

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

UNITED STATES OF AMERICA,)
UNITED STATES COAST GUARD,) DECISION AND ORDER
)
vs.)
) ALJ DOCKET NO. 08-074-TEM-98
Merchant Mariner's Document) And CG S&R 99-0345
No. 347-46-9407)
) MSO CASE NO. 16722/035/HOU/98
Issued to:) And PA99001939 16722/104/HOU/99
) Houston, TX
John W. POWELL,)
)
Respondent.)

On 23 July 1998, the undersigned Judge issued a Decision & Order (Consent Agreement), incorporating as Enclosure 1 the "Notice of Hearing and Charge Sheet" and as Enclosure 2 the "Joint Motion of Settlement and Request for Entry of Consent Order." The undersigned Judge found the charge of "Use of Dangerous Drugs" and its supporting specification proved, accepted Respondent's plea of "no contest," and ordered Respondent to successfully complete an initial bona fide drug rehabilitation program.

Upon completion, Respondent was to enter into an aftercare program which would include continuing treatment measures recommended by the Respondent's rehabilitation counselor; a minimum of twelve (12) random drug screens conducted over a twelve (12) month period; and a report by the Respondent's Medical Review Officer (MRO) saying whether Respondent is a

sufficiently "low risk" to return to drug use, in accordance with 46 CFR 16.370(d). Respondent was to mail or fax documents and/or reports of his drug rehabilitation completion to the MRO, the Chief of the Investigations Branch of the Marine Safety Office and to the Administrative Law Judge by or before 08 June 1999.

Following that, on 13 September 1999, the Investigating Officer, Paul W. Turner, filed a "Motion to Show Cause" why the "Order of Revocation" should not remain in effect since the Respondent failed to file proper documents with the Investigating Officers nor with the Judge's Office.

Following that, Respondent called the Judge's Office stating that he did so at the suggestion of the Investigating Officer and requested an extension until 30 October 1999. He advised that he did all but one test of the procedures and then he will get the MRO's report by or before 30 October 1999 and file his documents by or before that date. This extension was granted until 30 October 1999 by the Judge.

Respondent failed to get his documents in by the initial date in June of 1999 and again by 30 October 1999. In the meantime, the U.S. Coast Guard Investigating Officer, Paul W. Turner, Lieutenant (Junior Grade), of the Marine Safety Office Houston-Galveston filed a three (3) page "Complaint" dated 30 September 1999 and served it upon the captioned Respondent which alleged the following: the jurisdiction allegations were

that the captioned Respondent giving his address and stating that he was the holder of the following Coast Guard issued credentials Merchant Mariner's Document (MMD) Number 347-46-9407. Respondent acted under the authority of that document on 13 September 1999, by serving as Tankerman aboard the vessel NMS 1443 as required by law or regulation.

In addition, the Coast Guard listed the following factual allegations-violation of law or regulation:

- (1) the Coast Guard alleges that on 13 September 1999 at the T/B NMS 1443 the Respondent:
- (2) violated Title 18 United States Code 2197 by unlawfully using his Merchant Mariner's Document.
- (3) The Respondent signed an affidavit of circumstances of loss of license or Merchant Mariner's Document (MMD) dated 08 June 1998. On the affidavit, the Respondent claimed to have lost his MMD. The Respondent signed this affidavit in which he agreed to immediately return his MMD to the U.S. Coast Guard if it was ever found or recovered.
- (4) This law is intended to promote marine safety or protect navigable waters. The Coast Guard proposed order was one of revocation of Respondent's MMD.

Respondent signed and filed his formal "Answer" to this three (3) page "Complaint" by a document dated 09 November 1999, in which he stated that he admits all jurisdictional

allegations, and Respondent admits all factual allegations. Respondent just wished to be heard on the proposed order. A "Notice of Hearing" was set for 15 December 1999 at 9:00 a.m. at the hearing room in the port of Houston, Texas in which the Respondent appeared before the undersigned Judge.

After being advised of his rights to an attorney and his other rights at the service of the first "Notice of Hearing" in the first case and again with the service of the "Complaint" in the second case, Respondent chose to be represented *pro se* at the hearing on 15 December 1999. At that same hearing, the U.S. Coast Guard was represented by Investigating Officer Paul William Turner, Lieutenant (Junior Grade), and Kimberly Wheatley, Ensign, both stationed at the Marine Safety Office on Clinton Drive in Houston, Texas.

Respondent was given initially approximately twelve (12) months to file by or before 08 June 1999, the MRO's certification that he was a "low risk" to return to drug use. Respondent had not filed it by then nor by 30 October 1999 nor by the hearing date of 15 December 1999. On 15 December 1999, the Respondent stated that he would file by fax the next day, by him or his drug counselor, and some documents were received the next day after the hearing on 16 December 1999 which are deemed Respondent's Exhibit 1. They only include a report from his drug counselor. In addition to the report to the MRO by the drug counselor for the Respondent, there are numerous past drug

tests. However, there is no certification from the MRO that the Respondent is found to be a "low risk" by this MRO. Thus the Respondent failed to file such a document by the initial date it was due, 08 June 1999. Then when he was given an extension to 30 October 1999, he still did not file it and by 16 December 1999, it still was not filed.

Accordingly, it is:

ORDERED that the prior stay of revocation is lifted and that an Order of Revocation dated 23 July 1998, be, and the same is, given retroactive effect to that date.

This Revocation Order includes all other valid U.S. Coast Guard licenses and/or U.S. Merchant Mariner's documents and duplicates issued to Respondent by U.S. Coast Guard and now possessed by the captioned Respondent which have not expired.

This Revocation Order applies to both captioned cases.

Respondent shall be and hereby is advised of his right to appeal from this Revocation Order. Such appeal will not be accepted unless it is filed within thirty (30) days after the effective date of this Order, the date it is served upon Respondent. [Note: If there is an appeal in this matter, that Notice of Appeal must be filed with the undersigned, Room 370, 8876 Gulf Freeway, Houston, TX 77017-6542, in accordance with 46 CFR Subpart J, Sec. 5.701-5.715.] The rules governing the appeal or petition for modification in this matter are governed
by 46 CFR Subpart H, 5.577, the rules governing Reopening of

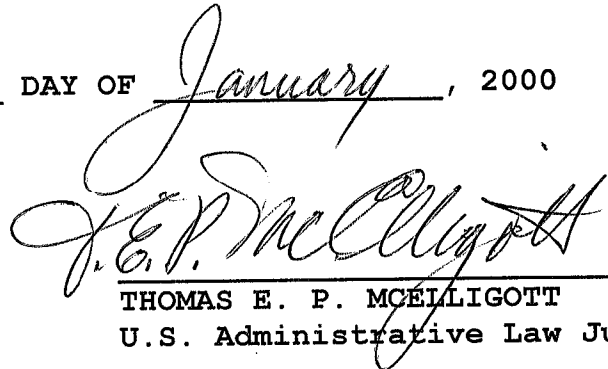
Hearing are set forth in 46 CFR Subpart I, Sections 5.601-607, Commandant's Review Authority is set forth in 46 CFR Subpart K, 5.801-5.807. See also Appeal Decision 2536 (Jacque) and VCDR 18 (Clay). Those sections pertaining to appeal are incorporated by reference and made a part of these proceedings (enclosed).

The procedures following are known as the U.S. Coast Guard's "Administrative Clemency Program." These may require three (3) or more years. Procedures are provided by which a person, or Respondent, whose U.S. Merchant Mariner's license and/or document have been revoked and surrendered, 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 document. These rules and conditions are found in 46 CFR Subpart L (46 CFR §§ 5.901, 5.903 and 5.905) entitled "Issuance of New Licenses, Certificates or Documents After Revocation or Surrender."

The Respondent's MMD, Investigating Officer's Exhibit 3, will be returned to the Commanding Officer of the Marine Safety Office for the ports of Houston and Galveston, Captain Wayne Gusman, to the attention of the Senior Investigating Officer. This particular document already expired on the 05 October 1999. It shows the Respondent's date of birth as 10/22/1953 with

Social Security Number and Merchant Mariner's Document Number
347469407 D2 for second duplicate of this document issued to the
Respondent.

DONE AND DATED THIS 20th DAY OF January, 2000
HOUSTON, TEXAS.


THOMAS E. P. MCELLIGOTT
U.S. Administrative Law Judge