

24.1: A West Sacramento Utility Machine Operator was reinstated with 50% back pay from the termination for failure to return from LOA. Benefits in tact, however, will be placed on a WR in the attendance category for 12 months period.



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
September 8, 2006

**CASE CLOSED
FILED & LOGGED**

IBEW



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. 16131 VP & Controller's Organization – Bill Print & Mail – West Sacramento

Rose Veridiano
Company Member
Local Investigating Committee

Arlene Edwards
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a Utility Machine Operator for failure to return from leave of absence or provide sufficient medical documentation prior to the expiration of the leave to extend it.

Facts of the Case

The grievant suffered an injury to her left eye on March 22, 2005 which prevented her from reporting to work. She was placed on sick leave until April 11, when it was exhausted. She was tagged on a leave of absence effective April 12 - 18 based on the leave application form completed on April 4 by her treating physician. She was expected to return to work on April 19.

On April 18, at grievant's request, Company faxed leave forms to the treating physician, which he completed and faxed to Company that afternoon. He indicated grievant could not work until April 29.

On April 20, the doctor faxed more forms extending the disability to May 9. A letter dated April 21 was sent to the grievant informing her of the extension and notifying her that she must either return to work or provide Company with appropriate documentation to extend the leave. Failure to do so may result in discipline or discharge.

On May 6 Company received a form completed by the doctor extending the disability to June 9. On June 6 and 7, the supervisor left messages for the grievant that her leave was about to expire and reminded her to either report or submit doctor completed forms. The grievant did not respond to either call.

On June 9, the grievant was a no call; no show. On June 13, she called to say she was not released to return to work, but did not have the documentation. On June 14, a handwritten note, signed by the doctor on June 9, was received by fax. It extended the disability to July 8.

On July 8, the same note was faxed with the old date scratched out, initialed, and a new date of August 19 written in. Once again the leave was extended.

On August 22, the grievant was again a no call; no show. The supervisor called to inform her she was absent without permission. The grievant indicated she would submit documentation. At 1:46 that day, Company received a faxed copy of the EDD Claimant's Certification with a disability date through August 29. The Certification was signed by the same doctor on August 8. Again the leave was extended.

The grievant did not arrive for work or call on August 30; nor was documentation received to extend the leave. A 10-day letter was sent requiring the grievant to provide medical documentation by September 9 or her employment would be terminated. On August 31, the same note was received with the August 19 date scratched out and September 20 written in and initialed.

On September 1 and 6 the supervisor left messages with the doctor's office and faxed forms for completion indicating the handwritten note was unacceptable. On September 2 and 9, the same message was conveyed to the grievant. By the September 9 deadline, no further documentation was received.

On September 14, the grievant was terminated. On September 16 a completed leave of absence form was received from the doctor. It said she was to be off work until September 30 but seemed to conflict with that by indicating she could perform the essential functions of her job and could perform work on any kind.

At Review Committee step of the grievance procedure it was determined that additional information from the doctor would be helpful. A letter was sent asking several questions and requesting a response by a specific date. As the doctor did not respond by the requested date, a call was placed to his office. That night the grievant's medical file was faxed, but the questions not answered. In the file was a notation that a completed leave form was faxed to Company on September 9. Company has no record of receiving any document on that date and the doctor's file contains no copy.

A follow-up call to the doctor's office questioning the validity of the September 9 log entry provided no further clarity about it. The assistant simply said we received everything in their file and they kept a copy of everything sent to us. She had no explanation for the notation, but was not the person who made it.

The grievant has long service and numerous leaves of absence. She had no active discipline at the time of discharge.

Discussion

This case was discussed at great length at each step in the grievance procedure. Company argued the grievant had the responsibility to ensure that the appropriate forms were completed and submitted prior to the expiration of each leave or extension. The instructions to the grievant were made clear and given her history, she was very familiar with the process for being granted a leave of absence.

Company noted that between September 9, the last deadline for submitting documentation, and the date of discharge a week later, nothing was received.

Union argued that the grievant is at the mercy of the doctor and when he can fit PG&E's requirements into his schedule. Union cited the lack of response to the supervisor's calls and to the Review Committee's inquiry. Union noted the Company accepted the doctor's handwritten note twice, but not the third time.

What is not in dispute is that this employee's attendance record is unacceptable. Company seriously considered arbitrating this grievance. However, given some of the uncertainties about this case, believed it to be a more prudent decision not to. Rather, the following decision will address the grievant's failure to provide timely documentation, her unauthorized absences, her overall unavailability, and failure to keep her supervisor apprised of her status.

Decision

- She will then be reinstated with 50% back pay retroactive to May 19, 2006.
- Benefits in tact except for vacation adjustment pursuant to Subsection 8.5(a).
- She will be placed on a Written Reminder in the Attendance category effective for 12 months (or more) from the date of return.
- Proof of illness must be provided for all future absences before sick leave will be paid.
- Future requests for leave of absence of FMLA will not be granted unless approved by a panel physician.
- Future leave extensions must be supported by an originally completed and signed by a doctor leave of absence form submitted to Company prior to the expiration date of the leave.
- Failure to meet any of the above conditions may result in her immediate discharge.
- EAP is available to assist the employee, if requested.

This case is closed based on the foregoing.

For the Company:

Margaret A. Short
Bob Lipscomb
Dave Morris
Craig Porter

By: Margaret Short/pcv

Date: 9/6/06

For the Union:

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

By: Sam A. Tamimi

Date: 9/7/06

