consideration for Long Term Disability.

Decision

Based on all of the above, it is the decision of the Review Committee that the grievant's suspension from supplemental benefits and the grievant's termination of employment were appropriate and for just and sufficient cause and should not be disturbed by this Committee. On that basis this case is considered closed without prejudice to the position of either party.

FOR COMPANY:

L. C. Beanland
F. C. Buchholz
J. B. Stoutamore
D. J. Berman

By [Signature] date 2-10-81

FOR UNION:

G. W. Abrahamson
H. W. Burr
P. Pelucca
R. W. Stalcup

By [Signature] date 2/10/81