

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD
Complainant

vs.

WALTER ANTHONY JONES

Respondent

Docket Number 2010-0591
Enforcement Activity No. 3914181

ORDER

Issued: April 11, 2011

By Administrative Law Judge: Honorable Michael J Devine

Appearances:

**LTJG DIANNA M. ROBINSON
Sector Hampton Roads**

For the Coast Guard

WALTER ANTHONY JONES, Pro se

For the Respondent

This Order is issued in accordance with 33 CFR 20.902(c), which authorizes the issuance of an initial oral decision. The United States Coast Guard initiated this administrative action seeking revocation of the Merchant Mariner's Credential issued to Walter A. Jones, the respondent in this case. The Complaint dated December 21, 2010 alleges that Respondent, a holder of Coast Guard issued credentials, violated 46 U.S.C. 7704 and 46 CFR 5.35 (use of or addiction to dangerous drugs) on October 29, 2010 by presenting himself for random drug testing as required by his employer; that his specimen was collected and resulted in a positive test for cocaine metabolites.

On January 7, 2011, Respondent filed an Answer in which he generally denied the allegations. On March 4, 2011 the parties entered a stipulation of fact where it was agreed that Respondent is the holder of MMC 000043922, admitted to the factual allegations regarding participating in a random drug test and that the drug test results were positive for cocaine metabolites.

An evidentiary hearing was held in Norfolk, Virginia on April 7, 2011. The hearing was conducted in accordance with Administrative Procedure Act, amended and codified at 5 U.S.C. 551-59, Coast Guard Administrative Procedure statute codified at 46 U.S.C. 7702, and the procedural regulations codified at 33 CFR Part 20.

At the hearing, LTJG Dianna Robinson, Investigating Officer and James Staton, assistant Investigating Officer, entered an appearance on behalf of the Coast Guard. Respondent also appeared at the hearing on his own behalf (*pro se*).

After an opening statement the Coast Guard presented three (3) Exhibits which were admitted into evidence. Both jurisdictional facts and most of the facts alleged in the Complaint were admitted by the stipulation of fact. Respondent presented (2) two witnesses and his own sworn testimony and also presented six (6) exhibits (A through F) which were admitted into

evidence. Respondent did not offer any other matters into evidence. The witness and exhibit lists are contained in Attachment A.

At the conclusion of the hearing, an oral decision was rendered finding the jurisdictional and factual allegations proved and stating the sanction. The findings of fact and conclusions of law are summarized as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Walter Anthony Jones and the subject matter of this proceeding is within the jurisdiction of the Coast Guard vested under the authority of 46 U.S.C. Chapter 77.
2. On October 29, 2010, Respondent submitted to a random drug test. The Respondent engaged in official matters relating to his Merchant Mariner Credentials by reporting for drug testing.
3. Respondent admitted he is the holder of MMC 000043922. Therefore since he was the holder of a MMC and performing activities under the authority of his credentials Jurisdiction for this suspension and revocation proceeding exists under 46 CFR 5.57 and was not disputed at the hearing.
4. Department of Transportation procedures were followed by the collector who obtained a specimen from Respondent on October 29, 2010.
5. Respondent's original specimen collected on October 29, 2010 was forwarded for testing and resulted in a positive test result for cocaine metabolites.
6. The MRO reviewed the results with Respondent and determined no valid excuse or medical explanation for the positive test result.
7. As provided in the stipulation of fact entered into by the parties, the positive test result was verified in accordance with 49 CFR Part 40.

8. Respondent testified that he does not use dangerous drugs and provided character evidence through documents and witnesses.
9. The Coast Guard presented a prima facie case of use of a dangerous drug in this matter. In keeping with Appeal Decision 2657 (BARNETT) (2006) a prima facie case of dangerous drug use based on urinalysis test results is presented when (1) a party is tested for use of a dangerous drug; (2) the test results show a positive result for a dangerous drug; and (3) the drug test is conducted in accordance with Department of Transportation procedures in 49 CFR Part 40.
10. There is no valid medical explanation for the positive test result and Respondent failed to provide sufficient evidence to rebut the presumption that he is a user of dangerous drugs that arises under 46 CFR 16.201.
11. Based on the record as a whole, the Coast Guard has proved by a preponderance of reliable and credible evidence that Respondent is a user of dangerous drugs under 46 U.S.C. 7704(c) and the underlying regulations.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED THAT the Merchant Mariner's Credential and all other Coast Guard licenses, certificates and documents issued to Respondent Walter Anthony Jones are **REVOKED**. Respondent's Merchant Mariner credentials have been surrendered to the U.S. Coast Guard Sector Hampton Roads Office, 200 Granby Street, Norfolk, Virginia 23510 and shall be processed appropriately. Respondent must immediately surrender any other Coast Guard issued credentials to the Coast Guard, Sector Hampton Roads, 200 Granby Street, Suite

700, Norfolk, VA 23510. If you knowingly continue to use your credentials, you may be subject to criminal prosecution.

PLEASE TAKE NOTICE that, within three (3) years or less, Mr. Jones may file a motion to reopen this matter and seek modification of the order of revocation upon a showing that the order of revocation is no longer valid and the issuance of a new license, certificate, or document is compatible with the requirement of good discipline and safety at sea. The revocation order may be modified upon a showing that the individual:

- (1) Has successfully completed a bona fide drug abuse rehabilitation program;
- (2) Has demonstrated complete non-association with dangerous drugs for a minimum of one year following completion of the drug rehabilitation program; and
- (3) Is actively participating in a bona fide drug abuse monitoring program.

See generally 33 CFR 20.904; 46 CFR 5.901. The drug abuse monitoring program must incorporate random, unannounced testing during that year. Appeal Decision 2535 (SWEENEY).

PLEASE TAKE FURTHER NOTICE that Service of this Order on you serves as notice of your right to appeal as set forth in 33 C.F.R. § 20.1001 -1003. (Attachment B). A copy of the transcript will be provided to Respondent if requested.

Michael J Devine
US Coast Guard Administrative Law Judge

Date:

ATTACHMENT A

WITNESS AND EXHIBIT LIST

Coast Guard Witnesses

1. Dr. Byron Dean, MRO

Coast Guard Exhibits

1. Federal Chain of Custody form from 10/29/2010 showing positive results and signed by MRO Byron Dean on 11/3/2010.
2. MRO report dated 11/3/2010
3. Medtox Laboratories test results for Respondent's specimen

Respondent Witnesses

1. Lou Waller (Dann Ocean Towing)
2. Gaile McCullough
3. Walter A. Jones, Respondent

Respondent Exhibits

- A. Letter from Capt. Mike Bradley, dated February 21, 2011
- B. Letter from Gaile McIntosh McCulloch dated March 16, 2011
- C. Letter from Mike McCullough, dated March 11, 2011
- D. Letter from Rick Power dated 2/25/2011
- E. Letter from Clint J. Brady dated 2/26/11
- F. Letter from Douglas Reed dated March 7, 2011

ATTACHMENT B

NOTICE OF APPEAL RIGHTS

33 CFR 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

33 CFR 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
 - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
 - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 CFR 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
 - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --
 - (i) Basis for the appeal;
 - (j) Reasons supporting the appeal; and
 - (k) Relief requested in the appeal.

- (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
 - (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
 - (c) No party may file more than one appellate brief or reply brief, unless --
 - (1) The party has petitioned the Commandant in writing; and
 - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
 - (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

33 CFR 20.1004 Decisions on appeal.

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.