

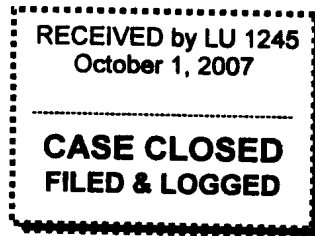
7.1: The discharge of a Davis GC Hole Digger Operator for a 2nd DOT positive test was for just cause.



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MARGARET A. SHORT, CHAIRMAN
DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

REVIEW COMMITTEE



IBEW



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ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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BOB CHOATE, SECRETARY

Pre-Review Committee No. 16594 Energy Delivery – GC – Tower Construction – Davis

Jeff Neeley
Company Member
Local Investigating Committee

Roy Runnings
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a Hole Digger Operator for a second DOT positive test.

Facts of the Case

The grievant was in a DOT covered Commercial Driver classification and subject to drug and alcohol testing. On September 9, 2004 the grievant had a positive random drug test. At that time he successfully completed the SAP (Substance Abuse Professional) recommended rehabilitation program and returned to work. Consistent with DOT regulations and Company policy, the grievant was then subject to 60 months of follow-up testing, in addition, to random testing. Between the first and second positive drug results, the grievant had about nine negative tests.

On March 10, 2006 the grievant was notified at about 7 a.m. that he needed to report for random drug and alcohol tests. The breathalyzer was administered at 7:35 a.m. and was negative. The first urine was given about 7:45. It was out of temperature range, too cool. Consistent with DOT regulations, the grievant was told he would need to have an observed retest. AT 9:35 a.m., the grievant provided a second sample. The results were positive for cocaine and methamphetamine.

The grievant was discharged April 6, 2006.

Discussion

The grievant stated the Collector asked him to leave the testing area after he gave the second sample. When the grievant returned to the testing area, the Collector poured the sample into two vials and sealed them while the grievant observed. The grievant then initialed the vials.


There is no statement from the Collector to support or deny that the grievant was asked to leave the test area before the splitting of the sample. However, by the grievant's own statement, he observed the split and he initialed the vials.

On the Chain of Custody form for the first sample on March 10, 2006, the Collector initially marked that the sample was within temperature range, but scratched that out and checked the box that the sample was not within temperature range. This form is signed by the grievant with a date of June 10, 2006, three months into the future.

The DOT regulations provide that defined procedural errors are considered "fatal flaws" and such tests cannot be relied upon. The PRC is in agreement that there was some sloppy work by the collection facility, but none of the errors rise to the level of "fatal flaws" as defined by the DOT.

Decision

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



 Margaret A. Short, Chairman
 Review Committee

9/29/07

 Date



 Bob Choate, Secretary
 Review Committee

9/29/07

 Date