

**UNITED STATES OF AMERICA
UNITED STATES DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD**

UNITED STATES COAST GUARD

Complainant,

vs.

TEMAKA ROJANN RUNNER

Respondent

**Docket Number 2020-0166
Enforcement Activity No. 5779354**

**ORDER MEMORIALIZING BENCH DECISION
Issued: October 22, 2020**

By Administrative Law Judge: Honorable Michael J. Devine

Appearances:

**LT ORLANDO HERNANDEZ, JR.
Sector Virginia**

And

**JENNIFER A. MEHAFFEY, ESQ.
Suspension & Revocation National Center of Expertise
For the Coast Guard**

**TEMAKA ROJANN RUNNER, *Pro Se*
For the Respondent**

This Order is issued in accordance with 33 C.F.R. § 20.902(c), which authorizes the issuance of an initial decision from the bench (orally) followed by a written order. The United States Coast Guard initiated this administrative action seeking revocation of the Merchant Mariner Credential (MMC) issued to Temaka Rojann Runner, the respondent in this case. The Complaint, dated April 19, 2020, alleges that Respondent is the holder of a Coast Guard issued MMC and that, on or about March 3, 2020, she was a user of or addicted to dangerous drugs, in violation of 46 U.S.C. § 7704(b) and 46 C.F.R. § 5.35. Specifically, on March 3, 2020, Respondent presented herself for pre-employment drug testing, her specimen was collected, and that specimen tested positive for cocaine metabolites.

On May 13, 2020, Respondent filed an Answer in which she generally denied the allegations. An evidentiary hearing was held by remote video using Zoom for Government on October 21, 2020. The hearing was conducted in accordance with the Administrative Procedure Act, amended and codified at 5 U.S.C. §§ 551-59, the Coast Guard Administrative Procedure statute codified at 46 U.S.C. § 7702, and the procedural regulations codified at 33 C.F.R. Part 20.

At the hearing, LT Orlando Hernandez, Jr., and Jennifer Mehaffey, Esq., appeared on behalf of the Coast Guard. Respondent appeared on her own behalf (*pro se*). After an opening statement, the Coast Guard presented four (4) witnesses and twelve (12) exhibits, all of which were admitted into evidence. Respondent presented her MMC, No. 000510176, issued on April 25, 2019 with an expiration date of April 25, 2024. Respondent cross-examined witnesses and presented her own sworn testimony. 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 Temaka Rojann Runner, and the subject matter of this proceeding, are within the jurisdiction of the Coast Guard vested under the authority of 46 U.S.C. Chapter 77.
2. On March 3, 2020, Respondent submitted to a pre-employment drug test. The Respondent engaged in official matters relating to her Merchant Mariner Credential (MMC) by reporting for drug testing.
3. Respondent is the holder of MMC No. 000510176. Therefore, since she was the holder of an MMC and was performing activities under the authority of her credentials, jurisdiction for this suspension and revocation proceeding exists under 46 C.F.R. § 5.57.
4. On March 3, 2020, Respondent signed a Federal Drug Testing Custody and Control Form for providing urine specimen ID No. 9725811.
5. Respondent's specimen was collected on March 3, 2020 by collector Lanisha Benton and forwarded for testing to Quest Diagnostics Incorporated, Norristown, PA (Quest).
6. Department of Transportation (DOT) drug testing procedures codified in 49 C.F.R. Part 40 were followed by the collector when she obtained the specimen from Respondent on March 3, 2020.
7. Respondent's specimen collected on March 3, 2020 was received by Quest, a certified SAMSHA laboratory.

8. On March 5, 2020, urine specimen ID No. 9725811 tested positive for cocaine metabolites as reported by Quest.
9. The MRO reviewed the results, and after not being able to contact Respondent determined no valid excuse or medical explanation for the positive test result.
10. The positive test result was verified in accordance with 49 C.F.R. Part 40.
11. Respondent testified that she has no explanation for the positive result, that she is not a threat, and she requested to keep her MMC.
12. The Coast Guard presented a prima facie case of use of a dangerous drug in this matter. In keeping with Appeal Decision 2584 (SHAKESPEARE) (1997) and its progeny, a prima facie case of dangerous drug use based on urinalysis test results is presented when (1) Respondent was tested for use of a dangerous drug; (2) the test results show a positive result for a dangerous drug; and (3) the drug test was conducted in accordance with 46 C.F.R. Part 16.
13. There is no valid medical explanation for the positive test result and Respondent failed to provide sufficient evidence to rebut the presumption that she is a user of dangerous drugs that arises under 46 C.F.R. § 16.201.
14. 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(b) and the underlying regulations.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED, the Merchant Mariner Credential (MMC) and all other Coast Guard licenses, certificates, and documents issued to Respondent Temaka Rojann Runner are **REVOKED**. Respondent's MMC shall be surrendered to U.S. Coast Guard Sector Virginia, 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. If Respondent knowingly continues to use her credentials, she may be subject to criminal prosecution.

PLEASE TAKE NOTICE: within three (3) years or less, Respondent 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 C.F.R. § 20.904; 46 C.F.R. § 5.901. The drug abuse monitoring program must incorporate random, unannounced testing during that year. Appeal Decision 2535 (SWEENEY).

PLEASE TAKE FURTHER NOTICE: 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. The time period to file a notice of appeal is 30 days or less after issuance of the decision. 33 C.F.R. § 20.1001.

Done and dated October 22, 2020
Baltimore, Maryland

<p style="text-align: center;">/s/</p> <hr/> <p>Michael J. Devine Administrative Law Judge United States Coast Guard</p> <p style="text-align: right;">October 22, 2020</p> <p>Date:</p>

ATTACHMENT A

Coast Guard's Witnesses

1. Dr. Eric Schaub
2. Ms. Lanisha Benton
3. Mr. John D'Asaro
4. Dr. Paul Cheng

Coast Guard's Exhibits

- | | |
|----------------|--|
| CG Exhibit 1: | Copy of Respondent's MMC (1 page) |
| CG Exhibit 2: | Seafarers International Union Drug Testing Policy (3 pages) |
| CG Exhibit 3: | I & O Medical Centers Patient Face Sheet and copy of Respondent's Driver's License (2 pages) |
| CG Exhibit 4: | Professional Collector Certification issued to Lanisha Benton (1 page) |
| CG Exhibit 5: | Federal Drug Testing Custody and Control Form for 03/03/2020 T. Runner Collection (1 page) |
| CG Exhibit 6: | Federal Register, Vol. 85, No. 41, p. 12310-12312, Current List of HHS-Certified Laboratories (3 pages) |
| CG Exhibit 7: | Federal Drug Testing Custody and Control Form - Test Facility Copy for 03/03/2020 T. Runner Collection (1 page) |
| CG Exhibit 8: | Quest Diagnostics Laboratory Litigation Package for Specimen No. 9725811 Collected on 03/03/2020 (74 pages) |
| CG Exhibit 9: | Medical Review Officer Certification issued to Paul P. Cheng, MD, MPH (1 page) |
| CG Exhibit 10: | MRO Verification Interview Worksheet (2 pages) |
| CG Exhibit 11: | Federal Drug Testing Custody and Control Form - Medical Review Officer Copy for 03/03/2020 T. Runner Collection (1 page) |
| CG Exhibit 12: | MRO Report issued by Dr. Paul Cheng (1 page) |

Respondent's Witness

1. Temaka Rojann Runner

Respondent's Exhibits

None

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.