

Before Louis V. Imundo, Jr., Impartial Arbitrator

In the matter of arbitration between

Federal Bureau of Prisons

and the

American Federation of Government Employees – Council of Prison Locals

Federal Mediation and Conciliation Service Case No. 06-52049

Grievance of Larry Parker

This matter was heard before Louis V. Imundo, Jr., Impartial Arbitrator, in Petersburg, Virginia on March 9th, 27th, 28th, 2006. Post Hearing briefs were filed by the Parties the last of which was received on May 17, 2006.

1.0 Introduction

1.1 Appearing For Management

- Elizabeth Blackmon, LMR Specialist 1,2,3¹
- Michael Sebastian, Lead Employee Services Specialist 1,2,3
- Jude Herges, National Drug Free Work-place Coordinator 1
- David Kuntz PhD, Laboratory Director, Lab One – Employment Services Group 1
- Yolanda Aponte, Collector AHSA 1,3
- John Cametas M.D., Medical Review Officer – Pembroke Occupational Health 2
- Vanessa Adams, Warden 2,3

1.2 Appearing For The Union

- Dwayne Person, President, Local 2052 & Automotive Foreman 1,2,3
- Roger Payne, Council 33 National Secretary
Treasurer & Physician Assistant 1,2,3
- Larry Parker, Grievant 1,2,3
- James B. Beverly, Jr., Lieutenant 3
- Walter L. Vereen, Captain 3
- Kevin E. Pryor, Senior Officer Specialist 3
- Paul E. Dunston, Correctional Officer 3

¹ Denotes Hearing dates attended. No. 1 is for March 9th, No. 2 is for March 27th and No. 3 is for March 28th.

2.0 Nature Of The Case

This case pertains to the discharge of a long term employee, Mr. Larry Parker, for allegedly testing positive for marijuana in a urine specimen he provided for a random drug test.

It was Management's position that the urine specimen that tested positive for marijuana at a level of 79 ng/ml came from Mr. Parker and a level this high could not have resulted from passive inhalation of marijuana, or his unknowingly having eaten food containing marijuana. It was Management's position that although some minor procedural errors may have occurred in the collecting and processing of Mr. Parker's urine specimen no one, or combination of possible errors was fatal to the test.

It was Management's position that considering the nature of the Bureau of Prisons' work and the position Mr. Parker held that notwithstanding his 17 years of unblemished service his discharge was warranted. It was Management's position that they cannot retain correctional officers who test positive for drugs who are responsible for watching inmates the majority of whom are in prison for drug related offenses.

It was the Union's position that just and sufficient cause did not exist to discipline no less discharge Mr. Parker. It was the Union's position that Mr. Parker has never used drugs and that the urine specimen that tested positive for marijuana did not come from him. It was the Union's position that starting at the collection site and throughout the testing and retesting process so many major errors occurred that the test must be declared invalid. It was the Union's position that the drug free workplace program is flawed and in serious need of being re-evaluated to identify deficiencies and defects so that appropriate changes can be implemented.

It was the Union's position that Mr. Parker was denied due process because of Management's failure to have conducted a complete, fair, or impartial investigation. It was the Union's position that even if the urine specimen that tested positive for marijuana came from Mr. Parker, something they were unwilling to concede, discharge was too severe a penalty because the BOP has not applied discipline even handedly.

3.0 Applicable Articles And Sections Of The Agreement

Article 5 – Rights Of The Employer, Section a, Paragraph 2a

Section a. Subject to Section b of this article, nothing in this section shall affect the authority of any Management official of the Agency, in accordance with 5 USC, Section 7106:

2. in accordance with applicable laws:

a. to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees.

Article 30 – Disciplining And Adverse Actions – Section c

Section c. The parties endorse the concept of progressive discipline designed primarily to correct and improve employee behavior, except that the parties recognize that there are offenses so egregious as to warrant severe sanctions for the first offense up to and including removal.

Article 30 – Disciplining And Adverse Actions – Section d, Paragraph 1

Section d. Recognizing that the circumstances and complexities of individual cases will vary, the parties endorse the concept of timely disposition of investigations and disciplinary/adverse actions.

1. when an investigation takes place on an employee's alleged misconduct, any disciplinary or adverse action arising from the investigation will not be proposed until the investigation has been completed and reviewed by the Chief Executive Officer or designee; and

Article 31 – Grievance Procedure, Section h, Paragraph 1

Section h. Unless as provided in number two (2) below, the deciding official's decision on disciplinary/adverse actions will be considered as the final response in the grievance procedure. The parties are then free to contest the action in one (1) of two (2) ways:

By going directly to arbitration if the grieving party agrees that the sole issue to be decided by the arbitrator is, "Was the disciplinary/adverse action taken for just and sufficient cause, or if not, what shall be the remedy?"; or

Article 32 – Arbitration, Section d

Section d. The arbitrator's fees and all expenses of the arbitration, except as noted below, shall be borne equally by the Employer and the Union.

Article 32 – Arbitration, Section g

Section g. The arbitrator shall be requested to render a decision as quickly as possible, but in any event no later than thirty (30) calendar days after the conclusion of the hearing, unless the parties mutually agree to extend the time limit.

Article 32 – Arbitration, Section h

Section h. The arbitrator's award shall be binding on the parties. However, either party, through its headquarters, may file exceptions to an award as allowed by the Statute.

The arbitrator shall have no power to add to, subtract from, disregard, alter, or modify any of the terms of:

1. this Agreement; or
2. published Federal Bureau of Prisons policies and regulations.

4.0 Issues

The Parties agreed that the Issue to be decided by the Arbitrator is prescribed by Article 31, Section h of the Agreement. The Issue is:

- Was the disciplinary/adverse action taken for just and sufficient cause, or if not, what shall be the remedy?

5.0 Relevant And Pertinent Information From The Record

The following has been taken from the Arbitrator's notes, recordings of the Hearings, written transcript, testimony of witnesses, documentary evidence, and the briefs.

Day 1 – March 9th

Ms. Blackmon and Mr. Person submitted into the record, a loose-leaf binder containing 19 joint exhibits. (Joint Nos. 1 – 19)

In her opening statement Ms. Blackmon made the following points to support Management's position:

- The Grievant provided a urine sample and it tested positive.
- The Bureau of Prisons is a law enforcement agency. Therefore, drug usage at any time is prohibited.

- Ms. Aponte collected the sample and will testify about the procedure she followed. The Grievant signed a custody form certifying that he provided the urine specimen to the collector, and that the specimen bottle was sealed in his presence.
- Ms. Aponte brought the specimen to FedEx to be shipped to Northwest Toxicology for testing.
- Mr. Herges will testify about his role in the Bureau's Drug Free Workplace program.
- Dr. Kuntz will testify that Northwest Toxicology confirmed that Mr. Parker's urine sample was received with the seal intact. Dr. Kuntz will testify about the lab's procedures and the results of the testing.
- The Grievant will testify about his knowledge of the Bureau's Drug Free Workplace program.
- Warden Adams will testify that she has lost confidence in Mr. Parker. Warden Adams will testify about the Bureau's requirement that staff refrain from using illegal drugs. Warden Adams will testify about the Grievant's oral and written responses. In neither of his responses did Mr. Parker indicate that the marijuana was not in his system. He claimed that he did not know how it got there.
- Warden Adams, after considering all factors, determined that Mr. Parker was no longer a person that she could afford to have in the environment of the Federal Bureau of Prisons. The offense strikes at the very core of how law enforcement carries out its duties.
- The Agency seeks to have Mr. Parker's discharge remain on the record.

Ms. Blackmon submitted into the record, a typed copy of Management's opening statement. (Management No. 1)

Mr. Person deferred on making the Union's opening statement.

Ms. Blackmon called Ms. Yolanda Aponte as Management's first witness. Ms. Aponte testified that on September 29, 2005 she collected a urine sample from Mr. Parker. Ms. Aponte testified about the protocol she followed in handling Mr. Parker's urine sample. Ms. Aponte testified about how the sample was sealed, labeled, and packaged. Ms. Aponte testified about the paperwork she completed that accompanied the sample as it was sent for testing by an outside certified laboratory.

Mr. Person cross-examined. Mr. Person questioned Ms. Aponte about the kind of training she has received. Ms. Aponte testified about a manual she read. Mr. Person submitted into the record, a copy of a document titled: "Statement of BOP Drug Free Workplace Collector Training" that Ms. Aponte signed on May 20, 2005. (Union No. 1)

Ms. Aponte testified that she collected two other random sample urine specimens on the day she collected Mr. Parker's sample. Ms. Aponte testified that the three different

samples were not taken at the same time. Two of the samples were obtained in the morning and one in the afternoon. All three specimens were shipped by FedEx that day. The witness said the three bottles of urine, all of which were sealed, were put into the same bag for shipment. Mr. Person asked the witness if there was running water in the bathroom where Mr. Parker went to give his sample? The witness said there was running water, but it was turned off at the time Mr. Parker provided the specimen.

Mr. Person directed Ms. Aponte to Joint No. 17, page 11 of 14 and had her read the following: "Note: If a collector is collecting several specimens within a short period of time the sealed plastic bags may be placed into a single shipping container. The collector must maintain visual contact of the sealed plastic bags that are sealed in the single shipping container." Ms. Aponte testified that she locked the specimens in a safe until they were ready to be shipped.

Mr. Person submitted into the record, a copy of Ms. Aponte's handwritten log of U/A's for the period September 22nd – 30th, 2005. (Union No. 2) The names of employees with the exception of the Grievant had been redacted. They, along with Mr. Parker, are identified by a specimen number. Mr. Person, through the witness, pointed out that there were certain discrepancies and inconsistencies in Ms. Aponte's records. Mr. Person asked Ms. Aponte about blind samples. The witness was not familiar with the term.

Mr. Person directed Ms. Aponte to Joint No. 4 and asked her if she was familiar with it? The witness said she was not. Mr. Person asked the witness to describe the manual she claimed to have read. Mr. Person produced a copy of a manual titled: "Collector's Procedure Manual" dated April 1997. (Union No. 3) Ms. Aponte said she did not believe this manual was the one she had read as part of her training. Mr. Person directed Ms. Aponte to Chapter 6, page 36 of 54 of Joint No. 4. Ms. Blackmon said this was the MRO's responsibilities and not Ms. Aponte's responsibilities. Ms. Aponte said that she did not submit a blind sample with Mr. Parker's specimen.

Mr. Person questioned Ms. Aponte at length about her knowledge of the Agency's urine specimen collection, custody, and control procedures, and how she handled Mr. Parker's specimen that was provided to her in a plastic container.

Mr. Person directed the witness to Union No. 2 and asked her if it was an acceptable practice to write one number over another number? The witness answered yes. Mr. Person asked the witness if the policy is that you draw a single line? The witness said you make a line and you initial on the medical charts.

Ms. Blackmon redirected. Ms. Aponte testified that each of the three urine specimens that she collected from three different individuals on September 29th was sealed in the presence of each of them. Ms. Aponte said the seal is tamper proof. Ms. Aponte said

that she has been collecting urine specimens since 1996. Ms. Blackmon asked Ms. Aponte if she has ever experienced any "issues" with the collection of urine specimens? The witness answered no. Ms. Blackmon, through the witness, made the point that Ms. Aponte was trained before Union No. 3 was published.

Mr. Person recross-examined. Mr. Person made the point that Joint No. 2, the Drug Free Workplace program statement, was published on June 30, 1997.

The Arbitrator questioned Ms. Aponte. The Arbitrator asked Ms. Aponte if, since she has been in her current position, there have been any urine sample handling errors attributed to either her or her staff? The witness answered no. Ms. Aponte said that hundreds of urine specimens have been provided during the time she has been in her current job. The Arbitrator asked Ms. Aponte who, other than herself, had access to the safe where she kept the Grievant's and the other urine specimens she collected on September 29th? The witness named one other person, Ms. McKinney. The Arbitrator asked if this individual had access to the safe on the day in question? The witness said she did not because on the day she was working in another state.

The Arbitrator asked Ms. Aponte if the label that goes on the specimen bottle is signed prior to it being placed on the bottle, or if it is placed on the bottle and then signed? The witness said she has the staff, i.e., the specimen provider, fill it out before they go and give the specimen. Ms. Aponte said that after the sample is given to her she asks the individual if the initials and social security number written on the label is theirs and then she peels the label off of the form and puts it on the bottle. The witness said she puts the label on the specimen bottle in the presence of the person who provided the specimen and put his/her initials and social security number on the label.

Ms. Blackmon redirected. The witness's testimony was not significant with respect to the disposition of the matter at issue.

Ms. Blackmon called Mr. Jude Herges as Management's second witness. Mr. Herges testified that as part of his job responsibilities he oversees the national contract with Northwest Toxicology. Ms. Blackmon provided the witness with a biological specimen collection kit and a federal drug testing custody and control form. Using these items as props Mr. Herges testified at length about the protocol that is followed. Mr. Herges testified about the steps that are taken to make sure that the specimen, prior to, or after collection does not become contaminated. Mr. Herges testified about how the potential risk of water being used to dilute a specimen is avoided. Mr. Herges testified about how the temperature range of the specimen is checked to make sure it is within the acceptable range. Mr. Herges testified about the specimen provider's role in the collection, custody and control process. Mr. Herges testified about the method followed in transferring the specimen to the shipper. Mr. Herges explained in detail how the specimen provider participates in the entire collection and handling process. At nearly

every step of the process the individual who provided the specimen has to sign off on paperwork and labels. Clearly, according to Mr. Herges, the specimen provider sees what is taking place. Mr. Herges spoke about the safeguards that are built into the collection and handling process.

Mr. Herges testified about how, if a controlled substance, i.e., amphetamines, cocaine, opiates, phencyclidine, or cannabinoids, is detected in a specimen by the screening lab, it is transferred to a different and separate lab for additional analysis. This lab is known as the confirmation lab. The confirmation lab is not told what the screening lab has detected. Mr. Herges spoke about cut off levels for positive test results.

Mr. Herges testified about the check and balance role of the medical review officer if a positive test result occurs. Mr. Herges testified about the referee lab's role in the process if a positive result occurs. If the referee lab finds the same controlled substance in the specimen sample or was found by the screening and confirmation labs, the result is known as a re-confirm.

Ms. Blackmon asked Mr. Herges if Mr. Parker's test result, 79 ng/ml, i.e., nanograms per milliliter of marijuana could have resulted from passive inhalation of it? The witness deferred to Dr. Kuntz.

Mr. Payne cross-examined. Mr. Payne directed Mr. Herges to Joint No. 7 and asked him if there was anything wrong with the specimen number? The witness said there are seven digits. Mr. Payne said that eight are used. The witness agreed. The document in Joint No. 7 was signed by John G. Cametas M.D. who is a Medical Review Officer at Pembroke Occupational Health. Mr. Herges said that this label could have a different numbering system and use only seven digits. Mr. Payne directed the witness to Joint No. 4, page 25 of 54, Section C, Handling Retest Requests, Item 2, the third bullet point and had him read it: "Specimen ID Number on the Federal CCF", and asked him what it means? The witness said that CCF means chain of custody form. Mr. Payne said that according to this, the retest signed by the MRO should have had the federal specimen identification number on it. The witness agreed. Mr. Payne directed the witness to Union No. 2, page 3, where Mr. Parker's name, date, and control number are written, and asked him if it was common practice to write over numbers? ² The witness said he is a certified dyslectic, and it is not uncommon for him to have to write over numbers.

Mr. Herges testified that Northwest Toxicology was the highest bidder by about 25 percent, for the national contract with the BOP and was selected because of the value added owing to their high standards. Mr. Herges testified at length about the lab review process followed by the Government and the BOP.

² On the date, which appears as 9/27/05 with Mr. Parker's control number and his name, someone wrote "27" over another date.

Mr. Payne directed the witness to Mr. Parker's October 8, 2005 letter to Warden Adams wherein he wrote: "I was never informed who the Medical Review Officer (MRO) was so I am asking that you forward my request to the appropriate MRO. I am requesting that my sample be sent to Quest Diagnostics Inc., in Atlanta, Georgia, phone # 770-452-1590." (Joint No. 16) Mr. Payne asked the witness if he knows if the specimen was ever sent there for testing? The witness said he had no knowledge of whether it was, or was not sent to that particular location. He also pointed out that Quest Diagnostics is a large company with many locations.

Mr. Payne produced a letter dated May 9, 2003 from Mr. George M. Ellis, Jr. at Greystone Health to Mr. Herges the subject of which was that an individual whose name had been redacted for the purposes of this Hearing of which was interviewed by an MRO after a positive drug test and the results were reaffirmed. Mr. Payne questioned the witness about the letter. Mr. Payne also produced a list of State HHS certified labs dated September 2, 2005. Mr. Payne questioned the witness about the certification process. Both documents were submitted into the record. (Union Nos. 4 & 5)

Ms. Blackmon redirected. Ms. Blackmon asked Mr. Herges if any of the uncorrectable errors outlined in the MRO's reviewing manual were made in Mr. Parker's case? The witness answered no. Mr. Herges testified that in the most recent fiscal year there were eight positive random drug tests in the BOP. Ms. Blackmon asked if any of the eight employees are still employed by the BOP? The witness answered not to his knowledge.

Mr. Payne recross-examined. Mr. Payne asked the witness if he is always informed of what action is taken after an employee tests positive for drugs in his/her urine specimen? The witness answered no. Mr. Herges said it is not uncommon for an employee who has tested positive to resign before he/she is discharged. Mr. Payne asserted that there have been employees since the 1997 Drug Free Workplace policy went into effect who tested positive and were not discharged. The witness concurred, but pointed out that he is not part of that information loop. In effect, he is neither involved in the disciplinary action process, nor is he kept informed about the outcome of each case where an employee has tested positive for drugs.

Mr. Payne questioned Mr. Herges about the program known as safe harbor. Mr. Herges testified that the safe harbor program is predicated on the employee voluntarily coming forward prior to any adverse action, or situation leading to adverse action taking place.

Ms. Blackmon called Dr. David Kuntz as Management's third witness. Dr. Kuntz testified that his laboratory was involved in the testing of Mr. Parker's urine specimen. Dr. Kuntz testified about the procedure that is followed when a specimen arrives at the laboratory. Dr. Kuntz testified at length about the safeguards built into their system to

protect the integrity of specimens received for testing. Dr. Kuntz said the lab has been continuously certified since 1989. Ms. Blackmon asked the witness if there has ever been a false positive in their testing? The witness said not to his knowledge. Dr. Kuntz spoke about the seriousness of such an error occurring and what would result if such were to occur.

Ms. Blackmon directed the witness to the summary page of Joint No. 3 and had him explain what were the findings. Dr. Kuntz signed the summary on October 14, 2005. Dr. Kuntz testified that the specimen was positive for marijuana metabolites, which was produced by the metabolization of marijuana. The witness said the concentration was greater than 15 ng/ml, which is the minimum concentration required by the Department of Health & Human Services / SAMHSA to call a specimen positive for marijuana. Ms. Blackmon asked if such a finding could occur as a result of passive inhalation? The witness said that passive inhalation would never come close to 79 ng/ml, which was the level found in Mr. Parker's specimen.

Mr. Payne cross-examined. Mr. Payne asked Dr. Kuntz how many specimens have been lost, on average, annually since 1989? Dr. Kuntz's answer was that "perhaps" three a year. Dr. Kuntz said the lab typically tests about 700,000 specimens a year. Dr. Kuntz testified about the lab's internal tracking number, which is not the same as the Agency's tracking number. Dr. Kuntz testified that if a specimen is sent to another lab for retesting the numbers are provided with the sample to insure that specimens do not get mixed up. The witness said that the retesting lab may assign their own control number to a specimen.

Mr. Payne asked Dr. Kuntz what level casual inhalation of marijuana could rise to? The witness asked Mr. Payne if he was referring to an open-air concert? Mr. Payne answered, "Or a dorm or whatever" and Dr. Kuntz said maybe one. (Arbitrator's recording & Tr. Page 60) Mr. Payne asked what level could result from the ingestion of marijuana? Dr. Kuntz said the level would be much higher and could be as high as 50 to 100 ng/ml if a person ingested the equivalent of one joint within 12 hours before providing a specimen. The witness testified about the breakdown of marijuana in the body and how much it is affected by the frequency of usage and the amount smoked.

The Arbitrator questioned Dr. Kuntz. Dr. Kuntz testified that in close quarters passive inhalation of marijuana could yield a result as high as 10 ng/ml. The witness said that the level found in Mr. Parker's urine was not achievable by passive inhalation of marijuana. The Arbitrator asked if such a level could be achieved by eating food containing marijuana? The witness said such was possible if the marijuana had been heated. Dr. Kuntz said it can be baked in cookies, brownies, or cooked with spaghetti sauce. Dr. Kuntz said a level of 79 ng/ml could be achieved the day after having eaten marijuana in food. The Arbitrator asked what result would occur if the marijuana had been eaten in some baked or cooked food up to a week earlier? The witness said that

such a high result as was found in Mr. Parker's specimen would not have been possible.

The Arbitrator asked if the average person would likely sense a difference in smell or taste if he/she was unknowingly given a food containing marijuana? The witness said that the odor of marijuana would have to be heavily masked in a sauce, or in the case of brownies or cookies a lot of chocolate would have to be masking the flavor. Dr. Kuntz said there would also be an issue of texture with cookies or brownies. The Arbitrator asked Dr. Kuntz the following: "If a person had ingested a significant amount of marijuana, knowingly or unknowingly, what affect would they likely feel and how quickly they would likely feel it, and how long would it last?" Dr. Kuntz answered: "The effects would probably last up towards two hours. There's....when you smoke, only a very small amount of that marijuana is actually ever inhaled and absorbed. It's something like five percent is actually ever physically inhaled. Some of it is destroyed in the heating." (Arbitrator's recording & Tr. Pages 171 – 172) Dr. Kuntz went on to say that the ingestion method is very effective and insidious because the effects come on gradually. Dr. Kuntz said that if someone ingested about a joint's worth of marijuana the day before, and he/she was not simultaneously drinking alcohol, the effects would be relaxation and maybe a slight change in perception of time. Dr. Kuntz said there would not be a dramatic impairment.

Mr. Payne recross-examined and Ms. Blackmon redirected. The witness's testimony was not significant with respect to the outcome of this case.

Day No. 2 – March 27th

Prior to the second and third Hearings the Union had, by way of a subpoena, sought a number of documents they believe are important to their case. For reasons that were outlined at the Hearing, Management was either unable or unwilling to provide some of the requested documents. The requested items were discussed at the onset of this Hearing.

Ms. Blackmon called Dr. John Cametas as Management's fourth witness. Dr. Cametas serves as a Medical Review Officer for the Agency. The witness said he has, as an aside to his medical practice, consistently worked as an MRO since 1989. Ms. Blackmon submitted into the record, copies of documents that pertained to the chain of custody and control of Mr. Parker's urine specimen. (Management No. 4) Dr. Cametas testified that Dr. Reynolds, was the MRO who actually interviewed Mr. Parker. According to the witness, Mr. Parker admitted to Dr. Reynolds that he had used marijuana. Dr. Cametas testified that he is the keeper of the records. Dr. Cametas testified that the cutoff for marijuana is 15 parts per billion and Mr. Parker's test was positive at the rate of 79 parts per billion, which is more than five times the cutoff level.

Dr. Cametas testified that marijuana in a urine specimen degrades over time and if a retest takes place the result would confirm marijuana if there were as little as one part per billion. Dr. Cametas testified about the protocol that is followed to check to see if tests are being correctly done.

Ms. Blackmon directed the witness to the first page of Management No. 4, the MRO Detail Report, and asked him to explain what the typed remarks under "Employee Call Comments" meant? Dr. Cametas answered: "At 6:06 on 10/5, the staff made a note of what the claimant said to Dr. Reynolds, and they wrote in the computer records admits exposure, okay. And then they re-asserted in that same note that he admitted to use." (Arbitrator's reading & Tr. Page 48, Vol. 2) Dr. Cametas pointed out that the initial test and the retest of Mr. Parker's urine tested positive.

Mr. Person cross-examined. Mr. Person directed Dr. Cametas to the Federal Drug Testing And Control Form and asked him to explain what the process is for retesting a single sample collection? (Management No. 4) Mr. Person pointed out to Dr. Cametas that at one place on the document there is an X next to single, which was marked by Ms. Aponte and the specimen identification at the bottom of the document indicates a split sample. Mr. Person made the point that the MRO Manual instructs that when a single sample is done you do an aliquot. Dr. Cametas said the collector, Ms. Aponte, may have written single by mistake and should have written split. He went on to say that it makes no difference to the lab. Dr. Cametas said the lab would have gotten one sample. He then said he did not know how many samples the lab got. Dr. Cametas said that the retest, whether it was on an aliquot portion, or a split, which is two different containers would have been done by Quest Laboratory and they found that urine to be positive for marijuana. Mr. Person asked where the split B came from? The witness said it was Mr. Parker's specimen. The witness said he did not know which one was sent, it could have been an aliquot portion, or a separate split sample. Dr. Cametas said that questions of this nature would be best directed to people at the lab and not him.

Mr. Person directed the witness to the MRO Detail Report for Mr. Parker and pointed out that on the retest report the specimen number is not Mr. Parker's specimen number. (Management No. 4) Dr. Cametas said that when Northwest Toxicology sent Mr. Parker's specimen to another lab for the retest it created another, totally different chain of custody form. The witness said this is normal, but he would expect to see the correct name and social security number. The witness said these are correct on the retest chain of custody report form. Dr. Cametas said there was no fatal error on the form. The witness said that even when a new chain of custody is created the specimen number on the original specimen stays the same.

Mr. Person produced a document that had been faxed to Ms. Blackmon. The document is a copy of a document, which is the same form as Management No. 3. (Management

No. 5) This form, like the one in Management No. 4 has been filled out by Ms. Aponte and someone at Northwest Toxicology who certified the test result for the Grievant's specimen. This document contains all of the same information that appears on the one in Management No. 4 with the exception that there is a reconfirmation dated October 27, 2005 from a Mr. Samar Asmar at Quest Diagnostics in Van Nuys, California. The certifying lab attached a label with different numbers. Dr. Cametas said the retest lab was tying the sample that was positive to a second chain of custody form that goes to the second lab with the numbers on the bottom of the form. Dr. Cametas explained that when a chain of custody form is initially filled out certain parts of it go with the urine sample. When a retest is requested, using the original form, a stick-on label is put on the bottom so they identify that number to the lab the sample was sent to.

Mr. Person directed the witness to Section C2 on page 25 of the MRO Manual and had him read it into the record:

- "MRO name and address (use MRO letterhead),
- Laboratory name and address (i.e., Laboratory A) where original analysis was performed.
- Specimen ID Number on the Federal CCF,
- Laboratory Accession Number (i.e., the number assigned by Laboratory A to the specimen when it was accessioned),
- Request for confirmatory retest for the drug/metabolite, adulterant, or substitution reported by Laboratory A, and
- Name and address of the HHS-certified laboratory (i.e., Laboratory B) selected to retest the specimen (i.e., aliquot of a single specimen or the split (Bottle B) specimen)." (Joint No. 4)

Dr. Cametas said that the request was sent electronically and may have been sent in writing. He was confident the lab had received the required information correctly to start the process going.

Ms. Blackmon redirected. Dr. Cametas said he has been an MRO since 1989.

The Arbitrator questioned Dr. Cametas. The Arbitrator, noting the discrepancy of the chain of custody form that went from Ms. Aponte to Northwest Toxicology, asked Dr. Cametas has he ever seen a situation like that in the past? Dr. Cametas could not remember any, but said it's within the capabilities of the collector to mark it in the wrong spot. The witness said he did not think that Ms. Aponte had a split specimen. The Arbitrator asked the witness if he had ever seen a situation where there had been a mix up of urine specimens and it was attributable in part, or in total to the fact that the chain of custody control numbers had changed? Dr. Cametas said he was not aware of that happening. The Arbitrator asked if such an error had occurred would it have been brought to his attention? The witness answered yes.

In lieu of having Dr. Cametas come back when the Union was presenting their case, the Parties agreed that the Union would now call Dr. Cametas as their witness.

Mr. Payne examined Dr. Cametas. Mr. Payne directed the witness to Mr. Parker's October 8, 2005 letter to Warden Adams wherein he requested a retest of his urine specimen by Quest Diagnostics in Atlanta, Georgia. (Joint No. 16) Mr. Payne directed the witness to page 10, Item 14 of the BOP's Drug Free Workplace Program Statement, which reads as follows:

"14. Testing by laboratory of employee's choice. An employee may request from the MRO a retest of his or her original sample within 72 hours following notice that his or her result has been determined positive. This employee safeguard consists of a retest of the original specimen at a second SAMHSA-certified laboratory selected by the employee. The Bureau shall bear the cost of re-analysis." (Joint No. 2)

The witness pointed out that the request was made after 72 hours. The witness said even if the request for a retest comes in late he still allows the requestor to have a retest. The witness said that very rarely does a person ask for a retest at a specific lab location. Dr. Cametas made the point that irrespective where the retest is done the lab must follow the same procedures. Dr. Cametas said that the retest lab does not provide him with a quantitative number of the retest. The witness pointed out that as little as one part per billion on a retest is a positive test result. Dr. Cametas testified that as of September 2005 he was not aware of any business relationship between Norwest Toxicology and Quest Diagnostics.

Dr. Cametas testified that if a urine sample is not handled correctly so that the claimant cannot see it in front of him the whole time that it is prepared and put into shipment, there might be some confusion, or that the sample could have been switched with someone else's sample. The witness remembered one occasion where such happened.

Mr. Payne asked the witness the following question: "If the specimen I.D. number on the Federal CCF and the bottle label seal do not match, or the number is missing on either the Federal CCF or the specimen label seal, is that an uncorrectable error?" (Arbitrator's recording and Tr. Page 113, Vol. 2) The witness said he would consider it a fatal error.

Ms. Blackmon questioned Dr. Cametas. Ms. Blackmon directed the witness to Management's Nos. 4 and 5. Dr. Cametas said that the numbers 084504 appear on both documents. The witness said those numbers are on his MRO report and the numbers are correct.

The Arbitrator questioned Dr. Cametas. The witness's testimony did not add to, or subtract from what was already in the record.

Ms. Blackmon called Mr. Larry Parker as Management's fifth witness. Mr. Parker testified that he had been employed by the BOP for 17 years and four months at the time he was discharged and his position was Senior Officer Specialist. The Grievant said he held a collateral position as a Firearms Instructor.

Mr. Parker testified that he was familiar with the BOP's policy prohibiting the use of illegal drugs. (Joint No. 14) Mr. Parker said he knew that he was subject to random drug testing. Mr. Parker said he was familiar with the acknowledgement document that he signed on October 24, 1997. (Joint No. 12) The witness said he was familiar with the Drug Free Workplace policy. (Joint No. 2) Ms. Blackmon asked Mr. Parker if he was familiar with the custody and control form that he had signed. (Joint No. 5) The witness answered yes.

Ms. Blackmon referred Mr. Parker to Captain Walter Vereen's November 4, 2004 letter to him wherein he was notified that it was being proposed that he be terminated because of the positive urine test for marijuana. (Joint No. 8) Ms. Blackmon asked Mr. Parker if he admitted to the MRO (Dr. Reynolds) that he used marijuana? The witness answered no. Ms. Blackmon asked Mr. Parker what he stated to the MRO? Mr. Parker answered: "He stated to me that I had a positive drug test. And I said: 'That can't be possible because I do not use illegal drugs.' But he said: 'You have a positive test. Is there any reason that you know of why your test could be positive?' At that time I stated to him: 'I don't know how it could be positive because I didn't believe it was mine at that time because I didn't believe it was mine at that time because I do not use illegal drugs.'" (Arbitrator's recording & Tr. Page 124 Vol. 2) Ms. Blackmon pointed out to Mr. Parker that he certified that the bottle of urine was his specimen. Ms. Blackmon referred the Grievant to the Union's November 17, 2005 response to the proposal letter to terminate his employment, and quoted: "Mr. Parker knows that drug use in his position is incompatible, and possibility of rehabilitation is very high for Mr. Parker, because Mr. Parker did not knowingly use illegal drugs." (Joint No. 9) Ms. Blackmon asked the Grievant why he would need rehabilitation if he had not used illegal drugs? Mr. Parker answered: "Well, when this statement was made, as far as the rehabilitation is concerned, if when we were talking about it and the possibility of any...me not losing my job if I went through rehabilitation, I was willing to go through rehabilitation at that time, but in no way does my willing to accept rehabilitation mean that I use illegal drugs. It's not an admission of guilt." (Arbitrator's recording & Tr. Page 126, Vol. 2)

Ms. Blackmon directed Mr. Parker to Mr. Sebastian's November 10, 2005 memorandum to the file the subject of which was: "Oral Response – Larry Parker", and asked him to explain: "Mr. Parker stated that he had only one thing to say and that was he does not smoke weed or marijuana and he does not know how it got into his system." (Joint No. 10) The Grievant said he trusts the legal system and because the doctor told him that he

had it in his system, at that time this was all he had to go on. The Grievant adamantly denied that he smoked marijuana.

Mr. Payne questioned the witness. Mr. Payne referred Mr. Parker to the urine specimen collection kit and asked him if Ms. Aponte had him urinate in the big cup? (Management No. 2) Mr. Parker answered no, and pointed to the container he urinated in. Mr. Payne asked Mr. Parker if the box that has the tape seal on it was opened and the bottle out whenever he received it? The witness answered yes, and said Ms. Aponte handed him the bottle. Mr. Payne directed the witness to Management No. 3 and pointed out the two removable strips at the bottom of the form. Mr. Payne pointed out that on the back page of the copy of the original form it shows where Mr. Parker's signature bled through from his signing the strip on the form. Mr. Payne asked the Grievant if he signed the removable strip on the form, or did Ms. Aponte place the strip on the form, or did Ms. Aponte place the strip on the bottle and have him sign it on the bottle? (Management No. 3) The witness said he signed the strip while it was on the form. Mr. Payne asked the Grievant if Ms. Aponte sealed the urine specimen bottle in his presence? The Grievant said he gave it to her and walked out.

Ms. Blackmon called Warden Vanessa Adams as Management's sixth witness. Ms. Adams testified that she has been the Warden at FCC Petersburg for two years in July, and prior to this she was the Warden at FCC Alderson. Warden Adams testified that of the 3,500 inmates more than 60 percent are in prison for drug offenses. Warden Adams testified that Mr. Parker called her regarding the on-duty letter issuance to have the date he was supposed to come in to be issued a home duty status letter changed or cancelled. Warden Adams recalled that when Mr. Parker spoke with her he apologized for letting her down as well as himself. The Warden assumed that Mr. Parker was apologizing for the drug usage.

Ms. Blackmon directed Warden Adams to her December 5, 2005 termination letter to Mr. Parker and asked her to explain how she arrived at the decision to terminate him. (Joint No. 11) Warden Adams testified that after reviewing the evidence against Mr. Parker she concluded that he was responsible for the dirty urine specimen.

Mr. Payne cross-examined. Mr. Payne asked Warden Adams who actually constructed the Grievant's termination letter? (Joint No. 11) The witness said it came out of her Personnel shop, but she dictated her decision and the reasons for it. Warden Adams testified that in arriving at her decision she considered the Douglas factors. The witness said that Mr. Parker had been a good employee, and that there was no record of discipline. Mr. Parker worked for the BOP for 17 ½ years prior to his removal. The witness recalled that in addition to being a Firearms Instructor he was also part of the Disturbance Control Team (DCT).

Mr. Payne asked Warden Adams if anyone told her in her review that the urine specimen collection kit boxes were being opened prior to the staff being called in for a

test? The witness answered no. Mr. Payne asked Warden Adams if anyone told her that the bottles were being opened and the large container with the temperature bar on the bottom was not being utilized? The witness answered no. Mr. Payne asked Warden Adams if anyone told her that a staff member was falsifying the document by putting a temperature down when, if you do not utilize the large cup there is no way you can get a temperature of the urine. Again, the Warden answered no. Mr. Payne asked Warden Adams if anyone told her that they were having the staff members sign the forms, fill them out before the staff came in, sign the forms and not place the seal on the bottle with a staff member present? The witness answered no. Mr. Payne said to the witness that staff puts the seals on the specimen bottles after the people leave. Warden Adams said she had spoken with five different employees who had a random drug test and they told her that they put the seal on themselves. Warden Adams said what is important is who puts the seal on the urine test. Mr. Payne pointed out that the policy requires you to sign the seal once it is on the bottle. Warden Adams said that irrespective of when the seal is signed, either before or after it goes on the bottle, what is important is that the person putting the seal on the urine sample is the person who provided the sample. Warden Adams said it would be a problem if the employee who provided the urine specimen did not put the seal on the sample his or herself.

Mr. Payne submitted into the record, a copy of the BOP's Program Statement for the Office of Internal Affairs (OIA) dated October 1, 2001. (Union No. 6) Warden Adams was uncertain as to whether the OIA conducted an investigation. Mr. Sebastian interceded and said that in this particular situation an OIA investigation was not warranted. Mr. Payne argued that Mr. Parker was not accorded full due process. Warden Adams testified about the BOP's nationwide efforts to have more consistency and less disparity in the level of discipline meted out for misconduct. Mr. Payne submitted into the record, a copy of the Office of the Inspector General's Review of the Federal Bureau of Prisons' Disciplinary System dated September 2004. (Union No. 7) Mr. Payne said that the Office of the Inspector General found a gross disparity in discipline throughout the country. Warden Adams said that the OIG felt that the Bureau has not been strong enough in a lot of areas, specifically the Drug Free Workplace area. Warden Adams spoke about how mitigating factors and the Douglas factors affect decisions on the levels of discipline meted out for the same offenses.

Ms. Blackmon redirected and Mr. Payne recross-examined. The witness's testimony did not add to, or subtract from what was already in the record.

The Arbitrator questioned Warden Adams. Warden Adams testified that when Mr. Parker met with her the decision to discharge him had not been finalized. Warden Adams recalled that Mr. Parker said he did not smoke marijuana and did not know how it got in his urine sample. Warden Adams recalled the prior telephone conversation with Mr. Parker where he told her he was disappointed in himself. The Arbitrator asked the

witness if, at the time she asked Mr. Parker what he meant by the statement? The witness answered no.

Ms. Blackmon redirected and Mr. Payne recross-examined. The witness's testimony was not significant with respect to the disposition of the matter at issue.

Management rested.

In his opening statement Mr. Person made the following points to support the Union's position:

- The Agency must take their drug testing procedures seriously to ensure that innocent employees are not being removed for false positive test results because of procedural error.
- Employees are not allowed to follow their urine specimen from the collection site to the testing lab and review the testing procedure to ensure accuracy of their urine test.
- Mr. Parker requested a second test to be done, and it was not done in accordance with the specimen testing procedure, which is his right.
- In April 1988, the Secretary of Health & Human Services issued mandatory guidelines for the Federal Workplace Drug Testing Program. It provides that all urine collection for drug testing of employees shall be done in accordance with the policy and procedures contained in the Health & Human Services Manual guidelines for the Drug Free Workplace Testing Program.
- In Mr. Parker's case the policies and procedures were not followed, which constituted a harmful error and a false positive drug test for Mr. Parker.
- Mr. Person submitted a typed copy of his opening statement into the record. (Union No. 8)

Mr. Payne called Mr. Dwayne Person as the Union's first witness. Mr. Person testified that when he called Quest Diagnostics in Atlanta, Georgia he learned that Mr. Parker's urine specimen had been sent to California for the retest. He also learned that the chain of custody specimen numbers did not match.

Ms. Blackmon waived cross-examination.

The Arbitrator questioned Mr. Person. Mr. Person testified that he called Quest Diagnostics sometime in February 2006. The Arbitrator questioned Mr. Person about why he did not get the name of the individual with whom he had spoken given his belief that he believed that a fatal error had occurred. The witness had no explanation.

Mr. Payne redirected. Mr. Payne and Mr. Person expressed some concern about the authenticity of Management No. 6.

Mr. Person called Mr. Michael Sebastian as the Union's second witness. It was determined that Management Nos. 5 and 6 were not used as part of the basis to discharge Mr. Parker.

Ms. Blackmon cross-examined. The witness's testimony was not significant with respect to the disposition of the matter at issue.

Day No. 3 – March 28, 2006

There was a discussion regarding the information previously subpoenaed by the Union, which had not been received. It became apparent to the Arbitrator that Dr. Kuntz was unwilling to provide relevant information that was readily available.

Mr. Person called Lt. James Beverly as the Union's third witness. Lt. Beverly was Mr. Parker's supervisor. The witness said that Mr. Parker was an outstanding employee. He took quite a bit of time with new staff members, he did an outstanding job training people on the firing range, and he always did what he was told to do. The witness said he had never known Mr. Parker to be deceptive or dishonest. The witness said he has never known Mr. Parker to have lied. The witness said he has known Mr. Parker between 16 ½ and 17 years. The witness said that for the seven years he has been a Lieutenant he has no knowledge of Mr. Parker ever receiving any discipline. Mr. Person submitted into the record, copies of Mr. Parker's performance appraisals from 2001 forward. (Union No. 9)

Ms. Blackmon cross-examined, Mr. Person redirected, and Ms. Blackmon recross-examined. The witness's testimony was not significant with respect to the outcome of this case.

The Arbitrator questioned Lt. Beverly. The Arbitrator ascertained from the witness how often he interacted with Mr. Parker. The Arbitrator asked Lt. Beverly if, at any time during the three years preceding Mr. Parker's termination, he ever sensed that he might have been under the influence of any controlled substance or alcohol? The witness answered no. The witness said there have been several occasions where he suspected an inmate has been under the influence of something and about 60 to 70 percent of the time his suspicion was confirmed. The witness said his experience has been with alcohol among inmates.

Mr. Person redirected and Ms. Blackmon recross-examined. The witness's testimony was not significant with respect to the disposition of this case.

Mr. Person redirected. Mr. Person asked Lt. Beverly if he ever smelled marijuana on Mr. Parker? The witness answered no.

Mr. Person called Captain Walter Vereen as the Union's fourth witness. Captain Vereen said he supervised Mr. Parker for about four years, and as a Captain from August 2005 to the time he was discharged. Captain Vereen testified that if the proper procedures were not followed in collecting and testing Mr. Parker's urine it would make a difference in his mind. Mr. Person reviewed the applicable sections of the relevant program statements with the witness. Mr. Person asked the witness if he had ever known Mr. Parker to lie or be deceptive? The witness answered no. Mr. Person asked the witness if, prior to receiving the results of the drug test, he had ever suspected Mr. Parker of being under the influence of drugs, or any kind of illegal substance? The witness answered no. Mr. Person asked the witness if he had any knowledge of Mr. Parker having been in any kind of trouble, or his being a problem employee? The witness answered no.

Mr. Person ascertained that Captain Vereen issued the proposed removal letter without having complete information about the collection and processing of the Grievant's urine specimen. (Joint No. 8) Mr. Person directed the witness to Union No. 2 and pointed out that the log record of Mr. Parker's urine specimen was started on the 27th and completed on the 29th of September. The witness said he thought it was two different specimens. The witness opined and said it looks like they wrote him in for the 27th, and when he did not show up they got him on the 29th.

Ms. Blackmon cross-examined and Mr. Person redirected. The witness's testimony did not add to what was already in the record.

Ms. Blackmon recross-examined. Ms. Blackmon submitted into the record, a packet of documents all of which pertained to the testing of the Grievant's urine specimen and the associated paperwork. (Management No. 6) Ms. Blackmon reviewed the information on the custody control form with the witness. The form is a clearer copy of Management No. 5.

Mr. Person redirected. Mr. Person directed Captain Vereen to Joint No. 5 and Management No. 6. Mr. Person pointed out that on Joint No. 5 above the bar code at the bottom of the page it indicates the sample was split. However, in Management No. 6 at page 3 it indicates that an aliquot position was tested.

Ms. Blackmon recross-examined. The witness's testimony did not add to what was already in the record.

Mr. Person called Officer Kevin Pryor as the Union's fifth witness. Mr. Person submitted into the record, a copy of the custody and control form used in conjunction with the processing of Mr. Pryor's urine specimen, which was collected on September 29, 2005. (Union No. 10) Officer Pryor testified that on the 29th his scheduled work hours were 11:50 p.m. to 7:50 a.m. Mr. Person showed the witness the large urine specimen

collection cup and asked him if such a cup was given to him. The witness answered no. Mr. Person showed Officer Pryor the small collection bottle and asked him if this was given to him? The witness answered yes. Officer Person asked the witness if he completed the peel off label on the form? The witness said he filled it out while it was still on the form. Ms. Aponte was the collector. Ms. Aponte wrote on the custody and control form that she collected Mr. Pryor's urine specimen at 7:45 p.m., which was not correct because of Officer Pryor's work schedule that day. Mr. Person asked the witness how long it took him to provide a urine sample? The witness answered, a couple of minutes. Officer Pryor testified that when he finished his urine sample, he handed it to Ms. Aponte and left. The witness recalled that Mr. Parker gave his specimen after he had given his and departed.

Ms. Blackmon cross-examined and Mr. Person redirected. The witness's testimony was not significant with respect to the outcome of this case.

The Arbitrator questioned Officer Pryor. The Arbitrator asked Officer Pryor if the label he initialed, was peeled off and put on the specimen bottle in his presence? The witness said he did not recall seeing Ms. Aponte put the label on the specimen bottle. The Arbitrator asked the witness if he was sure of that? The witness said he was, because he was in a hurry.

Mr. Person called Officer Paul Dunston as the Union's sixth witness. Officer Dunston gave a urine specimen the same day as the Grievant and Officer Pryor. Officer Dunston testified that he was given the small bottle out of the collection kit in which to provide his specimen. Officer Dunston testified that he filled out the paperwork, i.e., the custody and control form in the mobile home trailer and went into the hospital to provide his specimen. Mr. Person asked the witness if the collection procedures were explained to him? The witness answered no. The witness said that after he urinated in the bottle he left.

Ms. Blackmon cross-examined. The witness's testimony was not significant with respect to the disposition of the matter at issue.

Mr. Person redirected. Mr. Person asked Officer Dunston if he saw the seal placed on the bottle? The witness answered no.

The Arbitrator questioned Officer Dunston. The Arbitrator asked him what time he provided the urine specimen? The witness said it was somewhere between 7:10 a.m. and 7:30 a.m. The Arbitrator asked Officer Dunston if he was told if any other people were going to be providing urine samples that day? The witness said he was told that there were 29 other people scheduled that day. The witness could not recall the date that he provided the urine specimen.

Ms. Blackmon recross-examined. The witness's testimony did not add to, or subtract from what was already in the record.

Mr. Person called Mr. Larry Parker as the Union's seventh witness. Mr. Parker said that it took him a couple of minutes, no more than five to provide his urine sample because he had to wait for Officer Pryor to finish. Mr. Person asked the Grievant if Ms. Aponte explained the collection procedures to him. The witness answered no.

Ms. Blackmon waived cross-examination.

The Arbitrator questioned Mr. Parker. The Arbitrator asked the Grievant what he did for leisure activities in the couple of years prior to his termination? The Grievant said he is an amateur body builder at 50 years of age. The Grievant volunteered that he has been married for 27 years and has a granddaughter. Mr. Parker said he takes about 50 different kinds of vitamin supplements a day. He proceeded to name some of the vitamins that he takes daily.

Mr. Parker testified that after the MRO told him he had a positive urine test he told him about all the muscle building stimulants and vitamins he takes. The Grievant recalled that the MRO told him these things could not cause a positive drug test. The witness said that when he went to the gym he took supplements with him and kept them in a locked locker. The Arbitrator asked the Grievant if, during the six months preceding his discharge he was having any problems of a financial or non-financial nature? The witness answered no. The Arbitrator asked the Grievant if anyone in his immediate family was suffering from any medical problems around the same time? The witness answered no.

Mr. Parker testified that Ms. Aponte gave him the small specimen bottle to urinate in. The witness said that after he provided the specimen he gave it to Ms. Aponte and she told him to have a nice day. Mr. Parker testified that he signed the form before he provided the specimen. The Arbitrator asked Mr. Parker if he saw Ms. Aponte remove the seal on the document? (Management No. 3) The witness answered no.

The Arbitrator recalled for Mr. Parker the telephone call he made to Warden Adams and what he purportedly said to her. Mr. Parker completely agreed with the Warden's recall of what he told her. The Arbitrator asked the witness what he meant when he made the statement to Warden Adams? Mr. Parker said he was a great deal of stress. Mr. Parker said he had never been in any kind of trouble before and holds Warden Adams in the highest regard. The Grievant said he apologized to her not because he had done something wrong, but rather because he wanted to let her know that he regretted the situation.

Mr. Person redirected, Ms. Blackmon recross-examined, and Mr. Person redirected. The witness's testimony either did not add to what was already in the record, or was not materially significant.

The Arbitrator questioned Mr. Parker. The witness's testimony was not significant with respect to the disposition of this case.

Mr. Person called Warden Adams as the Union's eighth witness. Warden Adams testified that she often has to remind people not to take shortcuts and to follow program statements to the letter.

Ms. Blackmon cross-examined. Warden Adams testified that she rarely gets to write anything any more, but that does not mean, her input does not go into it.

Mr. Person redirected. The witness's testimony either did not add to what was already in the record, or was not relevant to the outcome of the case.

Ms. Blackmon recross-examined. The witness's testimony did not add to what was already in the record.

Mr. Person redirected. Warden Adams testified that to her knowledge Mr. Parker had never been charged with making a false statement. Warden Adams testified that in her tenure at this institution she is amazed at how often people lie. The witness said there are integrity problems among the staff. Warden Adams said she does not know who to believe half of the time. Mr. Person asked Warden Adams if she believes that Mr. Parker has made a false statement related to this case? The witness answered yes.

Mr. Person called Mr. Roger Payne as the Union's ninth witness. Mr. Payne works for the Agency at Forrest City, Arkansas. Mr. Payne testified about his knowledge of the Drug Free Workplace Program and the problems with the Program Statement. (Joint No. 2) The witness said he has had many discussions with Mr. Herges about the procedures. Mr. Payne testified that it is very disconcerting when the person doing the urine specimen collection (Ms. Aponte) has never seen the Collector's Procedure Manual before. (Union No. 2) Mr. Payne testified about the lack of consistency among the institutions throughout the country. Mr. Payne explained why he does not believe that in Mr. Parker's case the policy was followed. Mr. Payne pointed out that the employee who is providing the urine specimen must first urinate in the large cup, which has the temperature sensor affixed to it, and in the case of the Union's witnesses who said they did not urinate in that cup, the results were falsified on the form. (Management Nos. 2 and 3) According to Mr. Payne, in Mr. Parker's case a number of fatal errors occurred throughout the entire collection process. Mr. Payne testified that a chronic shortage of staff throughout the system has resulted in employees taking shortcuts to get things done.

Mr. Person asked the witness if Dr. Cametas made a false statement? The witness answered yes, when he said that Northwest Toxicology made the determination where Mr. Parker's retest was sent. Mr. Person directed the witness to the second page of Management No. 6. According to the contents of the document Dr. Cametas was the person who instructed that an aliquot portion of the Grievant's urine specimen be sent to Quest Diagnostics in Van Nuys, California. (Management No. 2, page 2)

Mr. Person asked Mr. Payne about the proper procedure to be followed for correcting errors on legal documents. Mr. Payne said you draw a single line through the area, then you write error, initial it, date it, and then you write whatever you want to correct by it. You cannot write over the error itself.

Mr. Person testified that any class 1 or 2 offense must be reported to Internal Affairs within 24 hours and the only person who can send matter to, or give approval for an internal investigation to be conducted is the warden. Mr. Person asked the witness if he has ever known the BOP to terminate or impose discipline on an employee from an outside source, one not affiliated with the BOP or OPM without first investigating it? Mr. Payne said that the policy requires the BOP to do an investigation. Also, Internal Affairs can send the allegation to the FBI, and sometimes the FBI comes in and does an investigation too.

Mr. Person asked the witness what he thinks is the reason that Dr. Kuntz has refused to release the status report, which is required by law? Mr. Payne said he believes that the report has stuff in it that he does not want the Union to see, and that what is in the report will impeach his testimony. The witness said he believes that Dr. Kuntz underestimated some of the problems.

Mr. Person questioned Mr. Payne about why he believes that Northwest Toxicology and Pembroke refused to provide some of the Items contained in the subpoena.

Mr. Person submitted into the record, a copy of the 25 item checklist that Mr. Payne had testified about. (Union No. 11) The checklist is:

CHECK LIST				
Date of Collection: _____ Time of Notification: _____ Donor's Name: _____				
Please check and initial each one of the following items:	YES	NO	Donor initials	Collector Initials
1. Was the donor informed this is a random selection not based on any suspicion?				

2. Was the donor made aware of the two hours time frame to report to the collection site?				
3. Was the donor asked for an ID?				
4. Was the official notification for this test, from Central Office, shown to the donor?				
5. Was the donor informed of the drugs tested for?				
6. Were the donor belongings placed inside the locker?				
7. Was the donor given the key for one of the locks in the lock?				
8. Was the donor given the opportunity to wash his/her hands prior to testing?				
9. Was the water shut off system turned on?				
10. Was the blue dye placed inside the toilet bowl and the sink?				
11. Was the form filled completely in front of the donor?				
12. Was the test kit opened in front of the donor?				
13. Was the donor informed of the amount of urine needed for the test (30 ml.)				
14. Was the donor shown where to place the sample after finishing voiding?				
15. Was the temperature of the sample detected?				
16 – a. If the temperature not within limits, was the donor offered to have his/her corporal temperature taken and recorded in the form? – b. Was the room temperature recorded on the form?				
17. Was the sample transferred to the appropriate container?				

18. Was the container seal initialized and dated by the donor after being placed on top of the container's lid?				
19. Was the container properly packaged inside a Federal Express Package?				
20. Was the donor informed about the role of the Medical Reviewing Officer and his/her right to obtain a copy of the results?				
21. Was the donor informed of his right to explain to the Medical Reviewing Officer any positive results?				
22. Was the donor informed of the 72-hour time frame to request a retest after receiving the notification of a positive test?				
23. Was the donor informed he/she can choose the laboratory performing the retesting?				
24. Was the donor informed that the cost of the retesting is covered by the agency?				

Ms. Blackmon asserted that the form applies only to Forrest City. Mr. Payne said that everything listed on the checklist is required by the Drug Free Workplace Policy and the Collector's Manual. (Joint No. 2 & Union No. 3) Mr. Payne said the checklist items for urine collection and analysis is required throughout the BOP.

Mr. Person submitted into the record, copies of documents from Northwest Toxicology's website to show that Dr. Kuntz had no legitimate right to refuse to provide the Union with some of the information that had been requested by way of the subpoena. (Union No. 12) Mr. Payne reiterated that Dr. Kuntz refused to provide the information that the Union believes has a bearing on the matter before the Arbitrator because he has something to hide. In effect, the Union, by way of the Exhibit, is attempting to impeach Dr. Kuntz as a witness.

Mr. Payne testified that each Quest Laboratory is certified separately and that employees have the right to decide which specific lab they want to do a retest of their urine specimen.

Mr. Person submitted into the record, a copy of one page from the urine specimen collection logbook used at Forrest City. (Union No. 13) The names of the individuals had been inked over so they could not be identified.

Mr. Payne testified that in his opinion, Warden Adams did not give proper consideration to the Douglas factors. (Union No. 7) Mr. Payne said he did not think that Management performed all of the seven tests for just cause.

Ms. Blackmon cross-examined. Mr. Payne testified that if the checklist is not followed the likelihood of mistakes occurring in the collection and testing process could result in fatal errors.

Mr. Payne testified that the Union's primary position is that there was no just cause to discipline Mr. Parker for the following reasons:

- There were numerous errors in the urine specimen collection and testing process. The errors were so serious that the test results must be thrown out.
- Mr. Parker was not given proper due process. The Warden failed to comply with all of the requirements for conducting a thorough and impartial investigation.

The Union's secondary position is that discipline within the BOP has been inconsistent and that even if the Arbitrator were to find that just cause existed discharge was too severe a penalty.

Mr. Person redirected and Ms. Blackmon recross-examined. The witness's testimony was not significant with respect to the disposition of the matter at issue.

The Union rested.

Ms. Blackmon called Ms. Yolanda Aponte for the purpose of rebuttal. Ms. Blackmon asked Ms. Aponte the following question; "When you do a U/A test on an employee when you are a collector, is that sealed in front of the employee?" Ms. Aponte answered: "Always". (Arbitrator's recording and Tr. Page 195, Vol. 3) Ms. Aponte went on to say that she does not let the employee leave until she seals the "box" in front of him. The witness said she was certain that she sealed Mr. Parker's urine specimen in his presence. Ms. Aponte testified that she first has employees "pee" in the large cup so she can check the temperature.

Mr. Payne cross-examined. Ms. Aponte testified that she did not collect Captain Vereen's urine specimen. Mr. Payne, referring to Management No. 3, asked Ms. Aponte if she ever pre-fills the form out, or if she does it in front of the employee? The witness said she does it in front of the employee. Mr. Payne asked Ms. Aponte if she breaks the seal on the box, the specimen collection kit, in front of the employee? The witness answered yes.

Ms. Blackmon redirected. Ms. Blackmon submitted into the record, copies of photos of the safes where Ms. Aponte said she keeps urine specimens to be shipped by Federal Express at the end of the day, logbooks, chain of forms, and Fed Ex packaging. (Management No. 7)

Mr. Payne recross-examined. The witness's testimony was not significant with respect to the outcome of this case.

The Arbitrator questioned Ms. Aponte. The Arbitrator asked Ms. Aponte if, in the up to six months before Mr. Parker gave his urine specimen, she followed the same protocol to the letter for every employee who gave a urine specimen? The witness answered yes. Ms. Aponte said that for staff she does the U/As in the x-ray room.

Ms. Aponte testified that on September 29, 2005 she believed that she collected and processed three urine specimens. Ms. Aponte said she collected specimens from Mr. Parker and Mr. Pryor in the morning. She could not remember who she collected the specimen from in the afternoon. Ms. Aponte said she also did not do Mr. Dunston.

The Arbitrator, playing the role of Mr. Parker, had Ms. Aponte demonstrate what she did throughout the collection and processing of his urine specimen. The witness said she followed the exact same process with Mr. Pryor.

Ms. Blackmon redirected. The witness's testimony did not add to or subtract from what was already in the record.

Mr. Payne recross-examined. Mr. Payne asked Ms. Aponte who collected and processed Mr. Dunston's urine specimen? The witness said it was Ms. McKinney. The Arbitrator noted that Ms. Aponte had previously testified that Ms. McKinney was not at the institution on September 29, 2005 and that she was the only person doing U/As on September 29th.

Mr. Pryor directed the witness to Joint No. 5 and Union No. 10 and pointed out that she wrote that she collected Mr. Pryor and Mr. Parker's specimens at the same time, 7:45. Mr. Pryor said to the witness that she does not pre-fill them out. The witness answered no. Mr. Payne asked the witness if she filled out both forms at the same time? The witness said she filled them out a few seconds apart, Mr. Pryor's first and then Mr. Parker's form.

Ms. Blackmon redirected. Ms. Blackmon directed Ms. Aponte to Union No. 2 and asked her why a name is crossed out? The witness said it was because Ms. McKinney tried to get him in on the 27th for his U/A, but was unsuccessful.

Management rested.

The Parties rested. Ms. Blackmon elected to make an oral closing argument and file a written brief. Mr. Person elected to make the Union's closing argument in a written brief.

In her closing argument Ms. Blackmon made the following points to show that Management had proven their case:

- On September 29, 2005 the Grievant provided a urine sample. It was provided in accordance with the BOP's Drug Free Workplace.
- The sample was sent to Northwest Toxicology for testing where it tested positive.
- The Grievant asked for a retest, and the results were again positive.
- The Grievant was aware of the Agency's policy and knew that drug use was incompatible with his position.
- The Grievant knew that a positive drug test was grounds for removal.
- Warden Adams testified that she lost confidence in Mr. Parker, and that she could not leave him in an environment where he is charged with watching over individuals who are incarcerated for the use of illegal drugs.
- The Agency requests that Mr. Parker's termination remain on the record, and that he be removed from employment with the BOP.

6.0 Opinion

ISSUE NO. 1

WAS THE DISCIPLINING/ADVERSE ACTION FOR JUST AND SUFFICIENT CAUSE, OR IF NOT, WHAT SHALL BE THE REMEDY?

The record establishes that prior to his discharge Mr. Parker had been employed as a Correctional Officer by the BOP for 17 years. Based on what is in the record, Mr. Parker was an exemplary employee. In his 17 years of service he had never received any disciplinary action. He was the recipient of numerous service awards. He was given special duties because of his skills, knowledge, experience and dedication. In his career with the BOP he had been subject to random drug testing and never tested positive. Mr. Parker's supervisors, past and present, testified in glowing terms about his character, integrity, and job performance. Captain Vereen and Lt. Beverly, both of whom said they have training and experience detecting marijuana usage among people, primarily inmates, testified that they have never suspected that Mr. Parker had used marijuana. The record further establishes that in his 17 years of service no one had ever even suspected that Mr. Parker was under the influence of alcohol or any

controlled substance while he was at work. The record establishes that Mr. Parker has been married for 27 years and is a grandfather.

Based on the aforementioned it would appear that Mr. Parker is least likely to be the kind of person who would use marijuana. However, appearances and images can present a picture that is markedly different from reality. Unfortunately, people in responsible positions who are held in high regard sometimes turn out to be casual drug users and even drug addicts. Sometimes, it is addiction to prescription medicines. Sometimes it is an addiction to alcohol, and sometimes it is an addiction to controlled substances like marijuana.

The Arbitrator pointed out to Management at the first Hearing that in order to prevail they first had to prove that just cause existed to discipline Mr. Parker, and that if such were proven the next threshold to cross was that given all that was taken into consideration that Mr. Parker's termination was warranted.

There is no disputing the fact that a urine specimen, which Management is convinced was provided by Mr. Parker on September 29, 2005, tested positive for marijuana at a level of 79ng/ml and re-tested by a second lab positive for marijuana. Dr. Kuntz gave unrebutted testimony that such a high level of marijuana in a urine specimen could not have resulted from passive inhalation of marijuana. The record further establishes that a person unknowingly ingesting, in some prepared food(s), the amount of marijuana it would take to achieve such a high test result as was found in the urine specimen that purportedly came from the Grievant, was virtually impossible. In the Arbitrator's opinion, the urine sample that tested positive came from someone who had recently smoked marijuana. The question is: Was it Mr. Parker's urine? It was the Union's position that the specimen tested by Northwest Toxicology and then re-tested by Quest Diagnostics did not belong to Mr. Parker. It was the Union's position that the collection, test, and re-test protocol is badly flawed and needs to be re-evaluated at all points. It was the Union's position that in Mr. Parker's case there were so many procedural deficiencies and errors, a number of which were singularly fatal errors, that the test result was meaningless and should be thrown out. In effect, the Union has not only challenged the validity and accuracy of the entire protocol in Mr. Parker's case, they have challenged it for what occurs at FCC Petersburg, and the protocol nationwide.

While the Arbitrator's authority is limited to deciding the merits of the charge against Mr. Parker, if he determines that either the specimen tested did not belong to Mr. Parker, or if he determines that it did, but the processing of his urine specimen was so mishandled that the results are meaningless then Management must, for the sake of the integrity of the drug testing protocol, re-evaluate what is going on at all steps and as necessary make changes to insure its integrity. The importance of a valid and reliable program with its protocols cannot be overstated. Conversely, if a flawed program is continued the adverse impact on employees' morale at large, the devastating effects on

employees who become victims of a flawed system, and the adverse consequences for the Agency cannot be understated.

The record establishes that Ms. Aponte was the person who collected and initiated the processing of what was alleged to have been the Grievant's urine sample. The collection occurred on September 29, 2005. As the initial contact person Ms. Aponte had very important responsibilities. If she made one significant error in the collection and processing protocol what occurred after that would be irrelevant. If she made a number of minor errors and/or omissions the likelihood of fatally flawed test results would increase with each successive error. In the Arbitrator's opinion, considering the importance of Ms. Aponte's role it is essential that she be properly trained in all aspects of her job, her job performance be carefully monitored, and as necessary she receive follow up training. Anything less compromises the integrity of the program. No matter how competent Northwest Toxicology is, if they are sent mislabeled, or contaminated urine samples their test results are meaningless.

Ms. Aponte testified that she received annual training on how to do urinalysis. However, her claim is not consistent with the training record. Based on the BOP's records, the only formal training Ms. Aponte has ever received occurred in May 2005. Considering that Ms. Aponte has been doing such work since 1996, the fact that her only formal training occurred a few months before September serves to raise some question about Management's commitment to complying with Item 10 of the June 10, 1997 U.S. Department of Justice, Federal Bureau of Prisons Drug Free Workplace Program Statement. (Joint No. 2) The record establishes that Ms. Aponte has never seen, no less read the Collector's Procedure Manual whose contents she should have been knowledgeable of raises serious doubt about whether she is qualified to do urine collection and related processing work. The Arbitrator notes that Section 1 in the Collector's Procedure Manual has the requirement that: "All collectors staff shall complete an annual training course as directed by the National Drug Free Workplace Coordinator (National Coordinator)" Clearly, Management did not comply with this requirement with respect to Ms. Aponte.

It was the Union's position that Ms. Aponte did not comply with Section 3a of the Collector's Procedure Manual when she had Mr. Parker use the toilet in the x-ray room bathroom. The Arbitrator notes that the "Urine Specimen Collection Handbook for the New Federal Drug Testing Custody and Control Form", which was published after the "Collector's Procedure Manual", at Chapter 2 (a)(1) only requires that a restroom/stall with a toilet for the donor to have privacy be provided. (Joint Nos. 17 & 2) In the Arbitrator's opinion, there is nothing in the record to prove that the toilet or anything else in the bathroom could have contaminated the Grievant's urine specimen.

In the Arbitrator's opinion, the U/A logbook is an abomination. (Union No. 2) Ms. Aponte's method of record keeping was in clear violation of the BOP's requirement on maintaining records and correcting errors.

In the Arbitrator's opinion, Ms. Aponte was a less than credible witness. At the March 9th Hearing Ms. Aponte testified that on September 29, 2005 Ms. McKinney was working in another state. At the March 28th Hearing Ms. Aponte testified that on September 29th Ms. McKinney collected and processed Officer Dunston's urine specimen. As will be discussed, Ms. Aponte repeatedly gave perjured testimony. In stark contrast to Ms. Aponte's perjured testimony the Arbitrator found Captain Vereen, Lt. Beverly, Officer Pryor and Officer Dunston to be wholly credible witnesses.

According to what Ms. Aponte wrote on Mr. Parker's custody and control form she collected his urine specimen at 7:45 a.m. (Joint No. 5) According to what Ms. Aponte wrote on Officer Pryor's custody and control form on September 29th she collected his urine specimen at 7:45 p.m. (Union No. 10) The p.m. was in error because on that day Officer Pryor worked from 11:50 p.m. on the 28th to 7:50 a.m. on the 29th. Clearly, the time of the collection was 7:45 a.m. the exact same time Mr. Parker's urine specimen was collected. The record establishes that Mr. Parker provided his urine specimen after Officer Pryor. While this error standing alone is not significant it is just one of the many things that Ms. Aponte either did incorrectly or outright fabricated.

Captain Vereen gave unchallenged testimony that a couple of years ago when he was asked to provide a urine specimen he was given the small vial and not the large cup with the temperature sensor affixed to it to urinate in. Based on Captain Vereen's testimony it appears that what happened on September 29, 2005 was not an isolated event. Officers Pryor and Dunston and Mr. Parker all testified that Ms. Aponte gave them the small plastic vial/bottle to urinate in. This was done in clear violation of the protocol contained in the Collection Handbook because unless a thermometer is used, which in these three instances it was not, the temperature of the urine cannot be checked. On Officer Pryor and the Grievant's custody and control form Ms. Aponte, by putting an x in the yes box indicated that she had read the specimen temperature within four minutes and it was between 90° and 100° F. (Joint No. 5 and Union No. 10) In the Arbitrator's opinion, what Ms. Aponte did was a deliberate falsification of records.

Officer Pryor, Officer Dunston and the Grievant all testified that Ms. Aponte did not do any of the following, all of which were required;

- She did not open the urine specimen collection kit in front of them.
- She did not have them wash their hands before providing a specimen.
- She did not have a bluing agent in the toilet where the urine specimen was provided.
- She did not provide the large cup with the temperature sensor affixed to it for them to urinate into so the urine's temperature could be checked.

- She did not transfer the urine specimen from the large container with the temperature sensor to the small bottle/vial in their presence.
- She did not peel the specimen bottle seal from the custody and control form and affix it to the specimen bottle in their presence.
- She did not have them initial and date the seal after it had been affixed to the small bottle/vial.

In the Arbitrator's opinion, some of the above listed things that Ms. Aponte failed to do standing alone were significant enough to invalidate any test result. Collectively, they render the entire test protocol at the collection site meaningless. At the March 28th Hearing Mr. Payne testified about the checklist that is used at Forrest City to make sure that the things required by the Drug Free Workplace Policy and the Collector's Manual are followed. (Union No. 11, Joint No. 2 & Union No. 3) In the Arbitrator's opinion, considering that Petersburg is bound by the same requirement as Forrest City, Management would be well advised to adopt the form. In the Arbitrator's opinion, the record convincingly shows that either Ms. Aponte failed to do many of the listed things, or she falsified information on the custody and control form, or she gave perjured testimony at the Hearings.

In the Arbitrator's opinion, the problems with the processing of Mr. Parker's urine specimen did not stop with Ms. Aponte. In the Arbitrator's opinion Dr. Kuntz was, at the March 9th Hearing, a cooperative and credible witness. Prior to the March 27th Hearing the Union subpoenaed 12 items, some of which were to be provided by Northwest Toxicology. Northwest Toxicology refused to honor the subpoena. The record establishes that although Northwest Toxicology is not a party to the Agreement they are a vendor to the BOP. Based on what is in the record, it appears that Northwest Toxicology does a substantial amount of business with the BOP. Considering that fairness and justice for employees is essential to the BOP being able to effectively and efficiently conduct its business it behooves vendors to cooperate in every way possible with the BOP to insure that employees' rights are respected and protected and that an environment of fairness and justice is maintained. In the Arbitrator's opinion, Northwest Toxicology's failure to comply with the subpoena, or in the alternative provide an explanation as to why they were unwilling and/or unable to comply with such raises some troubling questions. It is well established by arbitral case law and court opinions that when a party to a proceeding fails to provide legitimately sought relevant information to the disposition of the matter at issue, then an adverse inference is drawn. In the Arbitrator's opinion, Northwest Toxicology's failure to provide relevant subpoenaed documentary information, or in the alternative provide an explanation as to why they were unwilling or unable to do so served to create the impression that the information, if provided, would have been unfavorable and possibly damaging.

In the Arbitrator's opinion, with respect to the initial testing of the urine specimen that allegedly was provided by Mr. Parker, Northwest Toxicology acted correctly. The

specimen tested positive for marijuana at the level of 79 ng/ml. If, as Management argued the specimen was Mr. Parker's, then there was just/sufficient cause to discipline him. However, considering Ms. Aponte's negligence and irresponsibility in the collection process the Arbitrator does not believe that the specimen that tested positive belonged to Mr. Parker.

When Mr. Parker was informed of the positive test result, he asked that the urine specimen be retested. He requested that the retest be done at Quest Diagnostics in Atlanta, Georgia. (Joint No. 17) Contrary to Mr. Parker's written request his specimen was sent to Quest Diagnostics in Van Nuys, California when it re-tested positive. No explanation was provided as to why the specimen did not go to the location Mr. Parker decided upon. In the Arbitrator's opinion, this amounted to a violation of Item No. 14 in the 1997 Drug Free Workplace Program Statement. (Joint No. 2) In relevant part it provides that: "This employee safeguard consists of a retest of the original specimen at a second SAMHSA-certified laboratory selected by the employee." (Joint No. 2) In the Arbitrator's opinion although the retest was done by a Quest Diagnostics laboratory, which arguably satisfies the requirement, Mr. Parker had his reason(s) for wanting the retest to be done at this specific location and that request should have been honored. In the Arbitrator's opinion, considering that the Quest Laboratory in Van Nuys was certified this violation of Mr. Parker's right standing alone would not be sufficient to conclude that a fatal error had occurred. However, this action was just one more in the series of actions that invalidated the test.

Another problem with the processing of Mr. Parker's specimen came to light when the Union pointed out that although Mr. Parker provided a single sample Northwest Toxicology's tracking system shows a split specimen. (Management No. 4) This error gives rise to the possibility that someone else's specimen was tested.

It was Management's position that Mr. Parker freely admitted to Dr. Reynolds, the Medical Review Officer in his case, that he had used marijuana. On its face it would appear that although the collection process was seriously flawed, a freely given admission of wrongdoing would establish just cause for disciplinary action. However, Mr. Parker took issue with what Dr. Reynolds indicated in the MRO report. (Management No. 4) When called as a hostile witness by Management Mr. Parker said he told Dr. Reynolds: "I don't know how it could be positive because I do not use illegal drugs." (Arbitrator's recording & Tr. Page 124, Vol. 2) The Arbitrator recognizes that it is not unusual for a person to recant a confession at an arbitration proceeding. However, the Arbitrator found Mr. Parker to be a very credible witness. Curiously, for reasons known only to Management Dr. Reynolds was not called as a witness to offer first hand testimony about what Mr. Parker said to him. Nor was he called to offer rebuttal to what Mr. Parker claims he told him.

In the Arbitrator's opinion, Dr. Cametas' testimony with respect to what Mr. Parker purportedly told Dr. Reynolds was pure hearsay and has no probative value whatsoever.

In the Arbitrator's opinion, although Dr. Cametas was not the MRO in this case some of his testimony was troubling. Dr. Cametas testified that if he receives a retest report where the individual's name and social security is correct, but the specimen numbers are incorrect he would verify a positive drug test. The Arbitrator recognizes that the chain of custody and control numbers will likely change when a specimen transfers from the primary test lab to the retest lab. However, if the custody and control numbers are not correctly matched then an inquiry should be made to make certain that the document provided to the MRO is accurate in all respects. A positive drug test is a very serious matter and if anyone involved in the entire collection and testing process has even the slightest suspicion that something may be wrong he/she should not hesitate to ask questions. A mishandled drug test could have devastating financial and psychological affects on a falsely accused person. In the Arbitrator's opinion, incorrect labeling of a urine specimen would be a fatal error.

At the March 27th Hearing Dr. Cametas testified that he was not aware of the fact that Mr. Parker had asked for his urine specimen to be retested at a particular lab. The record establishes that by letter dated October 8, 2005 to Warden Adams, Mr. Parker requested that the retest be done by Quest Diagnostics in Atlanta, Georgia. (Joint No. 16) Mr. Parker asked that his request be forwarded to the MRO. On October 24th, by facsimile Dr. Cametas requested that Mr. Parker's urine specimen be sent to Quest Diagnostics in Van Nuys. In the Arbitrator's opinion, Dr. Cametas could not have requested a retest unless Mr. Parker had made such a request. The retest request did not come from Mr. Parker directly to Mr. Cametas. Therefore, it had to have come from someone at the BOP. In the Arbitrator's opinion, in this respect Dr. Cametas gave contradictory and incredible testimony.

This brings the Arbitrator to what Mr. Parker said to Warden Adams in a telephone conversation with her. Warden Adams testified that when Mr. Parker spoke with her he apologized for letting her down as well as himself. The Warden said she assumed that he was apologizing for the drug usage. Warden Adams did not ask the Grievant what he meant by his remark. At the March 28th Hearing the Arbitrator asked Mr. Parker what he meant when he made the statement to Warden Adams? Mr. Parker said he was under a great deal of stress at the time, he had never been in any trouble before and he had the highest regard for Warden Adams. Mr. Parker said he apologized to her not because he had done something wrong, but rather because he wanted to let her know that he regretted the situation.

The Arbitrator understands how and why Warden Adams formed the opinion that what the Grievant said to her was a de facto admission of guilt and an apology for his drug

usage. In deciding this case the Arbitrator had to make determinations of accuracy, completeness, and credibility. In the Arbitrator's opinion, considering that Mr. Parker had never been in any kind of trouble for his entire 17 year career with the BOP, the shock and resulting stress of being told he had tested positive for marijuana coupled with his maturity and sense of duty, his testimony was credible.

At the Hearings and in Management's brief Ms. Blackmon pointed out that in Mr. Person's November 17, 2005 letter to Warden Adams responding to Captain Vereen's November 4th proposed removal letter he wrote: "Mr. Parker knows that drug use in his position is incompatible, and the possibility of rehabilitation is very high for Mr. Parker, because Mr. Parker did not knowingly use illegal drugs." (Management brief page 6 & Joint No. 9) Ms. Blackmon wrote: "The response did not deny usage, but rather stated that Mr. Parker didn't knowingly smoke or eat marijuana and that the possibility of rehabilitation is very high. Further, if there was not usage, there would be no need for rehabilitation." (Management brief page 6) The Arbitrator respectfully disagrees with Management's argument. The record establishes that prior to the Hearings, and during the Hearings, Mr. Parker was unwavering in his claim that he did not, and does not use marijuana and he had no idea how it got in his urine. The Union, in conducting its own investigation and preparing for the arbitration came to believe that the urine specimen that tested positive did not come from Mr. Parker. In the Arbitrator's opinion, on November 4, 2005 the Union had not fully investigated the matter and had not even demanded arbitration. The Union was desperately trying to keep Mr. Parker from being discharged. In the Arbitrator's opinion, in no way whatsoever can what Mr. Person wrote on behalf of Mr. Parker be considered an admission of wrongdoing.

After reviewing the record in its entirety, and in view of all the aforementioned it is the Arbitrator's opinion that the urine specimen collection process for Mr. Parker was so replete with errors, omissions, and falsifications of information that it was fatally flawed and must be invalidated. In effect, the test was meaningless and useless. This case is not about a guilty person whose discipline is rescinded because of what could be loosely described as procedural and processing defects. Rather, it is a case about a dedicated employee who was falsely charged with very serious misconduct because of dereliction of duty, recklessness, and irresponsibility of others, namely Ms. Aponte and those who directly supervise her work.

In the Arbitrator's opinion, Warden Adams is a decent, fair minded, and capable executive and she made a decision based on the information provided to her. The record establishes that information that came to light during the Hearings was not, and in many respects could not have been available to Warden Adams at the time she made the decision to terminate Mr. Parker. At the March 28th Hearing Warden Adams testified that in her less than two years at Petersburg she has been amazed at how often people lie and the extent to which they do not follow written policies and procedures. In the

Arbitrator's opinion this case is a clear example of people lying and not following policies and procedures.

In conclusion, for all of the aforementioned reasons it is the Arbitrator's opinion that just and sufficient cause did not exist to discipline no less discharge to Grievant.

ISSUE NO. 2

IF NOT, WHAT SHALL BE THE REMEDY?

The appropriate remedy is for the discharge to be rescinded and any mention of it to be removed from Mr. Parker's records. Mr. Parker is to be reinstated to his former job classification and returned to work as soon as practical. Mr. Parker is to suffer no loss of seniority or benefits. Mr. Parker is to be compensated for all lost wages including any increases he would have been entitled to from the date he was discharged to the date that he is returned to work. Mr. Parker is to be compensated for all medical expenses he incurred including healthcare insurance premiums that would have been covered by his insurance or paid for by the BOP during the above stated period. The Arbitrator will retain jurisdiction over this matter until the Award is fully implemented.

7.0 Award

The instant grievance is sustained. The discharge is hereby rescinded and any mention of it is to be removed from Mr. Parker's records. Mr. Parker is to be reinstated to his former job classification and returned to work as soon as practical. Mr. Parker is to suffer no loss of seniority or benefits. Mr. Parker is to be compensated for all lost wages including any increases he would have been entitled to from the date he was discharged to the date he is returned to work. Mr. Parker is to be compensated for all medical expenses he incurred including healthcare insurance premiums that would have been covered by his insurance or paid for by the BOP during the above stated period. The Arbitrator will retain jurisdiction over this matter until the Award is fully implemented.

Date

Louis V. Imundo, Jr.
Arbitrator