



REVIEW COMMITTEE

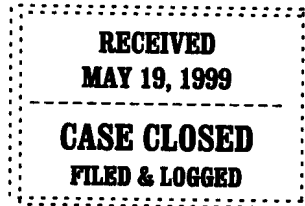
IBEW



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MARGARET A. SHORT, CHAIRMAN

- ☐ DECISION
- ☐ LETTER DECISION
- ☐ PRE-REVIEW REFERRAL



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
(510) 933-6060
R.W. STALCUP, SECRETARY

Kern Division Grievance No. BAK-97-26
Fact Finding Committee No. 6702-98-077
Pre-Review Committee No. 2205

JEFF NEELEY
Company Member
Local Investigating Committee

MIKE GRILL
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the placement of a Fieldman, Bakersfield, under the guidelines of the Company's First Time Offender Policy as well as the issuance of a Written Reminder for having a positive DOT random drug screen.

Facts of the Case

On October 30, 1997, the grievant took a DOT random drug test. On November 7, 1997, following a discussion with the grievant, the Medical Review Officer (MRO) determined that the test was a verified positive. In addition, a split sample from the same specimen was submitted for analysis at the request of the Union. This split sample also tested positive.

In the Local Investigation Committee (LIC) Report, the grievant stated that he felt uncomfortable with the collection process utilized during the random drug screen and therefore went to his personal physician on October 30, 1997, to request a drug screen. The results of the drug screen submitted by the physician indicated that the grievant's specimen had tested negative for a panel of drugs including the drug in which the grievant had tested positive in the DOT random drug screen. There is no indication that the lab that performed the test for the grievant's personal doctor was a HHS-certified laboratory. Tests performed for the purposes of DOT random drug screens are required by federal regulation to be performed in a HHS-certified lab. Additionally, there is no indication that any type of custody and control form was completed, nor any indication of the utilization of any of the collection process controls that are required in the collection of a urine sample for DOT testing. In addition, the Company received a letter from the grievant's personal physician stating that the grievant had been on a diet plan which included the grievant taking the medication

Fastin, also known as Phentermine, and that this medication probably resulted in the grievant's having a positive DOT drug screen.

Prior to the LIC, the Union requested that the Company provide the litigation package in order that their drug testing expert review the facts surrounding this drug screen. A report submitted by the Union's expert stated that the laboratory chain of custody, testing procedures and report associated with this drug screen appeared to be complete and correct. The report further stated that the documentation outlining the testing process performed by the laboratory did not allow the drug Phentermine to interfere with the identification or quantitation of the drug in which the grievant tested positive.

At the Fact Finding Committee step of the grievance procedure, the Committee agreed to send a letter to the MRO asking the questions: 1) Did the grievant inform you that he was taking diet drugs or Phentermine at the time of his test review? and 2) Can diet drugs be ruled out as the reason for the positive test result? The MRO responded that 1) yes, the grievant had informed him that he had used diet drugs and 2) yes, diet drugs can be ruled out as the reason for the positive test result and that Fastin, also known as Phentermine, will never test positive on a DOT confirmation drug test.

Discussion

The Pre-Review agreed that the those involved in the grievance procedure have limited expertise in answering technical questions surrounding drug testing and therefore must defer to those who are considered experts in this area. With this in mind, the Pre-Review discussed the documentation provided by both the Union's expert and the MRO which stated that the diet drug Fastin, also known as Phentermine, could be ruled out as the reason for the grievant's positive test result.

The Committee also looked closely at the question of proper administration of the initial collection process. At the LIC, but not at the time of collection, the grievant stated that the collector did not verify his identity by asking for a picture ID; that the collector handed him an empty specimen bottle rather than let him select one; that the collector did not follow him into the bathroom; that he did not observe the collector split the sample; that he did not observe the collector seal the specimen bottle with the label; that the collector did not take the temperature of the specimen.

The Committee noted that the procedure calls for the grievant to be given written instructions upon his arrival at the collection site. There is no indication in the record that he did not receive the Random Drug Testing Program - Checklist for Employees, which is a part of the DOT Agreement between Company and Union. In part, these instructions include the following statement:

You should observe the entire collection and documentation procedure used by the collector.

Note the temperature reading of the specimen and verify that the temperature was correctly recorded by initialing in the proper space on the form.

When instructed, read, sign and date the DOT urine custody and control form, certifying that the specimen in the bottle is yours and that it came from your body at the time of collection.

The Committee also noted that the following statement appears on the custody and control form, immediately above the space where the donor signs the form:

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; that each specimen bottle used was sealed with a tamper-evident seal in my presence and that the information provided on this form and on the label affixed to each bottle is correct.

The grievant received a copy of the Random Drug Testing Program Checklist for Employees, signed the custody and control form and initialed the tamper-evident seal on the vials, certifying that the collection process followed the established procedure. It is virtually impossible, after the fact, for this Committee to reach a finding that there were numerous departures from the established collection process given these facts. Company, however, noted that none of the grievant's concerns constitute fatal flaws under the DOT operating guidance dated June 1, 1992. Even if all of the collection errors alleged occurred, they would not be cause to forego testing of the sample or to invalidate the test result.

The Committee is in agreement that the employee may interrupt the collection process and appeal to his supervisor or other designated Company representative when the collector fails to follow the established collection procedures. Departures from the established process should be corrected before the process continues. Under certain circumstances, the employee may be required to immediately provide another specimen. If the collection error is not corrected, the employee may request representation by a shop steward.

Employees should be cautioned that if their protests lack validity, their actions could be considered a refusal to test or refusal to cooperate with the process which would then constitute a positive test.

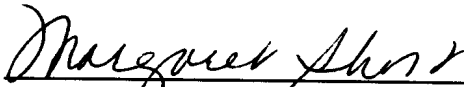
Unusual occurrences such as described above must be documented by the collector on the Site Report. The supervisor or other Company representative should also document the events.

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DECISION

The Pre-Review Committee agrees that the facts presented in this case confirm that the grievant did test positive on a DOT random drug screen and therefore he was properly placed under the guidelines of the DOT follow-up testing program, as well as, being issued a Written Reminder for just and sufficient cause.

On the basis of the foregoing, this case is considered closed.



Margaret A. Short, Chairman
Review Committee

5/18/99
Date



Roger W. Stalcup, Secretary
Review Committee

5/18/99
Date