

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

UNITED STATES COAST GUARD

Complainant

VS.

GLENN DAVID WILLIAMS,

Respondent.

Docket Number CG S&R 02-0482
Coast Guard Case Number: 1639743

DECISION AND ORDER

Issued: March 27, 2003

Issued by: Peter A. Fitzpatrick, Administrative Law Judge

APPEARANCES

FOR THE COAST GUARD

CWO Jonathan W. Henson
CAPT David Shippert
United States Coast Guard
Marine Safety Office Savannah
100 W. Ogelthorpe Avenue, Suite 1017
Savannah, GA 31401

FOR THE RESPONDENT

Glenn David Williams, *Pro Se*
1077 Fred Drive
Morrow, GA 30260

I.

PRELIMINARY STATEMENT

This case began on July 31, 2002 when the Coast Guard filed a Complaint against the Respondent, Glenn David Williams, under the statutory authority contained in 46 U.S.C. § 7704(b) and the Coast Guard regulation codified at 46 C.F.R. 5.35. Mr. Williams is the holder of Coast Guard issued license number 874155. The Complaint alleged that: ". . .within the last 10 years, the Respondent was convicted of violating a dangerous drug law of the State of Georgia." The Investigating Officer proposed the revocation of Mr. Williams's license under 46 U.S.C. § 7704.¹

On that same day, Mr. Williams voluntarily deposited his license with the Coast Guard for not more than 45 days pursuant to 46 U.S.C. 4402(d)(1). Also, he agreed not to accept employment in a safety sensitive position on any merchant vessel of the United States.

On August 8, 2002, the Investigating Officer filed a Motion to Withdraw the Initial Complaint. The motion explained that ". . . due to an alleged violation of regulation that precipitated the initial investigation and the apparent conviction of a Dangerous Drug Law Violation, the Coast Guard took possession of the respondent's license on 29 July 2002." The Investigating Officer asserted that a new Complaint and Affidavit were served in person on the Respondent on August 8, 2002. The Motion was Granted by Order dated September 6, 2002.

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

The new Complaint was filed under the authority of 46 U.S.C. 7702 and alleged as follows:

JURISDICTIONAL ALLEGATIONS

1. The Respondent's address is as follows: 1077 Fred Drive, Morrow, GA 30260, telephone: 770-329-2762.
2. Respondent holds the following Coast Guard-issued credential(s): License Number 874155.
3. Respondent performs a safety sensitive function when acting under the authority of that license, certificate, or document by serving as Operator aboard the vessel JOHN PAUL ECKSTEIN as required by law or regulation.
4. There is probable cause to believe that the Respondent: has performed the safety sensitive function in violation of law or Federal regulation regarding the use of alcohol or a dangerous drug; has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document.

FACTUAL ALLEGATIONS

The Coast Guard alleges that:

1. On 2 May 2002 the Respondent GLENN DAVID WILLIAMS was operator of the M/V JOHN PAUL ECKSTEIN (D1052078), operating under the authority of the above-captioned license, while pushing a flotilla of barges ran aground near mile 920 of the Lower Mississippi River. Bluegrass Marine's port captain and a representative from Bluegrass Marine's contracted drug testing consortium responded to the vessel after the grounding to conduct a company required post-casualty drug test in accordance with 46 CFR 4.05-12. Mr. WILLIAMS refused to submit to a post-casualty drug test. Bluegrass Marine discharged Mr. WILLIAMS and informed later MSO Savannah. Mr. WILLIAMS' refusal to submit to a post-casualty drug test is a violation of regulation as defined in 46 CFR 4.06-5. Mr. WILLIAMS resides in northern Georgia and is within MSO Savannah's zone.
2. During the course of the personnel action investigation of the alleged post-casualty test refusal, Mr. WILLIAMS was found to have been

convicted of violating a dangerous drug law in the state of Georgia. On 29 March 2000, Mr. WILLIAMS plead guilty to the violating Georgia's Control Substances Act (O.C.G.A. 16-13-30A). Mr. WILLIAMS was ordered to pay a \$750.00 fine, complete 120 hours community service and was placed on two (2) years probation. The probationary period concluded on 1 April 2002. The case, number 99-CR-01989-8, was processed in Clayton County, Georgia. Mr. WILLIAMS' conviction of Georgia's dangerous drug law violates Title 46 U.S. Code 7704 and 46 CFR 5.35. The aforementioned law and regulations promote safety upon U.S. waters.

Importantly, the Complaint stated that the hearing in this case must be expedited and conducted within 45 days. Also, the Answer was to be filed at a pre-hearing conference to be scheduled as soon as practicable.

The pre-hearing conference was held the next day on August 9, 2002 and the Investigating Officer, Mr. Williams, and his attorney at the time, Rodney Zell, Esq. participated. Counsel moved that the proceeding be removed from the expedited hearing docket and be placed on the standard procedure docket. The Investigating Officer agreed to that proposal provided Respondent's license be retained on a good faith deposit basis. Respondent's counsel agreed. On August 16, 2002, Mr. Williams himself confirmed that request with a written motion. The Respondent also stated that he intended to challenge the conviction of the Georgia court before that forum and a ruling in that case would not be forthcoming until late September 2002. By Order dated August 20, 2002 the case was removed from the expedited hearing docket to the standard procedure docket.

The Respondent's Answer was filed on August 16, 2002 and it reads as follows:

ANSWER

1. Respondent agrees to place of hearing.
2. Respondent admits the jurisdictional allegations contained in Paragraph one of the Complaint.

3. Respondent admits the jurisdictional allegations contained in Paragraph two of the Complaint
4. Respondent admits the jurisdictional allegations contained in Paragraph three of the Complaint
5. Respondent denies the jurisdictional allegations contained in Paragraph four of the Complaint.
6. Respondent denies the factual allegations contained in Paragraph one of the Complaint
7. Respondent denies the factual allegations contained in Paragraph two of the Complaint
8. Respondent intends to contest the factual allegations contained in the Complaint.

After the passage of several months and absent any additional information regarding Respondent's appeal of the Georgia court's decision, this case was set for hearing on February 12, 2003 in Savannah, GA. See Order dated November 18, 2003. In the meanwhile, Mr. Williams had dismissed his counsel and elected to represent himself.

The hearing was conducted as scheduled and the Investigating Officers and Mr. Williams appeared. At the outset, the Coast Guard moved to amend Factual Allegation No.2 by insertion of the phrase "by possession of cocaine on or about April 7, 1999, at Forest Park, Georgia.,"² In view of the fact that the proposed amendment made the allegation even more specific, did not enlarge or change the offense involved, and the Respondent had notice of the elements of the amended complaint, the amendment was allowed. (Transcript, hereinafter Tr. 26).

² The new version of that Factual Allegation reads as follows:

During the course of the personnel action investigation of the alleged post-casualty test refusal, Mr. Williams was found to have been convicted of violating a dangerous drug law in the state of Georgia by possession of cocaine on or about April 7, 1999, at Forest Park, Georgia. On 29 March 2000, Mr. Williams plead guilty to the violating Georgia's Controlled Substances Act, (O.C.G.A. 16-13-30A). Mr. Williams was ordered to pay a \$750.00 fine, complete 120 hours community service and was placed on two (2) years probation. The probationary period concluded on 1 April 2002. The case, number 99-CR-01989-8, was processed in Clayton County, Georgia. Mr. Williams' conviction of Georgia's dangerous drug law violates Title 46 U.S. Code 7704 and 46 CFR 5.35. The aforementioned law and regulations promote safety upon U. S. waters.

The parties sponsored Stipulations of Fact (Judges Exhibit III) and Stipulations of Authenticity of Documents (Judge's Exhibit II). The Coast Guard sponsored two witnesses including Steve Colby and Marc Davis. Also, the Investigating Officer offered eleven exhibits, all of which were admitted. All exhibits are identified on Attachment 1. The Respondent testified on his own behalf and did not sponsor any other witnesses. Also, he did not offer any exhibits. (Tr. 30, 33). One other exhibit (Judge's Exhibit I) was admitted. (Tr. 47) At the conclusion of the hearing I took the matter under advisement. The case is now ripe for decision.³

II.

FINDINGS OF FACT

A. Jurisdictional Allegations Admitted by the Respondent in the Answer

1. The Respondent's address is as follows: 1077 Fred Drive, Morrow, GA 30260, telephone: 770-329-2762.
2. Respondent holds the following Coast Guard-issued credential(s): License Number 874155.
3. Respondent performs a safety sensitive function when acting under the authority of that license, certificate, or document by serving as Operator aboard the Vessel JOHN PAUL ECKSTEIN as required by law or regulation.

B. Jurisdictional Allegations Not Admitted by the Respondent in the Answer

4. There is probable cause to believe that the Respondent: has performed the safety sensitive function in violation of law or Federal regulation regarding the use of alcohol or a dangerous drug; has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document.

C. Factual Allegations Not Admitted by the Respondent in the Answer

1. On 2 May 2002 the Respondent GLENN DAVID WILLIAMS was operator of the M/V JOHN PAUL ECKSTEIN (D1052078), operating under the authority of the above-captioned license, while pushing a flotilla of barges ran aground near mile 920 of the Lower Mississippi River. Bluegrass Marine's port captain and a representative from Bluegrass

³ There are some corrections to the transcript which are set out on Attachment III.

Marine's contracted drug testing consortium responded to the vessel after the grounding to conduct a company required post-casualty drug test in accordance with 46 CFR 4.05-12. Mr. WILLIAMS refused to submit to a post-casualty drug test. Bluegrass Marine discharged Mr. WILLIAMS and informed later MSO Savannah. Mr. WILLIAMS' refusal to submit to a post-casualty drug test is a violation of regulation as defined in 46 CFR 4.06-5. Mr. WILLIAMS resides in northern Georgia and is within MSO Savannah's zone.

2. During the course of the personnel action investigation of the alleged post-casualty test refusal Mr. Williams was found to have been convicted of violating a dangerous drug law I the state of Georgia by possession of cocaine on or about April 7, 1999, at Forest Park, Georgia. On 29 March 2000, Mr. Williams plea guilty to violating Georgia's Controlled Substances Act, (O.C.G.A. 16-13-30A). Mr. Williams was ordered to pay a \$750.00 fine complete 120 hours community service and was placed on two (2) years probation. The probationary period concluded on 1 April 2002. The case, number 99-CR-01989-8, was processed in Clayton County, Georgia. Mr. Williams' conviction of Georgia's dangerous drug law violated Title 46 U.S.C. 7704 and 46 CFR 5.35. The aforementioned law and regulations promote safety upon U.S. waters.

D. Stipulation of Facts

The Complainant and Respondent hereby stipulate and agree that the following facts exist and shall be found by the Administrative Law Judge to exist for all purposes in the referenced proceeding without the need for further testimony, documents or other evidentiary submission or tender.

1. On May 2, 2002 the Respondent, Glenn D. Williams was serving as master aboard the towing vessel John Paul Eckstein under authority of his license number 874155.
2. On May 2, 2002, while underway, the vessel John Paul Eckstein and its tow were involved in a grounding at approximately mile mark 920 on the lower Mississippi River.
3. Subsequent to the grounding of the John Paul Eckstein's tow, on May 2, 2002, Bluegrass Marine, Inc., requested that Respondent submit to a drug and alcohol test.
4. On May 2, 2002, Respondent declined and refused the request of Bluegrass Marine that he submit to a drug and alcohol test.
5. On March 29, 2000 the Respondent entered a plea of guilty to the charge of possession of cocaine, a violation of the Georgia Controlled Substances Act, which plea was a negotiated plea made under Georgia First Offender

statute, before the Superior Court of Clayton County, Georgia.

6. Pursuant to the plea as set forth in number 5 above, Respondent was sentenced to two years probation.

E. Stipulation of Authenticity of Documents

The Complainant and Respondent hereby stipulate and agree to the authenticity of the following documents intending that same may be offered into evidence at hearing on the captioned matter without need or requirement for foundational testimony by the maker thereof.

1. Exhibit One, (3 pages with certification), the Coast Guard form 2692 is that which was submitted by Bluegrass Marine, Inc. dated May 14, 2002 concerning MV John Paul Eckstein.
2. Exhibit Two, (one page), the Coast Guard form 2692B submitted by Bluegrass Marine, Inc. dated June 5, 2002 as follow up to Exhibit one.
3. Exhibit 3 is that portion of the Personnel Rules and Policies of Bluegrass Marine Relating to Drug and Alcohol testing which were in place at all time pertinent to these proceedings.
4. Exhibit 9 is Bluegrass Marine, Inc.'s Form I-3 signed by Respondent on 3/13/99.
5. Exhibit 8 is Marquette Transportation/Bluegrass Marine Termination letter dated 5/3/02.
6. Exhibit 6 are the records of the Clayton County Superior Court concerning Respondent.
7. Exhibit 4 is a memo from the Respondent to Steve Colby and Marc Davis (undated).

F. Other Facts

1. Immediately after the grounding at approximately 0915 on May 2, 2002, Respondent Williams called Mr. Steve Colby, Vice President of Operations and Head Crew Dispatcher, Bluegrass Marine, Inc. and reported the incident. (Tr. 76, 90). The Captain indicated the tow consisting of the JOHN PAUL ECKSTEIN and 35 barges was aground and that some of the barges were on the bank. (Tr. 88, 108). After discussing operational matters, Colby told the

Respondent that the drug testing firm retained by the company (West Kentucky Drug and Alcohol Screen) would be sent out to conduct drug screens. (Tr. 76-77). See also Tr. 75-76. Mr. Colby did not fire the Respondent or relieve him from duty at that time. (Tr. 88, 90, 21, 93).

2. The Respondent also talked on the phone with Mr. Marc Davis, the Port Captain for Bluegrass Marine.⁴ (Tr. 97). The Respondent told him three or four barges were aground “pretty bad.” (Tr. 99). Mr. Davis determined that a serious marine incident was involved and departed for an on scene inspection. (Tr. 98). Mr. Davis did not discuss Williams’s employment status with him and did not fire the Respondent. (Tr. 102).

Mr. Davis arrived on the tow at approximately 1230 that same day (May 2, 2002) and met with the Respondent. At that point, the Collection Site Person, Mr. Gary Guthrie, West Kentucky Drug and Alcohol Screen, had already completed the drug screens on the crew and he had departed. (Tr. 107). All 10 members of the crew participated in the urine drug test except Captain Williams. (Tr. 86, 89). Williams told Mr. Davis that he refused to take the drug test. (Tr. 103). Also, the Collection Site Person, Mr. Guthrie, sent a message notifying Mr. Colby that Mr. Williams refused to participate in the drug test. (IO-5). Later that afternoon Captain Thornberry boarded the tow and the Respondent was relieved from duty. (Tr. 110). The next day (May 3, 2002) Mr. Williams was fired by Bluegrass Marine. (IO-8).

3. The damages to the barges from the grounding amounted to approximately \$15,500. (IO-1). There was no damage to the tug or physical injuries to the crew. (IO-1, 2). The barges were empty at the time of the grounding. (Tr. 107).

⁴ Bluegrass Marine is a wholly owned subsidiary of Marquette Transportation, Inc. Marquette owns the tug JOHN PAUL ECKSTEIN and all tows. Bluegrass Marine operates the tows and employed the Respondent. (Tr. 41, IO-1).

4. Shortly thereafter, the Respondent wrote an undated letter to Messer's Colby and Davis stating that he refused to take the drug test because "I would not let the Boat Owners or the Coast Guard hold me accountable for my free time." Later, at the hearing, Mr. Williams indicated that he had taken his sister-in-law's prescription medication before boarding the tow and was not sure he would pass the drug test. (Tr. 126-27).

III.

STATUTES AND REGULATIONS INVOLVED

1. This proceeding is governed by the Administrative Procedure Act, which is incorporated into these proceedings under 46 U.S.C. 7702, which reads:

§ 7702. Administrative procedure

(a) Sections 551-559 of title 5 apply to each hearing under this chapter about suspending or revoking a license, certificate of registry, or merchant mariner's document.

2. 46 U.S.C. §§ 7701-7705 sets out the general procedures governing the suspension and revocation of merchant mariners' licenses and documents. 46 U.S.C. § 7702 (c)(2) provides in pertinent part that the Coast Guard (as delegated by the Secretary of the United States Department of Transportation) shall require drug tests for merchant mariners as follows:

(2) The Secretary shall require the testing of the holder of a license, certificate of registry, or merchant mariner's document for use of alcohol and dangerous drugs in violation of law or Federal regulation. The testing may include preemployment (with respect to dangerous drugs only), periodic, random, and reasonable cause testing, and shall include post-accident testing.

3. U.S.C. § 7704 (b) and (c) provides in pertinent part:

§ 7704. Dangerous drugs as grounds for revocation

(b) If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or merchant mariner's document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be revoked.

(c) 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.

4. The Coast Guard regulations governing chemical testing for dangerous drugs are codified at 46 CFR § 16.

5. The Coast Guard regulation describing sanctions for various offenses including an incident where a mariner refuses to take a drug test is codified at 46 CFR 5.569.

6. The regulations governing the performance of chemical tests for dangerous drugs adopted by the United States Department of Transportation are codified at 49 CFR § 40. The section governing the procedures to be followed where an employee refuses to take a drug test are set out at 49 CFR § 40.191. That rule in its entirety is set out at Attachment II.

7. The Coast Guard regulation governing the effect of a refusal to take a drug test by a mariner directly involved in a marine casualty is codified at 46 CFR 4.05-12(d).

8. The Coast Guard regulations governing the requirement that an individual involved in a marine casualty submit to chemical testing for dangerous drugs at the direction of his employer are codified at 33 CFR 95. The regulation governing an individual's refusal to test is codified at 33 CFR 95.040.

9. The Coast Guard regulation governing "Use of judgments of conviction" is codified at 33 CFR 20.1307. In pertinent part it reads:

x x x

(c) A judgment of conviction by a Federal or State court for a violation is conclusive in the proceeding if an S&R proceeding alleges conviction for—

(1) A violation of a dangerous-drug law;

x x x

(d) If the respondent participates in the scheme of a State for the expungement of convictions, and if he or she pleads *guilty* or *no contest* or, by order of the trial court, has to attend classes, contribute time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of the finding of the trial court, the Coast Guard regards him or her, for the purposes of 46 U.S.C. 7703 or 7704, as having received a conviction. The Coast Guard does not consider the conviction expunged without proof that the expungement is due to the conviction's having been in error.

(e) No respondent may challenge the jurisdiction of a Federal or State court in any proceeding under 46 U.S.C. 7703 or 7704.

IV.

CONCLUSIONS OF LAW

1. The Coast Guard has jurisdiction over the Respondent pursuant to 46 U.S.C. 7702 and 7704.

2. The Jurisdictional and Factual Allegations of the Complaint are PROVED by a Preponderance of the Evidence in accordance with 33 CFR 20.701.

V.

OPINION

1. General.

Congress has mandated that the holder of a Coast Guard license or merchant mariner's document, serving aboard a U.S. vessel like Mr. Williams here, be subject to testing for the use of alcohol and dangerous drugs. (46 U.S.C. § 7702(c)(2)). Such tests are to include post accident testing. (*Id.*). The Coast Guard rules governing chemical testing for dangerous drugs are codified at 49 CFR part 16. The purpose of the regulations is to minimize the use of intoxicates in the merchant marine and to promote a drug free and safe work environment. (46 CFR. 16.101). The rules provide that such testing is to be conducted "in accordance with the procedures detailed in 49 CFR part 40." (46 CFR 16.201(a)).

49 CFR part 40.191(c) specifically covers instances where an employee refuses to take a drug test and indicates that "you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations. Those consequences are set out in the Coast Guard regulations at 46 CFR 5.569. There, on the Table of Suggested Ranges of an Appropriate Order, the offense Violation of Regulation: Refusal to take chemical drug test, identifies an appropriate order as in the range of 12-24 months.

2. The Refusal to take the Drug Test

In this case there is no question that Captain Williams refused to participate in the post accident drug test ordered by his employer. (Stipulation of Facts, No. 4; Tr. 103; IO-5). Williams was the Master of the towing vessel JOHN PAUL ECKSTEIN and in control of the tow at the time of the grounding. (Stipulation of Facts, No. 2, 3). Thus, Williams was directly

involved in this marine casualty.

The Coast Guard regulations empower a marine employer to direct an individual operating a vessel to undergo a chemical test when reasonable cause exists. 33 CFR 95.035. Such cause exists where the individual “was directly involved in the occurrence of marine casualty.” The Commandant has held in Appeal Decision No. 2578 (CALLAHAN) (1994) that although the regulation does not define “directly involved,” other regulations governing the reporting and investigation of marine casualties define an individual directly involved in a serious marine incident “. . . as one where action or failure to act cannot be ruled out as a possible cause of the incident 46 CFR 4.03-4.” The CALLAHAN decision, *supra*, goes on to hold that this definition should also apply to other marine casualties. (*Id.*)

I find here that Captain Williams who was serving as Master of the tug JOHN PAUL ECKSTEIN at the time of the grounding was directly involved in the marine casualty and that his marine employer had reasonable cause to direct him to undergo a chemical test for dangerous drugs.

Captain Williams’s defense is that he had been fired as Captain before the representative of the drug testing concern conducted the drug test. Thus, he was no longer a member of the crew and did not have to take the test. Secondly, the marine casualty involved resulted in damage to the barges of approximately 15,500 dollars and thus did not constitute a “serious” marine casualty. Accordingly, the company’s order to test was improper.

A review of the testimony of the witnesses from Bluegrass Marine make it clear that Captain Williams was not relieved of duty nor fired before Mr. Guthrie from West Kentucky Drug and Alcohol Screen conducted the drug testing of the crew aboard the JOHN PAUL ECKSTEIN on the morning of May 2, 2002. Both Messers. Davis and Colby testified that they did not relieve Williams before the drug tests were conducted. (Tr. 77, 88, 90-91, 93, 101-103).

Mr. Davis arrived onboard at approximately 1230 on May 2, 2002 and Captain Williams was aboard at the time. Mr. Guthrie had completed the drug testing of the crew and had departed. (Tr. 107). Captain Thornberry had not yet arrived. (Tr. 110). Clearly, Williams had not been relieved and was serving as Master of the tug under the authority of his Coast Guard license when he refused to participate in the drug test ordered by his employer.

With regard to the nature of the marine casualty, the corporate officers of Bluegrass Marine (Messers. Colby and Davis) concluded that the JOHN PAUL ECKSTEIN and its tow which included 35 barges, was a serious marine casualty. (Tr. 98). The Respondent had advised them some of the barges were hung up “pretty bad.” (Tr. 99). Immediately, Mr. Davis was dispatched to the scene and the drug testing firm was contacted. At the time it was not known what the extent of the damage was but the shipping company was faced with the break up of its very large tow.

This is the very type of incident which is required to be reported immediately to the Coast Guard under 46 CFR 4.05 which includes “unintended groundings.” Also, a written report was required to be filed within 5 days. 46 CFR 4.05-10. The regulations also require the employer to determine whether alcohol or illicit drugs are involved. 46 CFR 4.05-12. Accordingly, under another Coast Guard regulation, the marine employer is authorized to require the individual directly involved in the occurrence to undergo a chemical test. See 33 CFR 95.035. Such individual has the duty to provide “blood, breath or urine specimens for chemical tests when directed to do so by the marine employer.” 46 CFR 4.06-5(a). Thus, Bluegrass Marine had the authority under the Coast Guard regulations and the governing statutes mentioned earlier to direct Captain Williams to undergo a chemical test for dangerous drugs in this case.

3. The Conviction for a Dangerous Drug Law Violation.

Congress has declared that if it is shown at a hearing that the holder of a Coast Guard

license within 10 years has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be revoked. See 46 U.S.C.. 7704(b). In this case, Mr. Williams and the Investigating Officer stipulated that Williams entered a plea of guilty “. . . to the charge of possession of cocaine, a violation of the Georgia Controlled Substances Act, which plea was a negotiated plea made under Georgia’s First Offender statute, before the Superior Court of Clayton County, Georgia.” (Judges Exhibit III, Stipulation No. 5). Also, Mr. Williams stipulated that pursuant to that plea he was sentenced to two years probation. (*Id.* at Stipulation No. 6). The Coast Guard offered a copy of the record in The State v. Glenn Davis Williams in Clayton Superior Court, November Term, 1999, Case No. 99-CR-01989-8 wherein Mr. Williams entered the guilty plea and was sentenced. (IO-11). Mr. Williams was treated as a first offender and ultimately discharged under the State of Georgia’s expungent scheme. The defendant successfully served his sentenced on probation and when discharged, his criminal conviction was erased. (IO-11).

Recently, the Commandant has discussed the impact of a conviction for a dangerous drug law violation and a State so-called expungement scheme in Appeal Decision No. 2629 (RAPOZA) (2002). There it was stated:

Congress has determined as a matter of public policy that involvement with illegal drugs is inconsistent with employment in the merchant marine and has required revocation of a holder’s license, certificate of registry, or merchant mariners document when the mariner has been convicted within the past ten years of a dangerous federal or state drug law. 46 USC 7704.

The term convictions is defined at 33 CFR 20.1307(d) as follows:

(d) If the respondent participates in the scheme of a State for the expungement of convictions, and if he or she pleads guilty or no contest or, by order of the trial court, has to attend classes, contribute time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of the finding of the

trial court, the Coast Guard regards him or her, for the purposes of 46 U.S.C. 7703 or 7704, as having received a conviction. The Coast Guard does not consider the conviction expunged without proof that the expungement is due to the conviction's having been in error.

In this case, Mr. Williams pled guilty to the charge of possession of cocaine, a violation of the Georgia Controlled Substances Act. The Court entered its Order and placed Mr. Williams on probation for two years. Thus, Williams must be treated for purposes of the Coast Guard's jurisdiction as having been convicted of a dangerous drug law violation. See RAPOZA supra.

The Coast Guard regulation governing the impact of a conviction for a dangerous drug law by a State Court is 33 CFR 20.1307. That rule makes it very clear that despite the State court's expungement, the Coast Guard considers the individual involved to have received a conviction. Only a successful appeal showing the conviction to have been in error can erase that conviction.

In this case, Mr. Williams did not challenge the Order of the Clayton County Superior Court placing him on two years probation. Despite the first offender treatment he received from that Court which erased the criminal conviction once the probation was successfully served, the conviction for Coast Guard purposes remains. See Appeal Decision No. 2441 (HESTER); No. 2435 (BABER). Whatever may have been the Respondent's understanding when he entered his guilty plea before the Georgia court, the law is clear that the conviction remains for purposes of this case.

VI.

ORDER

For all of the foregoing reasons, **IT IS ORDERED THAT** license number 874155 issued by the United States Coast Guard to Glenn David Williams is hereby **REVOKED** in accordance

with 46 U.S.C. 7704(b) since it has been shown that Mr. Williams has been convicted of violating a dangerous drug law of the State of Georgia.

It is **FURTHER ORDERED THAT** if the above described Order is set aside, Mr. Williams's Coast Guard license described above is hereby **Suspended Outright** for 24 months for wrongful failure to take a chemical test for dangerous drugs when directed to do so by his marine employer.


PETER A. FITZPATRICK
Administrative Law Judge
United States Coast Guard

Done and Dated on March 27, 2003 at
Norfolk, Virginia