

## **Drugs and Alcohol Standard NR/L2/OHS/00120 – section 14:**

### **Positive Test Result Appeal process**

#### **14.1 Appeal Criteria**

14.1.1 Workers and external candidates shall have the right to appeal against a positive test result where one or more of the following criteria are met:

- a) there is a legitimate medical reason, that the MRO has not been made aware of, in consideration of drug or the quantity of the drug detected within the sample which returned the positive test result;
- b) evidence that the chain of custody process was fatally flawed;
- c) Sample B analysis is reported as a negative test result;
- d) evidence of an irregularity in the testing procedure.

14.1.2 Workers shall be provided with information on the positive drugs and alcohol appeals process by their Sponsor.

#### **14.2 Appeal Evidence Collection**

14.2.1 The worker or external candidate shall contact the medical or testing provider who conducted their test to challenge the outcome and request a review of their positive test result. Contact details shall be provided by the worker's Sponsor.

14.2.2 If the worker or external candidate's challenge to overturn the positive test result is not successful via the medical or testing provider, the worker shall request Sample B is tested

14.2.3 If the worker has been able to gather evidence in line with the criteria in 14.1, the worker shall notify their Sponsor and request their support to progress an appeal against the positive test result.

14.2.4 The Sponsor shall decide, based on the evidence gathered, if an appeal is supported.

14.2.5 If an external candidate or worker who does not have a Sponsor has been able to gather evidence in line with the criteria in 14.1, they may appeal directly to Network Rail.

#### **14.3 Appeal Submission**

14.3.1 If the Sponsor supports an appeal, notification of an appeal and the appeal evidence shall be submitted to Network Rail within 60 days of the positive test result by the Sponsor. All appeals shall be submitted to [healthandwellness@networkrail.co.uk](mailto:healthandwellness@networkrail.co.uk)

14.3.2 In order to appeal a positive test result the following information shall be submitted by the Sponsor:

- a) a written appeal to the Network Rail Health and Wellbeing Team, stating the reasons for the appeal in line with the criteria in 14.1;
- b) a copy of the investigation report which followed the positive test result and the conclusions which provide evidence to support the grounds for appeal;
- c) a copy of the worker's positive test certificate and toxicology, including those for Sample B analysis;
- d) a statement from the MRO or toxicologist to specify their medical rationale to report the positive test result;
- e) where necessary a statement from the medical or testing provider stating details of the collection and analysis process followed for the worker's samples;
- f) a copy of the Company Drugs and Alcohol policy signed as having been read by the worker.

NOTE: Clause e applies where there is a challenge by the worker that the chain of custody process was not correctly followed.

14.3.3 Network Rail shall reserve the right to reject any appeal which on review of the evidence does not meet the criteria in 14.1 and there is no other legitimate explanation for the positive test result.

#### **14.4 Appeal Outcomes**

14.4.1 The appeal evidence shall be investigated and reviewed by the Network Rail Drugs and Alcohol Appeal Panel and Director of Occupational Health and Wellbeing.

14.4.2 Once an appeal outcome decision is reached, Network Rail Occupational Health and Wellbeing shall write to inform the Sponsor, Contractor, worker or prospective employee.

14.4.3 Outcomes of the appeals process are as follows:

- a) Appeal upheld. Action: the positive test result shall be overturned, and the Sentinel suspension shall be removed by the Network Rail Occupational Health and Wellbeing Team. The testing or medical provider shall be requested to replace the positive result certificate with a negative result certificate on the Sentinel database.
- b) Appeal dismissed. Action: the positive test result and the Sentinel suspension shall remain in place.

14.4.4 The appeals process is separate from any investigation or disciplinary procedure which the worker is subject to. The outcome decision of the positive test appeal is not affected by the outcome of a disciplinary procedure.

14.4.5 There shall only be one right of appeal against a positive test result.

14.4.6 The decision made by Network Rail's Director of Occupational Health and Wellbeing shall be the final outcome of the drugs and alcohol appeal process.

14.4.7 Prior to a Sentinel suspension being lifted at the end of the 5-year period, a new negative drug and alcohol certificate shall be uploaded to Sentinel. It shall not be uploaded in advance of one month prior to expiration date of suspension.

#### **15 Sample B Testing**

15.1 Where there is a challenge by the worker to the positive test result, they may request Sample B to be tested.

15.2 The worker shall request for their Sample B to be tested within 12 months of the initial test.

15.3 The worker is responsible for any associated costs.

15.4 The Sample B bottle shall be analysed at an alternative approved laboratory which is accredited to UKAS 17025 or 15189.

NOTE: Accredited laboratories can be found at: Search Accredited Organisations – UKAS.

15.5 The worker shall first confirm that the alternative laboratory selected can test the specified substance or metabolite identified within the initial sample analysis.

15.6 Following selecting another approved laboratory, the worker may:

- a) complete the 'challenge sample release form';
- b) make the request to release Sample B for testing directly to the approved testing provider who carried out their initial test.

15.7 Once notified, the testing provider shall make the necessary arrangements to securely send the Sample B to the designated alternative laboratory for analysis.

15.8 If following analysis of Sample B the reported test result is different to the first reported test result (Sample A), the worker may submit this as evidence to appeal against the positive test result (see section 14).