Refusals – Who Makes the Decision?

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Scenario #1
Employer conducts DOT hiring at its home office. After initial interview, employer provides paperwork for an applicant and instructs the applicant to go to the nearby collection site for a DOT pre-employment drug test. Applicant proceeds to the clinic, signs in, and waits for 30 minutes. The clinic is busy seeing patients causing the long wait time. The applicant gets impatient and leaves.

Is this a refusal? Who makes the decision?

- Collector
- DER
- MRO
- None of the above, it is not a refusal

Scenario #1

Answer: It is not a refusal

40191 (a) (2): “An employee who leaves the testing site before the testing process commences (see 40.63 (c)) for a pre-employment test is not deemed to have refused to test.”

40.63 (c) Select, or allow the employee to select, a ………..container”
Scenario #2
A DOT employee arrives at a collection site for a random DOT drug test. Employee provides 45 ml of urine, but the collector determines that it is out of temperature range and informs the employee that an immediate direct observed collection is required. The observed collection produces an insufficient amount of urine, starting the dry bladder collection procedures. The employee subsequently leaves the collection site without permission.

Is this a refusal? Who makes the decision?
- Collector
- Observer
- DER
- MRO
- None of the above because it is not a refusal

Scenario #2
Answer: A refusal decided by the DER

40.355 What limitations apply to activities of service agents?
40.355 (l) “Except as provided in paragraph (j) of this section, you must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the actual employer. You may, however, provide advice and information to employers regarding refusal-to-test issues.”

Scenario #3
- An Employee takes a DOT drug test with an uneventful collection. The laboratory reports the result to the MRO as substituted. The MRO determines, after the interview with the employee, that there is no medical explanation for the laboratory result.

Is this a refusal? Who makes the decision?
- Collector
- Laboratory
- DER
- MRO
- None of the above because it is not a refusal
Scenario #3

Answer: A refusal decided by the MRO

40.355 What limitations apply to activities of service agents?

40.355 (i) “Except as provided in paragraph (j) of this section, you must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the actual employer. You may, however, provide advice and information to employers regarding refusal to test issues.”

(j) As an exception to (i) above, (1) cases of an owner-operator; (2) as an MRO, you determine that an individual has refused to test on the basis of adulteration or substitution.

40.145 On what basis does the MRO verify test results involving adulteration or substitution?

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Scenario #4

An employee reports for a DOT random drug test. The first attempt produces an insufficient amount of urine, initiating shy bladder collection procedures which extend to the full three hours. The DER and the MRO consult on setting up a Shy Bladder exam for the employee per the DOT regulations. The medical evaluation results in a report to the MRO that there is not an adequate basis for determining that a medical condition prevented the employee from providing a sufficient amount of urine.

Is this a refusal? Who makes the decision?

Collector
DER
Shy Bladder Exam Physician
MRO
None of the above because it is not a refusal

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Scenario #4

Answer: A refusal decided by the MRO

40.193 What happens when an employee does not provide a sufficient amount of urine for a drug test?

(2) There is not an adequate basis for determining that a medical condition, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. As the MRO, if you accept this recommendation, you must:

(i) Check the “Refusal to Test” box and “other” box in Step 6 on Copy 2 of the CCF and note the reason next to the “other” box and on the “Remarks” lines, as needed.

(ii) Sign and date the CCF.

40.191(d) As a referral physician (e.g., physician evaluating a “shy bladder” condition), you must notify the MRO, who in turn will notify the DER.
Scenario #5

A DOT employee performs safety sensitive duties “after hours” at a company location; e.g., the night shift. When that employee has been selected for random alcohol testing, the employer makes arrangements for a collector to go to the company location during the employee’s work shift to conduct the DOT random alcohol test. The collector arrives and reports to the supervisor on duty, who has the responsibility for contacting the employee and notifying him to report for testing to the designated area. The supervisor notifies the employee. The employee responds that he needs a minute to shut down his equipment. After 15 minutes, the collector lets the supervisor know that the employee has not reported for testing. The supervisor reaches the employee on a cell phone, who states that he had to leave work without notice because he suddenly felt very ill.

Is this a refusal? Who makes the decision?

- Collector/BAT
- Supervisor
- DER
- MRO
- None of the above because it is not a refusal

Answer: A refusal decided by the DER

40.191 What is a Refusal?

As an employee, you have refused to take a drug test if you:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employee, consistent with applicable DOT agency regulations, after being directed to do so by the employer.

40.355 What limitations apply to activities of service agents?

40.355 (f) “Except as provided in paragraph (j) of this section, you* must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the actual employer. You may, however, provide advice and information to employers regarding refusal-to-test issues.”

*“you” refers to service agents which includes collectors, BATs, C/TPAs, MROs.
Scenario #6

A donor reports to the collection site for a DOT pre-employment drug test. The donor provides 45 ml of urine. The collector determines that the temperature is out of range and informs the donor that an immediate second collection under direct observation is required. The second, observed collection proceeds in accordance with the regulations - up, down, turn around -- and the observer finds that the donor has a prosthetic "whizzinator" strapped to his body. The collection is stopped and no specimens are sent to the laboratory.

Is this a refusal? Who makes the decision?
- Collector
- Observer
- DER
- MRO
- None of the above because it is not a refusal

Scenario #6

Answer: A refusal decided by the DER

40.191 What is a Refusal?
As an employee, you have refused to take a drug test if you:
(a) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
(b) As a collector or an MRO, when an employee refuses to participate in the part of the testing process in which you are involved, document the refusal on the CCF (including, in the case of the collector, printing the employee’s name on Copy 2 of the CCF), immediately notify the DER by any means that ensure that the refusal notification is immediately received.

Thank You!

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