

Drug & Alcohol Testing Law Advisor

Developments in Regulating Workplace Drug and Alcohol Testing

Refusal to Submit to Drug Testing Requires Evidence of Intent, in Kansas Workers' Compensation Case

By [Heather C. Panick](#) on February 6, 2017

An appellate court in Kansas ruled that an insufficient urine specimen, without evidence of intent to thwart the drug test, is not a refusal to submit to a test for purposes of the Workers' Compensation Act. *Byers v. Acme Foundry*, 2017 Kan. App. LEXIS 12 (KS. Court of Appeals January 27, 2017).

Mr. Byers was injured at work when a piece of metal struck his left elbow. He was taken to the emergency room for treatment. After spending the majority of the day in the emergency room, Mr. Byers returned to his employer, Acme Foundry, with the intent of going home. Upon his return to work, Mr. Byers was informed by Acme's in-house nurse that, pursuant to Acme's policy, he must submit to a post-accident drug test before he could leave. Mr. Byer was provided with a specimen cup and provided instructions on how much of a urine sample was needed in order for the test to be completed. Mr. Byers provided a urine sample, but the amount was inadequate and did not register the temperature gauge on the cup. Acme's representatives explained to Mr. Byers that they needed to get a temperature reading and that the specimen could not be used without one. Mr. Byers walked out the door, even

though he was advised that he could lose his job if he did so.

Acme's in-house nurse then threw the urine sample in the trash. Mr. Byers subsequently was terminated for refusing to submit to the post-accident drug test.

The Administrative Law Judge determined that Byers had forfeited his benefits under the Workers' Compensation Act because, by providing an insufficient urine sample, he had effectively refused to submit to a drug test at the request of his employer. However, the Court of Appeals found that the term "refusal," as used in the statute, carried with it the elements of willfulness or intent not to comply with the drug test, and that the facts did not support a finding that Mr. Byers willfully or intentionally failed to comply with Acme's request for a drug test. Indeed, there was no evidence that Mr. Byers was under the influence of drugs or alcohol at the time of the accident, and no evidence that his actions caused the injury. Moreover, the Court stated that Mr. Byers did provide a urine sample for testing when requested, but Acme did not even try to test it. The fact that the sample was insufficient did not excuse the company from attempting to perform the test and did not support a finding that Mr. Byers willfully or intentionally failed to comply with the requirements of Acme's post-accident testing policy.

Consequently, the Court of Appeals reversed the earlier decision and held that Byers was entitled to workers' compensation benefits.