

Office of Drug Enforcement and Program Compliance
49 CFR Part 40 Interpretation

Question: In a "shy bladder" scenario, does DOT consider a company's ordering the donor back to work prior to completion of the two-hour, twenty-four ounce period an obstruction of the collection process? Or, is the donor's failure to complete the collection, after having been compelled by the employer to leave the collection site, considered a refusal to test if no medical reason is provided for donor's failure to provide the required amount of urine?

Response: Section 40.25 states: *"If the individual is unable to provide such a quantity of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container."* and *"If the employee is still unable to provide an adequate specimen ... testing discontinued, and the employer so notified. The MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen ... constitutes a refusal to test."*

In addition, the "DOT Urine Specimen Collection Procedures Guidelines" states: *"The donor should be under direct observation of the collector or a company representative to prevent the donor from performing actions that would compromise the collection process (drinking excessive fluid, obtaining "clean" urine, obtaining adulterants, etc.)."* and, *"There is no provision to recall the donor at a later date."*

A company's ordering the employee to return to work prior to the expiration of the two-hour period, with no provisions for personal observation or for ensuring the employee's return to the collection site, appears to be in clear violation of DOT rules. The employer is not authorized to discontinue a test or to conduct a subsequent collection at a later time in lieu of a current collection. The employer could order the employee back to work while waiting for the two-hour period to elapse, but the employer must ensure that the employee drinks the prescribed amount of liquids, is under observation during the entire period of time, and returns to the collection site prior to the expiration of the two hours.

It should be noted that because the donor was not afforded the full two-hour period during which to provide a specimen, the donor's inability to provide the required amount of urine does not constitute a refusal to test but is the result of employer hindrance with the collection process. The MRO should advise the employer of its violation of 49 CFR Part 40 and propose corrective action accordingly (i.e., establish correct policy). In addition, the MRO may report the violation to the appropriate DOT operating administration or may request that the DOT Drug Enforcement and Program Compliance office report the matter. The company is required to maintain, in accordance with the appropriate governing regulation, a record of this "test" for review by a DOT operating administration in the event of an audit.