

What is an employer to do if an arbitrator's decision claims to overturn the result of a DOT drug or alcohol test on grounds contrary to DOT regulations?

ANSWER:

- There could be instances in which an arbitrator makes a decision that purports to cancel a DOT test for reasons that the DOT regulation does not recognize as valid.
- For example, the arbitrator might make a decision based on disagreement with an MRO's judgment about a legitimate medical explanation (see §40.149) or on the basis of a procedural error that is not sufficient to cancel a test (see §40.209).
- Such a test result remains valid under DOT regulations, notwithstanding the arbitrator's decision. Consequently, as a matter of Federal safety regulation, the employer must not return the employee to the performance of safety-sensitive functions until the employee has completed the return to duty process.
- The employer may still be bound to implement the personnel policy outcome of the arbitrator's decision in such a case. This can result in hardship for the employer (e.g., being required to pay an individual at the same time as the Department's rules prevent the individual from performing the duties of his job).

QUESTION:

After the laboratory reports a test result, someone (e.g., the employer, a service agent) discovers that the CCF listed the wrong reason for the test (e.g., the CCF says the test was a pre-employment test when it was actually a random test). How is this corrected and by whom?

ANSWER:

- This is another example of an error that does not have a significant adverse effect on the right of an employee to have a fair and accurate test (see §40.209).
- The test is not cancelled as the result of such a mistake.
- While concerned parties may wish to correct the faulty description of the reason for the test, Part 40 does not require a correction to be made.
- Employers or their designated service agents should ensure that appropriate changes are documented (e.g., for MIS reporting purposes).