

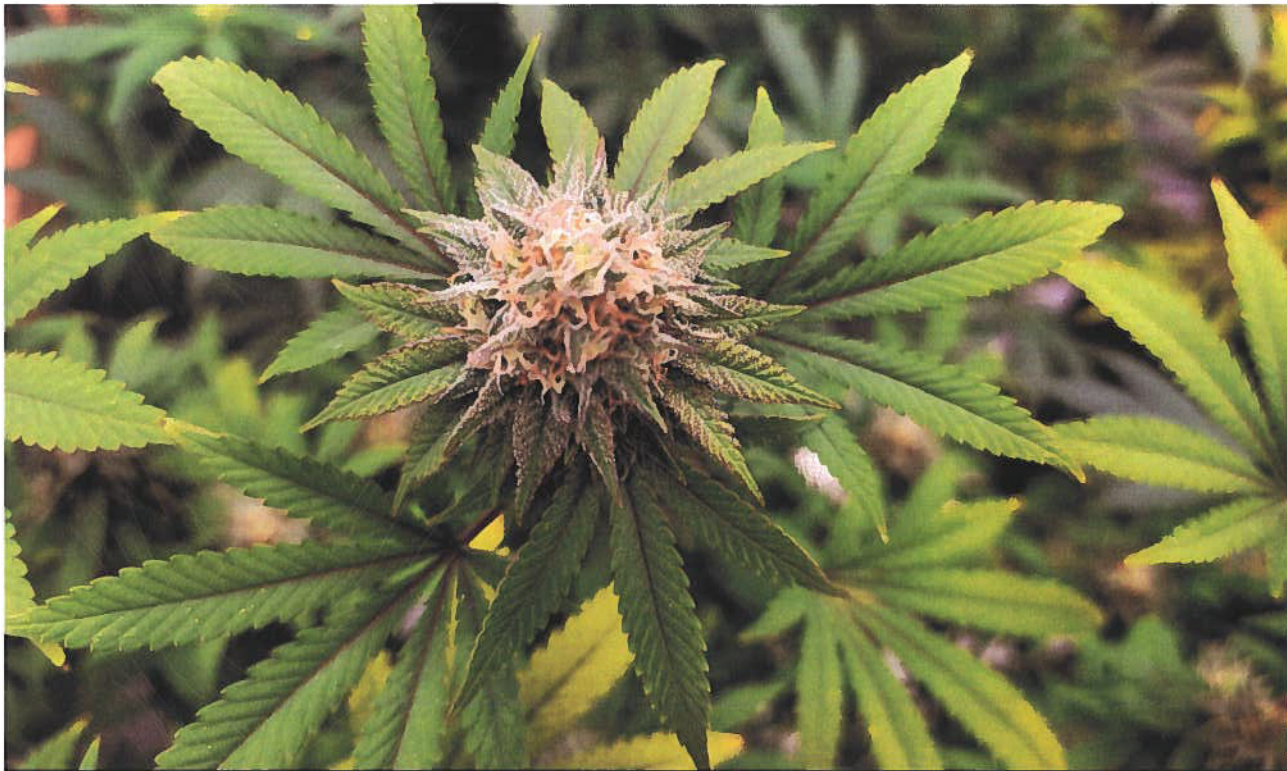
POLITICS

# Alaska Airlines Worker Fired Over Positive Marijuana Test Will Be Reinstated Under Arbitration Panel Decision



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By Ben Adlin 



An Alaska Airlines technician in Washington State who was fired over a positive marijuana test had his termination reversed earlier this month after formally challenging the decision, insisting he did not knowingly use cannabis and was unaware of how THC would have gotten into his system.

above a minimum threshold, and he was immediately fired given the safety-sensitive nature of his lead aircraft maintenance technician (AMT) role.

The employee—referred to in the decision as the “grievant”—didn’t deny the accuracy of the test result itself, but he “denied using marijuana or other drugs, and could not explain the positive drug result other than speculating he may have unwittingly ingested a marijuana edible at a block party/barbecue he had recently attended,” according to facts laid out in an arbitration panel’s decision.

“I don’t smoke weed,” the worker told an Alaska Airlines maintenance director in an investigatory interview. The barbecue “would be to me the only avenue that I would have ingested it,” he said,

At the time he was fired, the worker had been employed at the airline for about 22 years, first being hired at age 24. He had also passed several random drug tests without incident and had no disciplinary record. He’d held a lead role since 2017.

Though the airline industry is federally regulated and marijuana remains illegal in the United States, the worker lived in and attended the block party in Washington State, where cannabis is legal under state law.

While the arbitration board said that fact did not excuse the employee’s failed drug test—or any marijuana consumption by any workers in safety-sensitive roles—the lawyer who successfully argued the case on behalf of the Aircraft Mechanics Fraternal Association told Marijuana Moment that the decision represented a “toehold on realism.”

“It seems now, for the first time, this tectonic shift that we’ve felt underneath our feet is beginning to be reflected in decisions related to a marijuana positive,” said Lee Seham, of Seham, Seham, Meltz and Petersen in New York, “even in the airline industry.”

Alaska Airlines argued in the case that it was undisputed that the worker failed the marijuana test, emphasizing that he and others routinely completed training on the company’s zero-tolerance drug policy. The company said the employee’s claim “that he may have unknowingly and accidentally ingested a marijuana edible at a block party simply” amounted to “a fantastical story” and “bizarre speculation,” according to the arbitration panel’s account of the case.

“He concluded that theory was a ‘guess,’ that he had no specific reason to believe that any of the ‘sweets’ contained marijuana, that he felt no physical effects that would suggest he had consumed marijuana, and that he did nothing at all to determine whether, in fact, any of the ‘sweets’ contained marijuana,” the company said. “A far more reasonable conclusion is that Grievant had THC in his system because he chose to use a marijuana product.”

used a drug.

“If any employee were able to escape the consequences of a positive drug test by simply denying drug use and claiming accidental ingestion (without any corroborating evidence),” it said, “Alaska’s Drug and Alcohol Use Policy would be utterly toothless and the Company would have no meaningful way to deter drug use among safety sensitive employees.”

The arbitration panel, which consisted of one neutral arbitrator and a representative each from both the company and the union, noted that in an earlier situation, Alaska Airlines allowed another maintenance technician to return to work after he self-reported eating a marijuana-infused cookie by mistake.

“The AMT’s wife had been visited by neighbors who had brought over a plate of cookies containing marijuana and, when the neighbors left, she put the cookies in the cupboard and went to bed. Later, when the AMT got home, he found the cookies and ate some for a snack,” the decision says.

In that case, the technician determined through a conversation with his wife that the cookie he ate contained marijuana.

“That AMT’s self-reporting of accidental marijuana ingestion played a significant role in the Company’s decision to allow him to return to work,” the decision says. “But Grievant could not self-report unintentional ingestion of marijuana because he did not know or have reason to suspect that it had even occurred, until he tested positive.”

The earlier incident, it adds, “suggests that it may not be as fantastical or utterly unbelievable or bizarre as the Company argues that someone attending a potluck block party in Washington would contribute unidentified marijuana edibles for other attendees’ consumption.”

Ultimately the panel decided that Alaska Airlines did not have just cause to terminate the employee, as is required under union law. One supervisor, for example, admitted he did not “specifically” discuss with anyone that the worker had denied intentionally using marijuana.” As a consequence, another airline supervisor testified, “we didn’t see any reason to pursue accidental ingestion because that wasn’t offered as a potential reason” for the failed test.

“Just cause is a broad concept meaning fairness,” Seham, the lawyer who represented the fired worker, said. “If someone says, ‘I’m innocent,’ and you don’t even investigate to the slightest degree his arguments, then you have not complied with your obligation to provide them both procedural and substantive due process.”

Alaska Airlines did not respond to Marijuana Moment’s request for comment for this story.

Rather, the result was “determined based on its unique facts, applicable contractual language and just cause standards,” it said.

Seham acknowledged the panel’s disclaimer but nevertheless said the case shows “an indication that people are beginning to scratch their heads and say, ‘Is there some adjustment we ought to be making?’”

“Our position has been that there’s always been a dichotomy between the illegal drug and alcohol” in airline disciplinary matters, he continued. Where alcohol discipline is based on impairment and typically offers employees a path to return to their position, a positive test for THC metabolites doesn’t measure impairment.

He knows there’s not yet an accepted test to screen for marijuana impairment, but he thinks there might nevertheless be ways to adjust the random selection process. “Maybe with marijuana you should only have reasonable cause tests,” he said, “where you see signs of inebriation or intoxication and then you back that up with a test.”

For now, the worker in the current case will be “reinstated subject to execution of a Last Chance Agreement (LCA) comparable to LCAs that have been issued to other Alaska employees who were reinstated after a positive drug test,” the arbitration ruling says.

The evolving legal landscape around cannabis in the United States has complicated drug testing standards, especially in federally regulated sectors, and has encouraged employers and policymakers alike to reconsider when and how people are screened for marijuana.

Earlier this month, the House Rules Committee blocked renewed attempts by a Democratic congressman to end the practice of drug testing federal job applicants for cannabis use.

But in September, however, the House Oversight and Accountability Committee passed a standalone bipartisan bill that would prevent the denial of federal employment or security clearances based on a candidate’s past marijuana use.

While rescheduling of marijuana to Schedule III under the Controlled Substances Act could eventually allow use of medical marijuana by some federal employees—even in states where it’s currently illegal—people who work as federal contractors or grantees would likely not see a policy shift. Under federal law governing public contracts, contractors may not possess or use a “controlled substance,” defined as any drug in Schedules I through V.

Last week the Substance Abuse and Mental Health Services Administration filed federal drug testing program rules changes clarifying that using medical marijuana under a doctor’s recommendation in a legal state is not a valid excuse for a positive THC test.