

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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COMPLAINANT,

vs.

Merchant Mariner's Document
No. [REDACTED]

Issued to:
Robin D. Johnson
Respondent

Docket No. 00-0782
PA No. 00002045

Before: Archie R. Boggs
Administrative Law Judge

PRELIMINARY STATEMENT

This proceeding is brought pursuant to the authority contained in 5 USC 551-559; 46 USC Chapter 77; 46 CFR Parts 5 and 16; and 33 CFR Parts 20 and 95.

Robin D. Johnson was served with a Complaint dated 20 November 2000 which was issued by a U.S. Coast Guard Investigating Officer, LT Scott Johnson of the Marine Safety Office, New Orleans, LA.

The Complaints alleged statutory authority as 46 USC 7704 (c) Use of or Addiction to the Use of Dangerous Drugs, and regulatory authority as 46 CFR 5.35.

The factual allegations read as follows:

"The Coast Guard alleges that:

1. On February 10, 1999 Respondent took a random drug test.
2. Respondent signed a Federal Drug Testing Custody and Control Form.

3. The urine specimen was collected and analyzed by Premier Analytical using procedures approved by the Department of Transportation.
4. That specimen subsequently tested positive for cocaine metabolite.

LCDR Andrew Norris and LT Scott L. Johnson presented the case for the Coast Guard. The Respondent, Robin D. Johnson, although advised of his right to be represented by professional counsel, acted as his own attorney.

In his answer, which was filed on 8 December 2000, Mr. Johnson denied the jurisdictional and factual allegations. At his request a hearing was held at the Marine Safety Office, 1615 Poydras Street, New Orleans on 16 May 2001.

In support of the Complaint the Investigating Officer called three witnesses; (1) Christina Brugman, field supervisor for Secon, 260 La Rue France, Lafayette, LA, which company collected a urine specimen from Mr. Johnson on 10 February 1999 for a random drug test on board the M/V Miss Jean; (2) Steve Edward Harris, scientific director for Premier Analytical, the laboratory which tested Mr. Johnson's specimen; and (3) Brian N. Heinen, who served as Medical Review Officer for Mr. Johnson's specimen.

The Investigating Officer also introduced three exhibits.

I.O. Exhibit No. 1 – a copy of a completed Federal Drug Testing Custody and Control Form, copy No. 4, for a specimen with ID No. [REDACTED] which was Mr. Johnson's specimen collected on 10 February 1999.

I.O. Exhibit No. 2 – another completed copy of the Drug Testing Custody and Control Form, copy No. 2, 2nd original, for the same specimen.

I.O. Exhibit No. 3 – a laboratory report from ATN (parent company of Premier Analytical), Channelview, Texas, which indicates that Mr.

Johnson's specimen with an ID No [REDACTED] tested positive for cocaine.

Mr. Johnson did not call any witnesses or produce any exhibits.

At the conclusion of the hearing the Administrative Law Judge took the matter under advisement. It is now concluded that the Complaint is proved by reliable, substantial, and probative evidence.

FINDINGS OF FACT

1. On 10 February 1999 Mr. Johnson furnished a urine specimen for a random drug test on board the M/V Miss Jean.
2. Mr. Jeff Ronkartz collected the specimen for Premier Analytical, a urine collection company for Diamond Offshore Drilling, Inc.
3. Mr. Ronkartz is no longer employed by the collection company and his whereabouts are unknown. Mr. Drugman, who is field supervisor for the company, witnessed the collection from Mr. Johnson on board the Miss Jean on 10 February 1999. The collection was properly done in accord with the regulations.
4. The specimen was sent to Premier Analytical and it tested positive for cocaine metabolite at that laboratory.
5. Dr. Heinen, who is the Medical Review Officer, conducted a telephone conversation with Mr. Johnson concerning the positive result.
6. Mr. Johnson did not offer any explanation to Dr. Heinen for the presence of cocaine in his specimen.
7. Dr. Heinen documented his interview with Mr. Johnson, and he concluded that Mr. Johnson's urine specimen tested positive for cocaine, and he so notified the company.

ULTIMATE FINDINGS

The evidence shows that the specimen which Mr. Johnson gave on 10 February 1999 tested positive for cocaine metabolite and did, indeed, contain cocaine metabolite. The testing was in accord with the Coast Guard regulations for chemical testing of mariners as set forth in 46 CFR Part 16.

CONCLUSIONS OF LAW

The Respondent and the subject matter of this hearing are within the jurisdiction vested in the U.S. Coast Guard under the provisions of 46 USC, Section 7704.

Complaint, proved.

OPINION

The regulations which empower the U.S. Coast Guard to conduct chemical testing of mariners are set forth in 46 CFR Part 16. Those regulations list five different categories for testing as follows.

1. Pre-employment
2. Periodic
3. Random
4. Serious marine incident
5. Reasonable cause tested

Mr. Johnson was required to take a random test while serving on board Miss Jean.

Mr. Johnson did not offer any defense. He contended that he requested the Medical Review Officer to order a test of a new specimen of his urine. He explained that

he did not want a retest of the original specimen because that specimen tested positive. That request was, of course, not granted by the Medical Review Officer.

The Complaint is proved.

The law governing Coast Guard suspension and revocation proceedings involving drugs is well settled. 46 USC 7704© provides:

"If it is shown that a holder has been a user of, or addicted to, a dangerous drug, the license, certificate of registry, or merchant mariner's document shall be revoked unless the holder provides satisfactory proof that the holder is cured."

Absent proof of cure by a Respondent who has been found to be a user of, or addicted to, a dangerous drug, the "Administrative Law Judge is without discretion to issue an order less than revocation." Appeal Decision 2535 (Sweeney).

ORDER

That merchant mariner's document No. [REDACTED], and all other valid licenses, documents, and certificates of service issued to you by the United States Coast Guard, or any predecessor authority, now held by you, be and the same are hereby REVOKED.

Merchant mariner's document no. [REDACTED] is in possession of the Coast Guard.

The rules governing appeals are attached hereto.

Archie R. Boggs
ARCHIE R. BOGGS
ADMINISTRATIVE LAW JUDGE

Dated: 30 May 2001
New Orleans, Louisiana

Certificate of Service

I hereby certify that I have this day served the foregoing document(s) upon the following parties and limited participants (or designated representatives) in this proceeding at the address indicated by Facsimile:

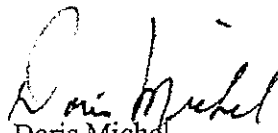
LT Andrew Norris
Marine Safety Office New Orleans
1615 Poydras Street, Suite 737
New Orleans, LA 70112
(FAX#) 504-589-

I hereby certify that I have this day served the foregoing document(s) upon the following parties and limited participants (or designated representatives) in this proceeding at the address indicated by First Class Mail:

Robin D. Johnson


I hereby certify that I have this day forwarded the attached document by Federal express to the following person:

ALJ Docketing Center
United States Coast Guard
40 South Gay Street
Baltimore, MD 21202-4022


Doris Michel
Legal Assistant

Dated 30 May 2001
New Orleans, Louisiana