From: Harris, Paul
To: Jim Lee
Subject: RE: Fwd: Part 26 Questions -Prompt Response requested
Date: Friday, September 16, 2016 1:32:00 PM

Jim,

Based on your information, it appears that you are in the midst of an appeal board with the licensee, 10 CFR 26.37 and 26.39. As such, I cannot comment on your case.

However, I can provide applicable regulations for your consideration.

10 CFR Part 26 does not differentiate between onsite and offsite drug/substance use or abuse. Additionally, 10 CFR Parts 26 and Part 73 require the evaluation of the individual's trustworthiness and reliability both onsite and offsite.

10 CFR Part 26, like other federally-mandated drug testing programs, does not differentiate how an illicit substance gets into an individual's body. Specifically, an individual's claim of poisoning, passive exposure, brownies, etc., are not legitimate medical explanations for the presence of controlled substances identified through drug testing. An individual's use, sale, or possession of illegal drugs/substances or misuse of legal drugs/substances on or offsite is an indication that the individual cannot be trusted nor relied upon to perform those duties and responsibilities that make him/her subject to the 10 CFR Parts 26 and 73 provisions.

Pursuant to the 10 CFR 26.183(c)(2), "The MRO may only consider the results of tests of specimens that are collected and processed under this part…" However, licensees (Reviewing Officials) are required to evaluate potentially disqualifying fitness for duty information under 10 CFR 26.69. Potentially Disqualifying FFD Information (FFD PDI) is defined in 10 CFR 26.5 and this definition includes the use, sale, or possession of illegal drugs. The results from a hair test and hospital test would be considered FFD PDI (used or possessed illegal drugs) and evaluated under 10 CFR 26.69, 26.75, and 26.77. 10 CFR 26.69 enables licensee (Reviewing Official) evaluation of FFD PDI that has been "disclosed or discovered by any means," see 10 CFR 26.69(a)(1). Under 10 CFR 26.69(d), the Reviewing Official determines whether your authorization is warranted or not.

Licensees are allowed by regulation to established licensee-administered sanctions that are more stringent than the sanctions in 10 CFR 26.75 (e.g., a 5-year denial in the case of an FFD Policy violation). And 10 CFR Part 26.27(b), establishes the minimum requirements that must be included within a licensee's FFD Policy.

R,
Paul

Paul Harris

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have a precedential effect in any legal or regulatory proceeding.

From: Jim Lee [mailto:gonefishing8025@charter.net]
Sent: Tuesday, September 13, 2016 12:23 PM
To: Harris, Paul <Paul.Harris@nrc.gov>
Subject: [External_Sender] Fwd: Part 26 Questions -Prompt Response requested

Paul

Are you able to address these questions?
Sent from iPhone.

Jim

Begin forwarded message:

> **From:** "Jim Lee" <gonefishing8025@charter.net>
> **Date:** September 12, 2016 at 10:28:22 AM PDT
> **To:** "'paul.harris@nrc.gov'" <paul.harris@nrc.gov>
> **Subject: Part 26 Questions -Prompt Response requested**
>
> Paul,
>
> Thanks for the quick reply. I have provided more information (maybe more than needed).
>
> I had an unusual thing happen to me on June 23. I traveled on vacation and ended up in an emergency room in Indiana. Somewhere en-route I got poisoned. The ER doctor told me I had been exposed to cocaine. I then told him that was impossible as had not taken any illegal drugs and he asked what I had eaten and drank that day. I told him about some odd tasting water I had gotten from the open cooler at the rental car office. Although not required, once released I immediately informed my manager what had happened to me, and filed a police report. I was quite surprised to learn from SAMHSA that there are ~15,000 "intentional poisonings" each year that resulted in ER visits.
>
> Access authorization was notified by my manager and access was placed on hold. My manager informed me that access authorization said that it would be out of my system by the time I returned to work and they would confirm it with a plant urine test and I could then return to work, but instead they referred me to the MRO for evaluation where he subjected me to a hair test. A week or so later I was requested to and went to the plant for urine test and have a determination of fitness (DOF) performed by another doctor via webcam. Prior to both evaluations I requested my ER hospital report be sent directly to access authorization but had not received it prior to evaluations.
>
> Access authorization then called me to inform me that they had received the hospital report and the hospital urine screen indicated positive for cocaine and

THC. I informed them that I was confused by this and asked about the hair test and the plant urine test results. Was told hair test only indicated cocaine and the plant FFD urine test was negative. I then contacted the hospital to ask for confirmation test and was told they could not perform one because they had destroyed my urine sample.

A few days later I received a phone call from access authorization telling me that my unescorted access was being revoked for trustworthy reliability issues. Followed by letter indicating the revocation plus a 5 year disqualification period.

I then requested copies of both MRO and DOF evaluations once received I requested to meet with the MRO first with a few questions I had and he refused to meet with me and stated "You voluntarily underwent non regulated drug test, both urine and hair test. I have no authority to interpret the results. I provided my professional opinion to Energy Northwest….. I am not accepting or soliciting any further information." I then contacted the psychologist about questions I had regarding the DOF and he stated as he is under contract he could only talk with me if Energy Northwest requested it. I requested it through access authorization and they denied my request.

The reason I am contacting you with these questions is it was brought to my attention that a condition report in Columbia's corrective action program references an email you sent. NRC Senior FFD Program Manager Paul Harris in an email to Exelon and forwarded states "The NRC only recognizes the use of DOT drug/alcohol testing provisions for the conduct of Part 26 testing requirements only when specified by the rule – extrapolation into areas for the purposes of Part 26 would be contrary to the rule." As I do not have a copy of the email I was looking to see if might apply to my situation. By not allowing the use of non HHS certified testing for Part 26 access authorization.

I have been in the nuclear industry for 35 years and feel an unjustified attempt is being made end my career, especially when I open and honestly reported what happened to me when I was not required to. I have appealed the revocation and I have until Sept 19 to provide any additional information for the appeal board determination meeting on Sept 21.

Your input would be valued and much appreciated.

The simple questions are:

If I was unknowingly exposed to drug(s) and reported it, is a licensee allowed to use non-confirmed drug testing that was performed by the non-HHS certified lab (with no chain of custody) for access authorization under Part 26?

Then could the licensee impose a 5yr denial of access authorization using those same test results?

Sincerely,

Jim Lee

Energy Northwest
Columbia Generating Station
509-942-8510 (cell)