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Fact Sheet for the Chairman,
Subcommittee on Treasury, Postal
Service, and General Government,
Committee on Appropriations, U.S.
Senate

April 1990

DRUG TESTING

Action by Certain Agencies When Employees Test Positive for Illegal Drugs



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April 6, 1990

The Honorable Dennis DeConcini
Chairman, Subcommittee on Treasury, Postal
Service, and General Government
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

In an October 23, 1989, meeting with your subcommittee, we agreed to explore certain issues that we identified during previous reviews of federal agency drug-testing programs. This fact sheet, prepared as part of this effort, provides information on one of the issues we identified--the actions that selected employers take when their employees test positive for illegal drugs.

BACKGROUND

In an effort to help eliminate the use of illegal drugs by federal employees, President Reagan issued Executive Order 12564, requiring each executive branch agency to establish a program to test for the use of illegal drugs by employees in sensitive positions. The executive order, which was issued on September 15, 1986, requires agencies to initiate action to discipline any employee who is found to use illegal drugs unless the employee voluntarily admits to using illegal drugs, obtains appropriate counseling and rehabilitation, and thereafter refrains from using them. The order also requires the Office of Personnel Management (OPM) to issue governmentwide guidance for agencies to use in initiating disciplinary actions against employees found to use illegal drugs.

The OPM guidelines established disciplinary measures that ranged from reprimanding the employee in writing to removing the employee from federal service, and gave agencies discretion in deciding which disciplinary measure to initiate. In exercising this discretion, however, agencies are to consider other relevant factors such as an employee's

past work and disciplinary action records, the employee's potential for rehabilitation, and the impact of the employee's action on the agency's reputation.¹

RESULTS IN BRIEF

On May 20, 1987, we provided congressional testimony on OPM's guidelines for establishing a drug-free federal workplace. In it, we pointed out that because of the range of penalties that could be imposed, disciplinary actions an employee may face could vary from agency to agency or even within an agency.

Information we obtained at three federal agencies we visited confirmed the view expressed in our testimony. The actions taken against employees testing positive for illegal drugs ranged from firing employees after the first positive testing to transferring them without rehabilitation to positions in which they were no longer subject to random testing.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to identify the differences in employer actions when employees test positive for illegal drugs and determine the basis for these actions. To achieve these objectives, we examined the random drug-testing programs at the Department of the Army, the Department of Transportation, and the Drug Enforcement Administration (DEA). These programs were selected because they were the first executive branch random drug-testing programs implemented. We also reviewed OPM's guidance and the provisions of the Civil Service Reform Act that pertain to

¹The U.S. Merit Systems Protection Board, which by law has authority to review appealable disciplinary actions, has ruled that it will review relevant mitigating and aggravating factors in deciding what penalty to impose in each case. Thus, agencies must give due consideration to these factors. Douglas v. Veterans Administration, 5 MSPB 313, 331-33 (1981).

disciplinary actions against employees found to use illegal drugs.

We reviewed records and documents related to drug-testing activities at the three agencies and interviewed officials associated with the drug-testing programs. Within the Department of the Army, we also reviewed available records at the Depot System Command (DESCOM), because Army officials told us that DESCOM was where slightly over 3,000 of the Army's 10,000 civilian employee positions subject to random testing were located.

Our work was done from November 1988 to December 1989, in accordance with generally accepted government auditing standards.

ACTIONS TAKEN BY DESCOM

At DESCOM, employees who tested positive for illegal drugs were offered rehabilitation. Subsequent actions varied within the agency. Some employees who tested positive twice for illegal drugs were fired. One employee who refused rehabilitation was also fired. Others were permanently reassigned or demoted to positions in which they were no longer subject to random drug testing.

According to an attorney in the headquarter's office of the Judge Advocate General, each Army installation commander is vested with the authority to make the final decision for disciplinary actions at his or her installation. He also said that since Executive Order 12564 and OPM guidance give discretion to the agencies, such disciplinary actions could be appropriately taken.

Available information shows that 13,861 random drug tests were done at DESCOM between May 1986 and September 1989. The information also shows that 110 employees tested positive for illegal drugs. As indicated in appendix I, 34 of these individuals were permanently reassigned or demoted to a position that was not subject to random testing and 7 were fired as of October 1, 1989. When it was a first offense and the employee refused rehabilitation, DESCOM fired one employee and permanently reassigned or demoted five others to positions in which they would no longer be

subjected to random drug testing. Four employees who tested positive twice for illegal drugs were fired, and 14 were permanently reassigned or demoted to positions in which they would not be subjected to future random drug tests.

Six of DESCOM's employees were permanently reassigned to positions in which they would not be subjected to future random drug testing without being offered rehabilitation. According to an Army official, these six were among the very first employees who tested positive and, at that time, how to deal with such individuals was unclear.

ACTIONS TAKEN BY THE
DEPARTMENT OF TRANSPORTATION

According to Department of Transportation procedures, employees who test positive for illegal drugs are to be offered rehabilitation. If the offer of rehabilitation is not accepted, the employee is to be fired. If it is accepted and the employee successfully completes rehabilitation, tests negative for illegal drugs for one year, and meets agreed aftercare rehabilitation requirements, the employee is put back into the random testing pool. The employee is reminded that a second positive drug test at any time following completion of rehabilitation will result in immediate removal. According to a Department of Transportation official, these procedures provide the Department with the opportunity to overcome any drug-related problems.

As indicated in appendix II, 20,414 random drug tests were done between July 1988 and September 1989. These tests identified 115 employees who tested positive for illegal drugs, 8 of whom were fired. Four of the employees failed to complete rehabilitation and, according to drug-testing program officials, were fired because they were assigned to public safety positions that required public confidence. The remaining four employees tested positive a second time.

ACTIONS TAKEN BY DEA

Though DEA policy states that a range of disciplinary actions is available when an employee is found to use illegal drugs, officials said such employees would be fired except in unusual circumstances. We were told that one situation in which an employee might not be fired for testing positive for an illegal drug could involve the use of medication containing a narcotic that was legally prescribed to an immediate family member. DEA officials thought that in such a case, firing the employee might be too severe a punishment for the situation.

As indicated in appendix III, 1,222 random drug tests were done between July 1988 and September 1989. DEA fired one of the five employees who tested positive, and the remaining four employees resigned.

According to the DEA Administrator, because of the nature of law enforcement at that agency, it must take a firm stand against employees found to use illegal drugs. The official said that if the testimony of a DEA employee could be questioned in a criminal court case because the employee had been found to use illegal drugs, the employee's actions could jeopardize the chance of obtaining a successful criminal prosecution.

AN OPM OFFICIAL BELIEVED ACTIONS
TAKEN WERE IN ACCORDANCE WITH
ESTABLISHED GUIDANCE

An official in the OPM Office of General Counsel believed that the actions taken at the Departments of the Army and Transportation and DEA were in accordance with OPM guidance and the executive order. He said that because the guidance requires agency officials who decide on the appropriate disciplinary action to consider other factors, the type of disciplinary action taken for the same misconduct may differ across and within agencies.

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This fact sheet was prepared to provide information on the actions being taken by federal employers when an employee tests positive for illegal drugs. Its contents were discussed with officials of the Department of the Army, the Department of Transportation, DEA, and OPM. All of the officials agreed with the facts presented. As requested, we plan no further distribution of this report until 30 days from its issue date unless the contents are announced earlier.

The major contributors to this fact sheet are listed in appendix IV. If you have any questions concerning the report, please contact me at 275-5074.

Sincerely yours,



Bernard L. Ungar
Director, Federal Human
Resource Management Issues

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ABBREVIATIONS

DEA	Drug Enforcement Administration
DESCOM	Depot System Command
OPM	Office of Personnel Management

STATUS AS OF OCTOBER 1, 1989, OF DESCOM EMPLOYEES
TESTING POSITIVE FOR ILLEGAL DRUGS THROUGH RANDOM TESTING
FROM MAY 1986 TO SEPTEMBER 1989

<u>Number</u>	<u>Actions</u>
41	Employees who tested positive in random drug tests that DESCOM took action against
34	Permanently reassigned or demoted to non-random testing designated position
5	After refusing rehabilitation
7	After completing rehabilitation
6	After testing positive once ^a
14	After testing positive twice
2	After testing positive once and admitting to second incident of drug use later
7	Fired
1	After refusing treatment (fired in fiscal year 1986)
4	After testing positive twice
1	After testing positive once (probationary employee)
1	For reason other than illegal drug use -- theft
9	Currently in rehabilitation
45	Completed rehabilitation, returned to random testing designated position
15	Resigned
10	After testing positive once
5	After testing positive twice
<u>110</u>	Total employees testing positive for illegal drugs
13,861	Total random tests conducted

^aThese were six of the very first positive drug tests. The employees were permanently reassigned to non-random testing positions without being offered rehabilitation, as guidance at that time was unclear.

STATUS AS OF NOVEMBER 17, 1989, OF DEPARTMENT OF
TRANSPORTATION EMPLOYEES TESTING POSITIVE FOR ILLEGAL DRUGS
THROUGH RANDOM TESTING FROM JULY 1988 TO SEPTEMBER 1989

<u>Number</u>	<u>Actions</u>
8	Fired
4	After failing to complete rehabilitation
4	After testing positive twice
13	Currently in rehabilitation
63	Completed rehabilitation, returned to random testing designated position, and currently in the DOT follow-up program ^a
18	Completed the 1-year follow-up program
12	Resigned
	7 After testing positive once
	1 During rehabilitation
	3 After testing positive twice
	1 Before being removed for tampering with test
1	Retired
<u>115</u>	Total employees testing positive for illegal drugs
20,414	Total random tests conducted

^aUnder the follow-up program the employee is subject to unannounced testing for 1 year after return to safety/security duties or completion of the rehabilitation program, whichever is later.

STATUS AS OF NOVEMBER 30, 1989, OF DEA
EMPLOYEES TESTING POSITIVE FOR ILLEGAL DRUGS
THROUGH RANDOM TESTING FROM JULY 1988 TO SEPTEMBER 1989

<u>Number</u>	<u>Actions</u>
4	Resigned
1	Fired
<u>5</u>	Total employees testing positive for illegal drugs
1,222	Total random tests conducted

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