

7.1; 102.2: The discharge of an Oakport probationary Relief Service Operator as a result of a verified positive DOT random drug test is for just and sufficient cause.

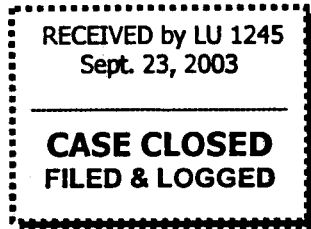


## REVIEW COMMITTEE

**IBEW**



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DECISION  
LETTER DECISION  
PRE-REVIEW REFERRAL

### Pre-Review Committee No. 13900 Customer Services – East Bay - Oakport

Kelly Adams  
Company Member  
Local Investigating Committee

Lula Washington  
Union Member  
Local Investigating Committee

#### Subject of the Grievance

This case concerns the discharge of a probationary Relief Service Operator as a result of a verified positive DOT random drug test.

#### Facts of the Case

Ex 11 = Collector's 2 ½ page hand-written statement dated October 23, 2002. Date of Collection: October 14, 2002.

Page 2, Item 6 Approximately 7:35 a.m. Donor handed cup to Collector. Collector read temperature and noted only 15 ml of urine. In view of the Collector, Donor drank water and ate cereal with milk. Donor drank water prior to 7:35 also.

Page 2, Item 2 Approximately 9:35 a.m. Donor states ready, given new cup. Donor handed cup to Collector. Collector read the temperature and noted 12 ml of urine.

Approximately 10:10 a.m. Supervisor advises Donor will be sent to a clinic if cannot provide sufficient specimen by the three hour limit. Donor drank coffee on way back to bathroom. Donor stated she'd taken a yellow pill someone had given her. Collector responded she didn't need to know about this.

Collector and Donor went to bathroom for third time. Collector repeated same steps as first and second bathroom visits. When donor was finished, Collector completed the Chain of Custody form.

Exhibit 8 = Collector's Addendum Statement dated October 24, 2002 (1/2 page typed. This same statement is found in the Collector's own handwriting as the fourth page of Exhibit 11.)

1. Each time I asked her to void I opened a new split kit.
2. This was done 3 times in total.
3. She was running out of time almost the 3-hour limit. She was drinking a cup of coffee.
4. She was sitting on the toilet for the 3rd attempt and couldn't void she asked me to hand her the coffee. I observed her the entire time she drank the rest of the coffee and handed me the empty coffee cup.
5. "I explained" this is not a normal procedure.

FF in receipt of email dated February 27, 2003 from Vina Spiehler, Ph.D., DABFT, Spiehler and Associates.

I did receive the joint statement of facts and the exhibits in the shy bladder case. If the specimen was the combined results of attempt #3 and attempt #4 as stated by the grievant, then that is a fatal flaw. If the specimen was the result of the 3rd void as stated by the collector in her statement dated 10/23/02 which is exhibit 11 (3 pages handwritten) and in the statement addendum exhibit 8, then it is not a fatal flaw.

Exhibit 12 - Grievant's undated and unsigned three-page typewritten statement.  
DOH: 5/28/02

May 28	Hired as Relief Service Operator - Oakport. One week of ride-along with 4 GSR's.
June 3	Started three-week GSR school
June 21	Passed school - expected to fail. Below average on two prior week-ending tests.
June 24	Reported to Dispatch
July 10	New Employee Orientation
October	Cordaptix training
October 14	DOT random (positive)
October 17	Last day worked
October 21	Discharged

Due to auto accident, did have Vicoden and Tylenol with Codeine in system. This other drug I found out about last week is in no way possible to be in my system.

I have never received the results of my test. I have not received a call back from the doctor or the lab. The Doctor didn't provide me with information that the DOT guidelines clearly state "must provide" or "must say before medical information is gathered". I didn't know of my rights.

Exhibit 16 = Grievant's undated and unsigned two-page typewritten statement re October 14, 2002 Collection

Met with Collector shortly after reporting for work. Collector asked if she wanted anything to drink. She responded, "no", was eating a rice cake.

Collector prepared bathroom. Donor entered stall and sat for approximately 20 minutes. Collector asked Donor to read amount of specimen from behind closed stall door. Collector told Donor to discard; Donor flushed. Donor and Collector left restroom.

In break room Donor drank 6-7 8 oz cups of water. Donor went outside to have cigarette. Donor returned and had a bowl of cereal. Donor and Collector chatted. Donor and Collector returned to bathroom.

Collector prepared bathroom; gave Donor a new cup. It took a while to provide a sample. Collector again asked Donor to read amount from behind closed stall door. Collector again stated it was not enough and to discard. Donor and Collector returned to break room.

Donor drank some water and went outside for another cigarette. Donor told supervisor she was having a hard time being able to provide a sample. Collector said needed to hurry, three hour limit almost up, suggested Donor drink coffee, as it is a diuretic. Donor made a pot of coffee and poured a cup and drank some. Donor replenished cup. Donor and Collector returned to bathroom.

Collector prepared a different stall. Donor put coffee on counter in bathroom. Collector handed donor a new specimen cup. Donor sat in stall for probably ½ hour. Donor told Collector about car accident and **taking son's Vicoden and some little yellow pills from a friend** to relieve pain in the shoulder. Collector reminded Donor of the time factor.

Donor was able to go. Donor handed cup underneath the stall door to Collector. Collector asked if Donor could provide more. Donor set the cup on floor away from her feet. Donor asked for more coffee. Collector gave her cup of coffee that she'd placed on the counter. Collector said they were breaking the rules. The cup was full, but the coffee was cold. Donor drank it right down. Donor sat for 20-30 minutes, then picked up the specimen cup from the floor and urinated into it (the cup already had urine in it.) Donor slid the cup under the door and the Collector said it was enough.

The Collector asked if the Donor wanted the results. Donor replied she did and gave Collector her address, which Collector wrote down.

Exhibit 14 – Donor's undated 1 ¼ page typed undated unsigned document:

On October 17 was shopping at Target when cell phone rang at 7:43 p.m. It was the MRO who informed her of failure of random drug test, told her what tested positive for but she could not write down at time.

MRO asked what medications she was taking. She stated **meclizine, weight control pills, and son's prescription**. MRO said it is illegal to take someone else's medication and that he would refer it to the DER.

Donor asked to call MRO back when she got home, five minutes away, wanted to give MRO exact names of medication taking. MRO refused, wasn't going to change things. Asked for MRO's phone number, did not provide it; gave two other numbers to call the following day. Walked through the building to get pen in car to write down phone numbers.

Asked MRO if should report to work following day. He said no. He told me to call in sick and told me to call the numbers. The call was over.

Called MRO number from Caller ID, wanted to write down what was positive for. Got answering machine. Left a message. MRO never called back.

MRO failed to notify me of right to have split specimen tested. I was told about this option on Monday, October 21 through PG&E.

To this day, I have not received a copy of my test results. Just last week I was informed that I was positive for type d-amphetamines. There is no possible way this could have been in my system. I do not do drugs.

Item 14 of LIC Joint Statement of Facts - Grievant's testimony:

Grievant told Collector about a car accident that she had had and told her that she was taking her son's Vicoden and some little yellow pills from a friend to relieve the pain that she had in her shoulder.

Exhibit 7 = MRO Report dated November 15, 2002:

Donor tested positive for D-Methamphetamine, as reported by our MRO office on October 18, 2002. After speaking to Donor it was determined that there was no prescription medication that she was taking that would have shown in a drug test to be a positive for D-Methamphetamine.

FF in receipt of e-mail, dated February 13, 2003, from EAP which confirms that the MRO did talk with the Donor prior to the determination of a verified positive. The Donor strongly denied using Methamphetamines. She did state she had used Vicoden. The MRO assured the Donor that Vicoden does not break down into any type of amphetamine.

FF in receipt of Kelly Adams email dated October 21, 2002. Grievant has decided not to have a split specimen.

#### Discussion

As can be noted from the above, there are discrepancies between the Collector's and the grievant's versions of what transpired on October 14, 2002. In a case such as this where there is conflicting one-on-one testimony and there are no witnesses, the PRC attempts to establish credibility and/or impeach the testimony of the involved parties.

The grievant's own testimony provides three different descriptions of what medications she had in her system on October 14. She told the Collector her son's Vicoden and some little yellow pills from a friend. She told the MRO meclizine, weight control pills, and son's prescription. Finally, some time post-discharge she writes: "did have Vicoden and Tylenol with Codeine in system." It is apparent from the date of collection the grievant was concerned about the outcome of her random test as she told the Collector what she had taken without being asked.

In Exhibit 14, the grievant states she could not write down the drug she was positive for because she didn't have a pen to write with and the MRO would not give her a number to call when she got home. Yet, in that same phone call she says she walked across the building to her car to get a pen to write down the phone numbers she was to call the next day. Why could she not write down the name of the drug at that time when she had both pen and the MRO on the phone?

The grievant stated that the MRO did not ask if she wanted the split tested. That is difficult to believe as this doctor has been the MRO for PG&E's drug testing program since its inception in 1990. Offering a split test during a discussion with a donor about a positive drug test is routine and he has done it many, many times in the past.

The grievant was later offered the split test on October 21, but declined. The amount of time between the original collection and the offer is a negotiated one between PG&E and IBEW to provide some cut-off for employee decisions, not because the test is less reliable unless adulterants or substitutions are involved. Samples are retained for one year and new aliquots could be tested. Company's PRC member is unaware of any PG&E employee's split sample having a different result from the initial verified positive.

With respect to the critical collection process, the Collector does admit that it "was not a normal procedure." However, the Collector indicates she observed the donor during this time. The litigation package copy of the Custody and Control Form has the YES clearly marked for the temperature in range (Jan 23, 2003 e-mail from DER). The lab would not test a specimen that is less than 45 ml in volume. Collectors are required to note the Custody and Control Form only when the specimen is less than sufficient volume. This was done.


The grievant's failure to provide a sufficient specimen for almost three hours even though drinking sufficient fluids is not a normal occurrence during random testing. When the three hours is exceeded the employee must be taken to a doctor, clinic, or hospital for examination. No evidence has been offered by the grievant indicating a pre-existing condition of shy bladder.

Finally, the grievant's test was positive for the street drug type of Methamphetamine. None of the medications she described would provide this test result. By her own admission, she was taking others' prescribed medication which is illegal activity. Depending on what effect the medications could have, the grievant may have been required under DOT regulations to report taking them to her supervisor.

The Union's technical expert indicates the Collector's version, if true, is not a fatal flaw; or that if the grievant's version is true, then a fatal flaw occurred. The parties believe the weight of the evidence and the benefit of the doubt in this situation go to the professionals who were merely carrying out their responsibilities and who had no ax to grind with the grievant. By contrast, the grievant's statements are self-serving, inconsistent, and inaccurate.

Decision

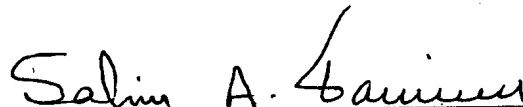
The PRC is in agreement that this discharge was for just and sufficient cause. This case is closed without adjustment.



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Margaret A. Short, Chairman  
Review Committee

9/19/03

Date



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Sam Tamimi, Secretary  
Review Committee

9-22-03

Date