

**UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD**

**UNITED STATES OF AMERICA,
UNITED STATES COAST GUARD**

vs.

**Lionel J. TEMPLET, JR.
Respondent**

**THOMAS E. MCELLIGOTT
UNITED STATES ADMINISTRATIVE LAW JUDGE**

)
) **DECISION & ORDER**
)
)
) **Docket Number: CG S&R 00-0035**
)
)
) **PA NUMBER: PA00000082**
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I

PRELIMINARY STATEMENT

The Notice of Assignment of Administrative Law Judge Thomas E. McElligott to this case was first received by the Judge on 13 January 2000. A prehearing conference required in these matters was held on the same date, 13 January 2000, at approximately 1:30 p.m. to 2 p.m., at which were present the Administrative Law Judge, Thomas E. McElligott; the Respondent, Lionel J. Templet, Jr.; the Senior Investigating Officer, Lieutenant Commander Robert W. Foster; and the Investigating Officer, Lieutenant Juliet Hudson; both stationed at the Marine Safety Office Mobile at 150 North Royal Street, Mobile, Alabama 36652.

The Respondent had been previously served on 11 January 2000 with a "Complaint and Affidavit" involving temporary suspension and seizure of his license by the Investigating Officers (IOs) requiring an "expedited hearing" which was held in Mobile, Alabama on 03 February 2000 with the agreement of all parties, with Judge Thomas E. McElligott presiding.

The "Complaint" had jurisdictional and factual allegations. Respondent "admitted" to ~~allegations one, two, and three during the prehearing conference. The Coast Guard alleged, and~~
Respondent admitted, that Respondent's address is as follows: 26129 Highway 40, Bush,

Louisiana. They alleged a zip code of 70058; the Respondent corrected that to 70431. The Respondent's telephone number is (504) 886-9970.

Respondent admitted that he holds the following Coast Guard issued credentials: a U.S. Coast Guard License number 853725. This is the sixth license issued to Respondent by the Coast Guard.

Respondent admitted that he performs a safety sensitive function when acting under the authority of that license, when serving as Master, Captain or relief Captain aboard such vessels as the towing vessel AMY ANN, as required by law or regulation.

Respondent denied the fourth allegation, which alleged that there is probable cause to believe that the Respondent has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document. He also denied the statement that there is probable cause to believe that the Respondent within the last three (3) years has been convicted of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (Title 23 U.S. Code Section 401 note).

The following factual allegations were also admitted by the Respondent during the prehearing conference: (1) on 16 July 1997, the Respondent violated Title 46 U.S. Code 7703(3) by being convicted in Covington, Louisiana of Driving Under the Influence (DUI) of alcohol and (2) on 22 July 1998, the Respondent violated Title 46 U.S. Code 7702(d) by not disclosing on his license renewal application a conviction on 16 July 1997 for a third (3rd) Driving Under the Influence of alcohol (DUI) violation in a state court in or near Covington, Louisiana. Covington, Louisiana is near Respondent's residence in Bush, Louisiana.

Although the Respondent admitted this second factual allegation with regard to the license renewal application, he stated during the prehearing conference that although he did sign the license renewal application, he claimed that his wife had filled it out for him. However, the Respondent changed his position at the actual hearing held on 03 February 2000, when he

admitted that he not only signed the document on 22 July 1998 on the reverse or the second page of the document in Section VII, but that all the six initials for answers in Section VI were done by Respondent. Section VI is entitled "Narcotics, DWI/DUI, and Convictions Record," and contains six questions answered by Respondent.

In Section VI of the License Renewal Application form (now IO's Exhibit 4), Respondent was asked six (6) questions. He was asked then to answer each of the six questions by yes or no and to put his initials in the yes or the no columns depending on what his answer was, that is to show whether it was yes or no. The instructions further state: "INDICATE ANSWER BY PLACING YOUR INITIALS IN PROPER COLUMN." Question two reads: "Have you ever been a user of/or addicted to a dangerous drug? (Including marijuana) (If yes, attach statement.)" The Respondent initialed yes, but did not attach a statement. At least none is attached to Exhibit 4, the License Renewal Application document. This is the form entitled "Application for License as Officer, Staff Officer, Operator and Merchant Mariner's Document." Respondent was using it as a License Renewal Application form. This answer was correct, but Respondent failed to attach a statement.

Respondent was next asked the third question: "Have you ever been convicted by any court – including military court – for an offense other than a minor traffic violation? (Conviction means found guilty by judgment or by plea and includes cases of deferred adjudication (*nolo contendere*, adjudication withheld, etc.) or where the court required you to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court finding. Expunged convictions must be reported unless the expungement was based upon a showing that the court's earlier conviction was in error.) (If yes, attach statement.)" (Emphasis supplied.) Respondent again initialed the no column with the initials "LJT" for Lionel Joseph Temple. This answer to this question was and is untrue and false.

He also answered in the no column to the fourth question under Section VI which states: “Have you ever been convicted of a traffic violation arising in connection with a fatal traffic accident, reckless driving or racing on the highway or operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance. (If yes, attach statement.)” (Emphasis supplied.) The Respondent initialed this answer again, “LJT,” in this no column. Respondent admitted at the hearing that these were his initials placed by him six times, as well as his signature on this document, the License Renewal Application (IO’s Exhibit 4). This was a second false and untrue answer by Respondent on this application, which Respondent initialed in six places and signed it.

The Respondent’s credibility is drawn into serious question when the Respondent stated at the prehearing conference that it was his wife who completed the document for him and he merely signed it. But when his wife was sitting next to him at the hearing, he did not state that she did the completing or initialing. Respondent admitted at the hearing, where he testified under oath, that all of the six initials to the six questions under Section VI, regarding “narcotics, DWI/DUI,” were initialed by him; and also signed by him in the next section, Section VII, entitled “Certification and Oath – Important – Read Before Signing.” Just above the Respondent’s signature in Section VII on the said application (IO’s Exhibit 4) it states in two paragraphs. The first paragraph:

“Whoever, in any matter within the jurisdiction of any department or agency of the U.S. knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than 5 years, or both (18 USC 1001).”

Immediately below that it states on the said application:

“I CERTIFY that the information on this application is true and correct and that I have not submitted an application of any type to the Officer in Charge, Marine Inspection in any port ~~and been rejected or denied within 12 months of this application.”~~

It was signed by Respondent, Lionel J. Templet, on 22 July 1998 and by a “Verifying Official” that accepted this License Renewal Application from Respondent on 22 July 1998.

As a result of Respondent’s six initials and filing this signed false or misleading application, he was issued that same day, the sixth Coast Guard License, which is the subject matter of this hearing.

The application was initialed six times, signed and filed by Respondent for a renewal of Respondent’s U.S. Coast Guard License under his name, Lionel Joseph Templet. It contained identifying data such as his address as 26129 Highway 40, Bush, Louisiana 70431, Social Security Number (SSN) 438-98-0755, with date of birth 04-20-56. Respondent’s place of birth is New Orleans, Louisiana. He describes himself in IO’s Exhibit 4 as having brown hair, hazel eyes, weight 180 pounds, 5’9” in height, and with a white complexion on said document.

Investigating Officer’s (IO’s) Exhibit 4 is a certified true copy of this License Renewal Application form signed by the Respondent and the Coast Guard on 22 July 1998 when he was reissued a replacement sixth license on the basis of this application containing false and misleading information, as initialed, signed and filed by Respondent with the U.S. Coast Guard, Regional Examination Center.

This adversary hearing was initiated by the U.S. Coast Guard while performing its missions to protect lives and properties at sea, enforce national laws and treaties, preserve marine natural resources, or promote national security interests. It was brought pursuant to the legal authority contained in 46 U.S. Code Chapter 77, including 46 U.S. Code 7703; the U.S. Administrative Procedure Act, 5 U.S. Code 551 through 559; 46 CFR Parts 4 and 5; 33 CFR Part 95; and Title 18 U.S. Code 1001.

Respondent was duly and properly advised of his rights when the Investigating Officer served Respondent with the “Complaint” on 11 January 2000. Respondent was also advised of his rights at the prehearing conference and at the commencement of the hearing by the Judge.

After the Respondent had been three times advised of his rights, including his right to an attorney or counsel by the Investigating Officers and by the Judge, the Respondent chose to be represented pro se. Respondent had his adult wife sitting next to him throughout the hearing, identified on the record and on his said application, Exhibit 4, as Carmen Templet of the same address.

The Investigating Officers (IOs) called two witnesses to testify who were sworn under oath. The IO's first witness was Ms. Pandora Martin, custodian of records and alcohol and drug counselor at Northlake Addictive Disorders Clinic, 19404 North Tenth Street, Covington, Louisiana 70433, for the Louisiana State Department of Health and Hospitals (IO's Exhibit 5). The IO's second witness was Captain Kenneth Pichoff, a Master who relieved the Respondent after the Respondent grounded, about 100 feet out of the channel, one or two of the barges he was pushing ahead side by side by the M/V MARY ANN on 09 January 2000, in the vicinity of Beacon 82, Mobile Bay, Alabama. One barge was loaded with cargo and the second barge was empty. The third witness to testify in the case was the Respondent. He chose to testify in his own behalf.

In addition to the three testifying witnesses, the Judge admitted into evidence eleven (11) exhibits, nine (9) exhibits of those offered by the Investigating Officers. The Judge admitted into evidence all of the exhibits offered by the Respondent, namely two (2). Respondent's Exhibit A is a Bogalusa Counseling and Rehabilitation Center report dated 02 February 2000 signed by Counselor Charlette W. Fornea, M.Ed., LPC. Respondent's Exhibit B is a report from L&L Marine Transportation, Inc. of Harvey, Louisiana dated 02 February 2000 stating in effect that "as soon as he has cleared up his problems with the Coast Guard that they would be willing to rehire him as a Captain." (See List of Witnesses and Exhibits attached as Appendix A.)

II

FINDINGS OF FACT BASED UPON THE ENTIRE RECORD CONSIDERED AS A WHOLE

1. At all relevant times herein mentioned, it was proven that the captioned Respondent, Lionel Joseph Templet, is or was the holder of an identifying U.S. Coast Guard Merchant Mariner's License number 853725. This License was issued to him on 22 July 1998 by the U.S. Coast Guard Regional Examination Center of the Marine Safety Office. This is the sixth license issued to the Respondent by the Coast Guard. Respondent is very familiar with these said applications. This Respondent has filled out or completed six Coast Guard applications for licenses, including one (1) application for an original license and five (5) applications for reissued licenses. The sixth application being the one he filled out, initialed, signed and completed on 22 July 1998 (now IO's Exhibit 4). U.S. Coast Guard Mariner's Licenses usually continue or last for a term of five years and then expire if not renewed. Each renewed or replacement license has its own unique identifying number. After Respondent filed this false and misleading said application (IO's Exhibit 4) on 22 July 1998, he was issued this said sixth License on the same date, 22 July 1998. It was issued to Respondent in reliance on the truthfulness and correctness of his answers on this said sixth application initialed, signed and filed by Respondent.

2. It has been held in Commandant's Appeal Decisions that the Respondent was working under the authority of his said license by engaging in official matters regarding that license by renewing and filing his signed and initialed application for a renewal or replacement license on 22 July 1998.

3. Prior to filing his sixth application for the sixth license, the captioned Respondent, Mr. Templet, was convicted on 16 July 1997 of Driving While Intoxicated (DWI) on 28 May 1997 in the 22nd Judicial District Court of Louisiana. This was his third similar offense.

Respondent had pleaded guilty to Driving While Intoxicated (DWI) for a second time on 22 July

1996 and for the first time on 08 December 1993. During at least two of these three convictions for DWI (Driving While Intoxicated) or DUI (Driving Under the Influence of Alcohol), Respondent Templet was represented by an attorney-at-law.

4. On the date the sixth license was issued to him, on 22 July 1998, Respondent initialed, signed and filed the document entitled as an "Application for License as Officer, Staff Officer, Operator, and Merchant Mariner's Document." This document is now in evidence as IO's Exhibit 4. It is also referred to as the License Renewal Application signed and initialed by Respondent.

5. In Section VI of this said License Renewal Application, Respondent initialed the no block for the following questions: "Have you ever been convicted by any court – including military court – for an offense other than a minor traffic violation?" Respondent answered no.

6. He was also asked, "Have you ever been convicted of a traffic violation arising in connection with a fatal traffic accident, reckless driving or racing on the highway or operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance." Respondent again initialed no in the two columns. There were two columns, one for yes and one for no, and he initialed no for both answers. Two of his six initialed answers were not true and correct.

7. Then in Section VII, Mr. Templet signed this application by the block that states, "I CERTIFY that the information on this application is true and correct."

8. IO's Exhibit 1 is a certified true copy of the State of Louisiana, Clerk of the Court records regarding "State of Louisiana vs. #273524, Lionel J. Templet." It includes a Bill of Information, a Uniform Commitment Document, court minutes from the plea taken on July 16, 1997, and the State court record of minutes from the Probation Revocation Hearing on 5 December 1997. These documents prove that the Respondent pleaded guilty to his third offense of driving while intoxicated on 16 July 1997. This was his third similar offense of this type, as

proved by these Louisiana State Court records of conviction. Respondent resides in Bush, Louisiana, near these courts. What is called a county in most states is officially referred to as a "parish" in the State of Louisiana.

9. IO's Exhibit 2 is also a certified true copy of State of Louisiana, Clerk of the Court records. These documents prove that Respondent, Lionel J. Templet, Jr., was convicted of "Driving While Intoxicated" (DWI) on 25 July 1996, the second such incident and conviction.

10. IO's Exhibit 3 is a certified true copy of the State of Louisiana, Clerk of the Court records. These documents prove that the captioned Respondent, Lionel J. Templet, was convicted of "Driving While Intoxicated" (DWI) on 8 December 1993. This was his first of the similar three offenses. All three state court convictions occurred before Respondent initialed and signed his License Renewal Application on 22 July 1998. Respondent should have admitted these three DWI or DUI convictions on this application.

11. As shown by IO's Exhibit 4, the certified true copy of the document entitled "Application for License as Officer, Staff Officer, Operator, and Merchant Mariner's Document," Respondent initialed and signed it on 22 July 1998. It stated on this application at that time it was signed by Respondent, Lionel J. Templet, that Respondent was certifying that he had never been convicted of a traffic violation arising in connection with operating a motor vehicle while under the influence of alcohol. This is a false and misleading renewal application.

12. IO's Exhibit 5 is a "Consent to Release Information, Waiver of Confidentiality Form." This consent form states that this form allows release of "any information in client charts, including psychosocial HX, medical, urine drug results, participation, and TX outcome" to be given to a Coast Guard representative or Judge, or Federal Court. It is signed by Respondent, Lionel J. Templet, and Pandora Martin on 24 January 2000.

III

ULTIMATE FINDINGS

It was proved on 03 February 2000 by the Coast Guard by a preponderance of the reliable, probative and substantial evidence that the captioned Respondent did commit the acts alleged in the "Complaint" served upon Respondent on 11 January 2000.

IV

CONCLUSIONS OF LAW

1. The U.S. Coast Guard and the U.S. Administrative Law Judge have jurisdiction over the subject matter of this hearing under the provisions of 46 U.S. Code Chapter 77, including 46 U.S. Code 7703; the U.S. Administrative Procedure Act, 5 U.S. Code 551 through 559; the U.S. Coast Guard's 46 CFR Parts 4 and 5; 33 CFR Part 95; and 33 CFR Part 20.

2. All of the allegations in the "Complaint" have been found proved by the Investigating Officers by a preponderance of the reliable, probative and substantial evidence.

V

OPINION

The above Preliminary Statement, Findings and Conclusions are incorporated herein as if set forth in full.

A relevant statute herein is 46 U.S. Code Section 7702. It is entitled Administrative Procedure. Section 7702 states in relevant part is Section d(1) that

"(d)(1) The Secretary (of the U.S. Department of Transportation and the U.S. Coast Guard) may temporarily, for not more than 45 days, suspend and take possession of the license, certificate of registry or merchant mariner's document held by an individual if, when acting under the authority of that license, certificate, or document –

"(A) that individual performs a safety-sensitive function on a vessel, as determined by the Secretary; and

"(B) there is probable cause to believe that the individual –

“(i) has performed the safety-sensitive function in violation of law or Federal regulation regarding use of alcohol or a dangerous drug;

“(ii) has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document; or,

“(iii) within the 3-year period preceding the initiation of a suspension proceeding, has been convicted of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982.” (Title 23 U.S.C. 401 note)

Paragraph 2 of the said statute 46 U.S. Code 7702 states:

“(2) If a license, certificate, or document is temporarily suspended under this section, an expedited hearing under subsection (a) of this section shall be held within 30 days after the temporary suspension.”

The footnote under the statute states that the Driver Register Act of 1982, as amended, is set out as a note under section 401 of Title 23 of the U.S. Code, and entitled “Highways.”

Another relevant statute is 46 U.S. Code 7703. It is entitled Basis for Suspension or Revocation. It states in relevant part that

“A license, certificate of registry, or merchant mariner’s document issued by the Secretary (of the U.S. Department of Transportation and the U.S. Coast Guard) may be suspended or revoked if the holder -...

“(3) within the 3-year period preceding the initiation of the suspension or revocation proceeding is convicted of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (23 U.S. Code 401 note).”

Respondent’s actions violated both of these statutes of the United States of America (USA).

The evidence in the hearing was admitted into the record under 33 CFR Part 20 and the Federal Rules of Evidence, including Rules 803, 803(6) and 803(8), as well as the U.S. Administrative Procedures Act (5 U.S. Code 551 through 559).

It has been held that the exclusionary rule of evidence is not applicable to U.S.

Administrative Law Judge hearings held under the U.S. Administrative Procedure Act (5 U.S.

Code 551 through 559) and also is not applicable to civil trials, but only to criminal trials.

Appeal Decision Number 2135 (FOSSANI, JR.) (1978).

It was further ruled on appeal that the U.S. Coast Guard Investigating Officers (IOs) may serve a complaint or charges and a U.S. Administrative Law Judge may preside at a hearing under the 46 U.S. Code Chapter 77 (46 U.S. Code sections 7701 – 7705) and the U.S. Administrative Procedure Act and may proceed whether police departments or a U.S. Attorney or a District Attorney withdraws criminal charges or proceeds with criminal charges based upon the same incidents or evidence. Commandant's Appeal Decision Number 2430 (BARNHART).

With regard to Respondent's false and misleading application for a U.S. Coast Guard Merchant Mariner's License, it has been held that the purpose of the Congress in granting such authority to the U.S. Coast Guard to issue such documents would be frustrated if it did not include suspension or revocation authority after a hearing before a U.S. Administrative Law Judge. Therefore, the U.S. Coast Guard Investigating Officers have jurisdiction to serve a complaint against the captioned Respondent and his U.S. Coast Guard Merchant Mariner's License. Appeal Decision Numbers 2319 (PAVELEC) (1983) at page 5, and 2025 (ARMSTRONG). See also Commandant's Appeal Decision Number 2408 (BROWN).

As it states in Commandant's Appeal Decision Number 2025 (ARMSTRONG) on page 7: "Based upon the evidence presented at the hearing below there can be no doubt that the Appellant (Respondent) indeed made a fraudulent application and this was an act of misconduct." It further states in Appeal Decision 2025 (ARMSTRONG): "The contents of 18 U.S. Code 1001 are printed on all such Coast Guard Merchant Mariner's Document and License application forms. In signing one of these applications an applicant acknowledges his awareness of the meaning of this statute."

See also Commandant's Appeal Decision Number 2569 (TAYLOR) wherein a similar case decided by Judge T. McElligott was affirmed on appeal by the Commandant regarding a case involving the U.S. Coast Guard v. Respondent K. L. Taylor.

Respondent has a right of appeal and these regulations are found in the attachment from 33 CFR Part 20.

The charge and supporting specifications ruled proved and the findings in this matter, have been found to be supported by and in accordance with a preponderance of the reliable, probative and substantial evidence. Steadman v. SEC, 450 US 91, 67 L. Ed. 2d 69, 101 S. Ct. 999 (1981); Commandant's Appeal Decision Number 2468 (LEWIN); 46 U.S. Code Chapter 77; 5 U.S. Code 551 through 559; and 33 CFR Part 20.

VI

CONSIDERATION OF A PROPER ORDER

The Investigating Officers stated that the Marine Safety Office's position is that this captioned Respondent's Merchant Mariner's License should be revoked since it was based upon an application containing false and misleading information filed by the Respondent with the U.S. Coast Guard, Regional Examination Center.

After findings were stated on the record, it was stipulated by the Coast Guard that the Respondent had a clear or negative prior disciplinary record with the Coast Guard within the last ten (10) years, before this "Complaint" was served on Respondent and proved against the Respondent by the said Investigating Officers of the Investigations Department of the Marine Safety Office, Mobile, Alabama.

Because the captioned Respondent has been convicted of driving while under the influence of alcohol or intoxicated on three separate occasions, and has been found to be an

alcoholic, it is reasonable to think he might well also operate a motor vessel or towing vessel while under the influence of alcohol. The Coast Guard seeks revocation of his license by these proceedings. There are many hazardous or numerous dangerous cargoes that he could be towing, or could collide with in other vessels, endangering not only his life, but also that of the crews involved and any shoreside people, buildings and facilities in the area. For the safety and well being of lives and properties at sea and in our nation's navigable harbors, rivers and waterways, Respondent's U.S. Coast Guard License is hereby Ordered Revoked.

VII

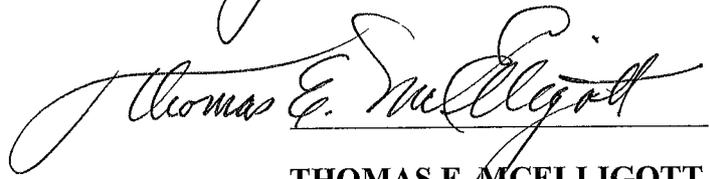
ORDER

That the captioned Respondent's U.S. Coast Guard issued License number 853725 is hereby REVOKED as of the date of deposit with the U.S. Coast Guard on 18 January 2000. It is noted that the captioned Respondent deposited this said License on that date with the U.S. Coast Guard Marine Safety Office, 150 North Royal Street, P.O. Box 2924, Mobile, Alabama 36652.

Procedures are provided by which a person, or a Respondent, whose U.S. Merchant Mariner's License and Document have been revoked, may apply to any Commanding Officer of a Marine Safety Office of the U.S. Coast Guard, such as the one in Mobile, Alabama or New Orleans, Louisiana, for the issuance of a new license or document. This is known as applying to "The Coast Guard Clemency Board." These rules and conditions are found in 46 CFR Subpart L and are referred to as the Coast Guard's Clemency Procedures. They are found within 46 CFR sections 5.901, 5.903 and 5.905 entitled "Issuance of New Licenses, Certificates or Documents After Revocation or Surrender."

DONE AND DATED THIS 11th DAY OF February, 2000

HOUSTON, TEXAS

A handwritten signature in cursive script, reading "Thomas E. Mcelligott", written over a horizontal line.

THOMAS E. MCELLIGOTT
United States
Administrative Law Judge