

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

UNITED STATES COAST GUARD

Complainant

vs.

HOWARD GLEN ODOM,

Respondent.

Docket Number CG S&R 02-0656
CG Case No. 1695093

DECISION AND ORDER

Issued: April 23, 2003

Issued by: Thomas E. McElligott, Administrative Law Judge

Appearances:

For the U.S. Coast Guard:

Lieutenant Robert L. Helton, Investigating Officer, Marine Safety Office Corpus Christi, Texas, 555 N. Carancahua Street, in the port of Corpus Christi, Texas

For the Respondent:

Respondent failed to appear at his hearing, after being given due and adequate notice.

I. PRELIMINARY STATEMENT

This adversary hearing was initiated by the U.S. Coast Guard in the performance of its missions to protect life and properties at sea, enforce national laws and treaties, preserve marine natural resources and/or promote national security interests.

This hearing was brought pursuant to the legal authority contained in 46 U.S. Code Chapter 77, including 46 U.S. Code 7701 through 7705; the U.S. Administrative Procedure Act, 5 U.S. Code 551 through 599; 46 Code of Federal Regulations (CFR) Parts 4, 5 and 16, as amended and 49 CFR Part 40.

At the signing and service of the official U.S. Coast Guard Complaint¹, the U.S. Coast Guard was represented by Investigating Officer Lieutenant Robert L. Helton, at the time stationed at the Marine Safety Office, for the port and city of Corpus Christi, Texas.

Respondent Howard Glen Odom failed to appear at the hearing, although he had been discussing the hearing date with the Investigating Officer a few days prior to the hearing. Respondent was sent a "Scheduling Order – Notice of Hearing" on December 3, 2002, to his last known residence address, addressed to him as Howard G. Odom. It advised him of the date of the hearing, Wednesday, March 26, 2003; the time of the hearing, 9:00 a.m.; and the place of the hearing, U.S. Coast Guard Marine Safety Office, 555 N. Carancahua, Suite 500, Corpus Christi, Texas 78478. The

¹ During the pendency of this case, the U.S. Coast Guard transferred from the Department of Transportation to the Department of Homeland Security. Pursuant to the Savings Provision of HR 5005 Section 1512 (PL 107-296), pending proceedings are continued notwithstanding the transfer of the agency.

“Scheduling Order – Notice of Hearing” was signed by Janice Emig, Legal Assistant, and the Administrative Law Judge (ALJ).

The hearing proceeded upon the following Complaint, which was served personally upon the Respondent. The Complaint was served against the Respondent, Mr. Howard Glen Odom, with identifying license number 842339, issued by the U.S. Coast Guard. It was served at his last known residence address. Respondent was charged under the statutory authority of 46 U.S. Code 7704(c), for Use of or Addiction to the Use of Dangerous Drugs, with regulatory authority supported by 46 Code of Federal Regulations 5.35. The Complaint was signed by Lieutenant Robert L. Helton, on October 28, 2002. The Complaint alleged the following factual allegations: “Use of or Addiction to the Use of Dangerous Drugs.” The Coast Guard alleged further that:

1. On September 26, 2002, the Respondent [Howard Glen Odom] submitted to a drug screen (urinalysis).
2. A urine specimen was collected by Medical Arts Clinic, 1731 W. Wheeler, Aransas Pass, TX 78336.
3. The Respondent signed a Federal Drug Testing Custody and Control Form on September 26, 2002.
4. The urine specimen was analyzed by LabCorp Occupational Testing Services using procedures approved by the Department of Transportation (DOT).
5. That specimen subsequently tested positive for Cocaine and results verified by Stuart B. Hoffman, MD, MRO.

The proposed order by the U.S. Coast Guard Investigating Officer was revocation in accordance with 46 U.S. Code 7704. Respondent, in response to this official Complaint, signed an official Answer on November 16, 2002, wherein he printed his name as "Howard Odom" and then signed his signature. Respondent did not admit or deny all jurisdictional allegations. Respondent did not admit or deny all factual allegations and did not affirmatively allege any defense. Respondent did state that he wished to be heard on the proposed order, so the hearing was scheduled so the Respondent might put in his defense, if any. Respondent faxed in his Answer, as he so stated on his Certificate of Service, to the ALJ Docketing Center in Baltimore and to the Investigating Officer at the Marine Safety Office Corpus Christi, Texas.

Lieutenant Robert L. Helton's case included an Opening Statement, a Closing Statement, and the sworn testimony of four (4) witnesses, including the specimen collector, Ms. Erin Alecia Russell, of Medical Arts Clinic; the Laboratory Director and Certifying Scientist from LabCorp, a certified laboratory, Dr. Bradley E. Black; another Certifying Scientist from LabCorp, Ms. Martha Juanita Mitchell; and a Medical Review Officer, Dr. Steve Shvartsblat, MD and MPH. Dr. Shvartsblat graduated from the University of Southern California, Los Angeles, Magna Cum Laude in Internal Medicine and served as a General Medical Officer in the U.S. Air Force. Dr. Shvartsblat received his Doctor of Medicine Degree from the UCLA School of Medicine, in Los Angeles, California.

In addition to the witnesses who gave their sworn testimony under oath, we had ten (10) exhibits offered by the Investigating Officer and admitted into evidence by the Administrative Law Judge at the hearing, held as scheduled, on March 26,

2003, at the Marine Safety Office, in the port and city of Corpus Christi, Texas, with Lieutenant Robert L. Helton representing the U.S. Coast Guard.

**II. FINDINGS OF FACT BASED UPON THE ENTIRE HEARING
RECORD CONSIDERED AS A WHOLE**

1. At all relevant times herein mentioned and specifically including the dates on or about September 26, 2002, the captioned Respondent, Howard Glen Odom, was the holder and acted under the authority of the captioned identifying and unique U.S. Coast Guard issued Merchant Mariner's License Number 842339, Issue Number 1, issued by the Coast Guard Regional Examination Center, in the port and city of Houston, Texas. The license expiration date is February 26, 2003, and certifies that Howard Glen Odom is licensed to serve as a Master of near coastal steam or motor vessels of not more than 100 gross tons for the term of five (5) years from the date of February 26, 1998. Although the license expired on February 26, 2003, Respondent has a year from that date to renew his license without taking any further tests, by applying to any U.S. Coast Guard Regional Examination Center, in the United States. If Mr. Odom applies after that one (1) year's extension, from February 26, 2003, he will have to pass all tests to qualify for the same license.
2. The Investigating Officer, Lieutenant Robert L. Helton, proved with credible evidence that was substantial and probative in nature, that the captioned

Respondent, Howard Glen Odom, with the said license number, did on September 26, 2002, while serving as the Master aboard the Motor Vessel (M/V) JETTY BOAT, submitted a urine specimen and subsequently tested positive for the use of cocaine, following a random drug screen urine collection, by his marine employer. The evidence was proven through the testimony of the witnesses, which I find credible, who collected and processed Mr. Odom's urine sample and through the ten (10) documentary exhibits admitted into evidence.

3. On October 28, 2002, Lieutenant Robert L. Helton, Investigating Officer, served the captioned Respondent with the official Complaint, with the charge of "Use of or Addiction to the Use of Dangerous Drugs," under the authority of 46 U.S. Code 7704(c). At the time, Lieutenant Helton explained Respondent's rights, the course of action available to Respondent, the nature of the proceedings against Respondent, and the substance of the charges and Complaint against him. The Respondent was provided with a copy of the Complaint, with page 3 of the form outlining and summarizing Respondent's rights. Respondent was asked by Lieutenant Helton if he had any questions with regards to the Complaint. The Respondent verbally acknowledged that he understood all that had been explained to him and signed the Complaint form, acknowledging receipt.
4. The Respondent requested time to consult with an attorney prior to submitting his formal Answer to the Complaint. The Respondent was advised that he had twenty (20) days in which to submit his written formal Answer. The Respondent submitted his written formal Answer to the Complaint on November 26, 2002, but

failed to admit or deny any jurisdictional allegations, any factual allegations, and he failed to provide any affirmative defense.

5. On September 26, 2002, the captioned Respondent, Howard Glen Odom, while holding and serving under the authority of his U.S. Coast Guard issued License Number 842339, and thereby serving as Master or Captain of the M/V JETTY BOAT, did submit a urine sample, as required and requested by his marine employer, for its random drug testing program. His marine employer at the time was KHS Enterprises, Inc. His marine employer utilized the Maritime Consortium, Inc. to oversee and do their urine specimen collecting for the drug-testing program. The urine sample that Respondent provided on September 26, 2002, was properly analyzed by a nationally recognized and certified laboratory, LabCorp, and subsequently tested positive for the presence of cocaine metabolites. This specimen was then confirmed as a positive for cocaine metabolites in Respondent's urine specimen by a Medical Review Officer. The Medical Review Group included Dr. Stewart B. Hoffman, Chief Medical Review Officer; and also Dr. Steve Shvartsblat, MD, Magna Cum Laude graduate of UCLA in Internal Medicine and a U.S. Air Force General Medical Officer before he became affiliated with the group of Medical Review Officers involved in this case.

III. ULTIMATE FINDINGS

1. The Complaint and its supporting factual allegations are found proved by the credible, reliable, probative and substantial evidence in this case, including the witnesses who testified credibly under oath and the ten (10) exhibits admitted into evidence.
2. The donor's identification number is shown on Investigating Officer's (IO's) Exhibit 5, for Howard Glen Odom. The trained and experienced collector, Ms. Erin A. Russell, collected the urine specimen, on September 26, 2002, she had the Respondent sign the collection form, where the Respondent signed and printed his name and gave his daytime and evening telephone number and date of birth. Respondent printed his name as "Howard G Odom" on the collector's copy of the "Federal Drug Testing Custody and Control Form." The laboratory's copy is now part of IO's Exhibit 5. Page 1 of 6, of IO's Exhibit 5, shows the certified laboratory was LabCorp Houston Toxicology, located at 7202 North Gessner Road, Houston, Texas 77040. After the two (2) required tests at the laboratory, the urine specimen was found positive for cocaine metabolites, as attested to and signed by Martha Mitchell, MT (ASCP), the said laboratory's Certifying Scientist. The Medical Review Officer's affiliated with Dr. S. B. Hoffman, located at 5900 Wilshire Boulevard, Los Angeles, California 90036, phone number (800) 762-3623, confirmed the positive found by the laboratory's after they were unable to contact the donor Respondent because Respondent would not

return their telephone calls. The laboratory findings of positive were confirmed by the Medical Review Officer, on or about September 28, 2002.

3. The "Federal Drug Testing Custody and Control Form" was signed by a Medical Review Officer of the same MRO group, known as Choicepoint, of Los Angeles, California. Dr Bertram Lee, one of their Medical Review Officers of the Medical Review Officer Services Group, signed the Respondent's collection form as positive for cocaine. The MRO company's full title is Choicepoint MRO Services, of Wilshire Boulevard, Los Angeles, California, also at www.choicepoint.com.
4. The quantitative level found by LabCorp, signed by the certified scientist, Ms. Martha Mitchell, showed that the specimen identification number 0084386077 and Respondent's social security number was positive for the cocaine metabolite at 249 ng/mL. This is well above the required minimum.
5. The urine specimen collector, Ms. Erin Alecia Russell, of Medical Arts Clinic, of the port of Aransas Pass, Texas, made a photocopy of Respondent's driver's license, which again showed his name as Howard Glen Odom. It gave his date of birth and his official driver's license number and identification card from the Texas Department of Public Safety. The photocopy is now IO's Exhibit 10. Any document that spells his name as "ODEM" is hereby corrected.
6. Further evidence offered by the Investigating Officer included IO's Exhibit 1, the Maritime Consortium notification of positive test results of cocaine. IO's Exhibit 2 is the official Complaint served upon the Respondent. IO's Exhibit 3 is Respondent's formal Answer to the official Complaint that Respondent filed by

fax with the ALJ Docketing Center, in Baltimore, Maryland. IO's Exhibit 4 is the certified Laboratory Corporation of America, Houston, Texas 77040, located at 7207 North Gessner Road, pages 1 –29, their LabCorp Analysis Package. IO's Exhibit 5 is the Choicepoint MRO Services Information Package, from their office in Los Angeles, California. IO's Exhibit 6 is the MRO's Qualification Package. IO's Exhibit 7 is a copy of Respondent Odom's U.S. Coast Guard issued license, obtained from the U.S. Coast Guard Regional Examination Center, at 8876 Gulf Freeway, Suite 200, Houston, Texas 77017. IO's Exhibit 8 is the qualifications of the MRO who testified in the case, former U.S. Air Force doctor, Steve Shvartsblat, MD. IO's Exhibit 9 is a blown up copy of the "Federal Drug Testing Custody and Control Form." IO's Exhibit 10 is a photocopy of the driver's license of Mr. Howard Glen Odom, provided by him as identification to the urine sample collector, on the date he gave his urine specimen.

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 7701 through 7705; and specifically including 46 U.S. Code 7704(c); the U.S. Administrative Procedure Act, 5 U.S. Code 551 through 559; the U.S. Coast Guard's 46 Code of Federal Regulations

Parts 4, 5 and 16, as amended; and U.S. Department of Transportation's Rules at 49 Code of Federal Regulations Part 40.

2. The Complaint and its supporting factual allegations and jurisdictional allegations are found proved by a preponderance of the reliable, probative and substantial evidence.
3. The entire Complaint is found proved by a preponderance of the reliable, probative, substantial and credible evidence.

V. OPINION

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

Pleadings, including Complaints, can be amended to conform to the evidence. Kuhn v. Civil Aeronautics Board, 183 F.2d, 839, 841 (D.C. Cir 1950).

This case falls within the guidelines of 46 U.S. Code Chapter 77, including 46 U.S. Code 7704.

Conference sworn telephonic testimony has been upheld on appeal. 46 CFR 5.535(f). Appeal Decisions 2538 (SMALLWOOD); 2503 (MOULDS); 2492 (RATH); and by 2476 (BLAKE), aff'd sub nom Commandant v. Blake, NTSB Order EM-156 (1989); aff'd sub nom Blake v. U.S. Department of Transportation and NTSB, No. 90-70013 (9th Cir. 1991).

Drug testing of employees' urine samples has been upheld by the U.S. Court of Appeals for the Ninth Circuit in Bluestein v. Skinner (U.S. DOT Secretary) and U.S. FAA, 908 F.2d 451 (9th Cir. 1990); Cert. Den. By U.S. Supreme Court at 112 L. Ed. 2nd 1042 (1991). Additional U.S. Supreme Court Decisions with similar rulings and authority are National Treasury Employees Union v. Von Raab, 109 S.Ct. 1384 (1989); Skinner (U.S. DOT Secretary) v. Railway Labor Executives Association, 109 S.Ct. 1402 (1989).

Other decisions upholding drug testing of certain employees include American Federation of Government Employees v. Skinner, (U.S. DOT), 885 F.2d 884 (D.C. Cir. 1989); National Federation of Federal Employees v. Cheney, 884 F.2d 603 (D.C. Cir. 1989); Thomas v. Marsh, 884 F.2d 113 (4th Cir. 1989); and Harmon v. Thornburgh, 878 F.2d 484, 487-488 (D.C. Cir. 1989).

The Complaint and its allegations are ruled proved and the findings in this matter have been found to be supported by a preponderance of the credible, 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 2468 (LEWIN); 46 U.S. Code Chapter 77; 5 U.S. Code 556(d); and Title 46 CFR 5.63.

The Respondent is advised of the right to appeal in accordance with the attachment enclosed herein.

The captioned Respondent did violate the sections above cited of the U.S. Code, and the supporting regulations promulgated thereunder, and also company policy by failing a drug test wherein Respondent was proved to be positive for

cocaine metabolite, thereby proving his use of cocaine. In light of the facts and applicable law, the following Order will be entered in this case.

After the IO, Lieutenant Robert Helton, proved his case, he offered evidence that Respondent had a prior case where it was found proved by an IO in Houston-Galveston, Texas that Respondent previously refused to give his urine sample for drug testing and an Administrative Law Judge decided to Order Twenty-two (22) months Suspension of his License. Respondent did not sign a receipt for this Decision and Order and therefore it was not yet officially served on Respondent. Respondent never deposited his said License for that twenty-two (22) month outright suspension of Respondent's said Coast Guard issued License to a U.S. Merchant Marine Officer.

VI. ORDER

That any and all U.S. Coast Guard issued licenses and documents issued to the captioned Respondent, Howard Glen Odom, are hereby **REVOKED**; that all U.S. Coast Guard Regional Examinations Centers are advised that they should not renew Respondent's licenses or documents, or issue a new one, following this Decision and Order.

Some people refer to the procedures following as the U.S. Coast Guard's "Administrative Clemency Board Program." Procedures are provided by which a person, or Respondent, whose U.S. Merchant Mariner's License and/or Document has been revoked, may apply to any Commanding Officer of a Marine Safety Office

of the U.S. Coast Guard, after an applicable waiting period, for the issuance of a new
license or

Done and dated on this 23rd day of April, 2003
Houston, Texas



Thomas E. McElligott
Administrative Law Judge