

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

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UNITED STATES COAST GUARD

Complainant

vs.

DAVID G. WRIGHT

Respondent.

Docket Number: CG S&R 08-0157
CG Case No. 3150610

ORDER OF REVOCATION

Issued: August 12, 2008

Issued by: Michel J. Devine, Administrative Law Judge

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 Document issued to David G. Wright, the respondent in this case. The Complaint dated April 1, 2008 alleges that Respondent, a holder of Coast Guard issued credentials, violated 46 U.S.C. 7703 (3) (conviction under National Driver Registration Act – DUI on February 24, 2006) and 46 U.S.C. 7704(b) and 46 CFR 5.35 by conviction for dangerous drug law violations on February 1, 2006 and September 20, 2006.

On April 21, 2008, Respondent, through counsel, filed an Answer in which he did not contest the jurisdictional allegations and he admitted the convictions but requested a punishment short of revocation. On April 23, 2008 the Coast Guard filed a Motion for Summary Decision

asserting there were no genuine issues of material fact and seeking revocation of Respondent's MMD in accordance with 46 U.S.C. 7704(b) as stated in the Complaint. On May 28, 2008 the undersigned issued an Order Partially Granting the Motion for Summary Decision. Although the allegations regarding the convictions for a dangerous drug law were found proven, the undersigned ruled that in keeping with existing authority revocation is not mandatory and the Respondent is entitled to a hearing to determine an appropriate sanction.

An evidentiary hearing was held in Milwaukee, Wisconsin on August 8, 2008. 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, LT J. D. Butwid entered an appearance on behalf of the Coast Guard. Respondent also appeared at the hearing pro se, without the assistance of professional legal counsel. Respondent had previously been represented by Attorney Robert Wells, but Attorney Wells withdrew from representation (Exhibit A). Respondent stated he understood his rights as noted in the Complaint and desired to continue representing himself. He also had his father, George Wright with him and asked if he could stay at counsel table and assist him. The Coast Guard did not object and the request was granted. At the outset the undersigned addressed the previous ruling that granting in part summary decision. With regard to the charge relating to the driving under the influence conviction, there was no citation to a regulation in 46 CFR Part 5. If the charge were considered a charge of misconduct under 46 CFR 5.27 then it was noted that there was no jurisdictional allegation or proof that the offense related to any action under the authority of his merchant mariner's document. The Coast Guard asserted that the charge was not misconduct and that violation of law (46 USC 7703(3)) was properly alleged and proven.

Although 46 CFR 5.33 was not cited in the Complaint, the statute was specifically included in the charge and therefore it was adequately charged and proven.

After opening statements by both sides, the Coast Guard presented the sworn testimony of two witnesses, and offered six exhibits into evidence, which were admitted into evidence. Respondent presented the testimony of his father, George Wright regarding his rehabilitation efforts and Respondent also testified on his own behalf at the hearing, but did not offer any additional exhibits into evidence. The witness and exhibit list are contained in Attachment A.

At the conclusion of the hearing, an oral decision was issued – noting that as previously ruled the two dangerous drug convictions and the driving while intoxicated conviction were proven, and finding that both the jurisdictional and factual allegations were proved in keeping with the previous ruling on the Coast Guard's summary decision motion. An order of revocation was issued. The findings of fact and conclusions of law may be summarized as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent David G. Wright, 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 February 1, 2006, Respondent was convicted of possession of THC (a dangerous drug offense).
3. On February 24, 2006, Respondent was convicted of Operating a vehicle while under the influence.
4. On September 20, 2006, Respondent was convicted of a felony offense of delivering THC (a dangerous drug).
5. The Respondent has previously been found in violation of regulations with regard to his document and received a suspension pursuant to a Suspension and Revocation Decision and Order issued May 25, 2006.
6. The Respondent completed a drug and alcohol rehabilitation program in the state of Wisconsin in October 2006.
7. The Coast Guard has proved by a preponderance of reliable and credible evidence that Respondent has been convicted of two offenses involving dangerous drugs under 46 U.S.C. 7704 and the underlying regulations.
8. The Respondent was positive for methadone on a July 7, 2008 urinalysis test that was part of his probation.
9. The fact of the convictions and the matters admitted into evidence during the hearing have been considered in determining an appropriate sanction.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED THAT the Merchant Mariner's Document and all other Coast Guard licenses, certificates and documents issued to Respondent David G. Wright are **REVOKED.**

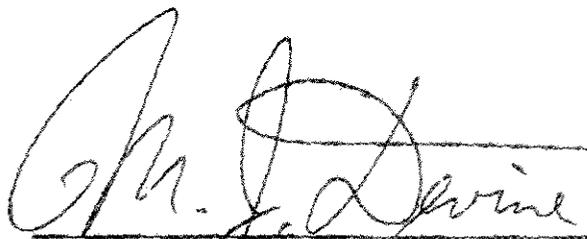
PLEASE TAKE NOTICE that, within three (3) years or less, Mr. Wright may file a motion to reopen this matter and seek modification of the order of revocation upon a showing that the order of revocation is no longer valid and the issuance of a new license, certificate, or document is compatible with the 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).

Done and dated August 12, 2008
Norfolk, VA


MICHAEL J. DEVINE
Administrative Law Judge

ATTACHMENT A
WITNESS AND EXHIBIT LIST

Coast Guard Witnesses

John Cassady

Angela Gumieny

Respondent Witnesses

George Wright

David G. Wright

Coast Guard Exhibits

- 1 CG0719B (Application for Merchant Mariner's Document and attachments by Respondent).
- 2 Investigative Request and Respondent Information
- 3 ALJ Decision and Order issued May 25, 2006
- 4 Chronological Log of Probation
- 5 Rules of Community Supervision (probation)
- 6 Respondent Positive drug screen (July 7, 2008)

Respondent Exhibits

- A. Withdrawal from representation of Respondent by Attorney Robert Wells