

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

<b>UNITED STATES COAST GUARD</b>	)	
<b>Complainant</b>	)	
	)	
<b>vs.</b>	)	<b>Docket Number: 00-0460</b>
	)	<b>PA Number: 00001213</b>
<b>LAWRENCE P. ABATIE</b>	)	
<b>Respondent</b>	)	
	)	
<b>BEFORE: THOMAS E. MCELLIGOTT</b>	)	
<b>Administrative Law Judge</b>	)	

**DECISION & ORDER**

At the hearing held at the port of Honolulu, Hawaii, on 08 September 2000, the U.S. Coast Guard was represented by the Chief of Investigations (and Senior Investigating Officer), Lieutenant Commander Craig A. Petersen, and Investigating Officer William N. DeLuca, Lieutenant Junior Grade, both at the time stationed at the Marine Safety Office Honolulu, Hawaii.

The Respondent was present throughout the hearing and was represented by his chosen attorney at law, Ramon J. Ferrer of 1975 Vineyard, Suite 405, Wailuku, Hawaii 96793.

This matter commenced with the service of a Complaint upon the Respondent by Investigating Officer W. N. DeLuca, which stated jurisdictional allegations that Respondent's address is P.O. Box 11851, Lahaina, Hawaii 96761, with U.S. Coast Guard-issued credentials including license number 779158.

The Coast Guard's factual allegations stated "Use of or Addiction to the Use of Dangerous Drugs." The Coast Guard alleged further that:

1. On 26 June 2000, the Respondent took a reasonable suspicion/cause drug test.

2. A urine specimen was collected by West Maui Healthcare Center of Lahaina, Hawaii.

3. The Respondent signed a "Federal Drug Testing Custody and Control Form."

4. The urine specimen was analyzed by Quest Diagnostics using Enzyme Immunoassay and/or Gas Chromatography/Mass Spectrometry procedures approved by the U.S. Department of Transportation.

5. That specimen subsequently tested positive for THC (marijuana).

6. The Medical Review Officer (MRO), Dr. Ben K. Azman, of West Maui Healthcare Center, interviewed the Respondent on 02 July 2000. The MRO determined the test to be a valid test for THC (marijuana).

The second set of factual allegations stated "Violation of Law or Regulation." The Coast Guard alleged further that:

1. On 21 June 2000 (Wednesday), the Respondent was directed by a Coast Guard law enforcement officer to undergo a chemical test for reasonable cause as soon as practicable.

2. The Respondent violated federal regulations by failing to comply with the Coast Guard's order to test until 26 June 2000 (Monday).

The third set of factual allegations alleged "Violation of Law or Regulation." The Coast Guard alleged that:

1. On 02 July 2000, the Respondent was informed by the MRO, Dr. Ben K. Azman, that the test was determined to be a valid test for THC (marijuana).

2. The Respondent violated federal regulations by continuing to work under the authority of his Coast Guard license until 13 July 2000.

Respondent filed his Answer with the Administrative Law Judge Docketing Center on 01 August 2000, in which he admitted all jurisdiction allegations. Respondent

admitted in his Answer to all of the allegations regarding use of a dangerous drug and failure of a drug test.

With regard to the allegations of a violation of a law or regulation, he denied all, and the Respondent requested a hearing before an Administrative Law Judge. With regard to the factual allegations, the Respondent did admit that on 02 July 2000, Respondent was informed by the MRO, Dr. Ben K. Azman, that the test was determined to be a valid test for THC (marijuana).

The Investigating Officers alleged that the captioned Respondent did commit acts, which violated federal chemical testing regulations. Although the Respondent admitted to testing positive for marijuana during a U.S. Department of Transportation urinalysis drug test in which he submitted a urine specimen on Monday, 26 June 2000, in Hawaii, certain aggravating charges remained in dispute.

It was proved that on Wednesday, 21 June 2000, Respondent was orally directed by Investigating Officer, Lieutenant Michael Simbulan of Coast Guard Marine Safety Office Honolulu to undergo a chemical test for reasonable cause as soon as practicable by providing a urine specimen. Respondent did not comply with this order to test until Monday, 26 June 2000, five days after the order was orally given. Respondent admitted that on 02 July 2000, the MRO, Dr. Ben K. Azman, informed Respondent that the certified laboratory test was determined to result in a positive test for marijuana. However, Respondent continued to work under the authority of his Coast Guard license until 13 July 2000.

The Coast Guard proposed revocation of Respondent's license issued by the U.S. Coast Guard.

The Coast Guard listed and called Lieutenant Michael Simbulan as a witness and Mr. David Hudson, the captain and owner of the corporation, Finest Kind Inc., which

corporation was Mr. Abatie's marine employer. (Appendix A, List of Witnesses and Exhibits)

Lieutenant Simbulan testified that he verbally ordered Respondent to take a urinalysis drug test for dangerous drugs on Wednesday, 21 June 2000, by Respondent providing a urine specimen.

A third witness was called to testify for the Coast Guard at the hearing, Dr. Anthony D'Addario, Ph.D., Director of the Quest Diagnostics Laboratory in San Diego, California. His testimony proved that this certified laboratory followed all required steps and procedures and found a positive for marijuana use.

Coast Guard's exhibits included:

IO's Exhibit 1 is a written order for reasonable cause drug test dated Wednesday, 21 June 2000, but the Respondent filed with it a post office stamped envelope in which it arrived to them date stamped Friday, 23 June 2000. The Respondent stated he did not receive it until the following Saturday, 24 June 2000.

IO's Exhibit 2 is MRO's documents #1, original positive test notification.

IO's Exhibit 3 is MRO's documents #2, MRO's file on test sample of 26 June 2000, Department of Transportation (DOT) test positive for THC.

IO's Exhibit 4 is the litigation package supplied by the certified drug-testing laboratory, Quest Diagnostics Laboratory of California.

IO's Exhibit 5 is Hudson Subpoena #1 for employment records.

IO's Exhibit 6 is Hudson Subpoena #2 for testimony and original employment records.

IO's Exhibit 7 are employment records of Abatie, Lawrence P., Respondent.

Respondent's witness list included Respondent Lawrence P. Abatie and David Hudson, captain and owner of the corporation and fishing vessel FINEST KIND.

Respondent Abatie offered into evidence seven (7) exhibits, which were admitted into evidence by the Judge.

Respondent's Exhibit 1, also marked Exhibit A, is a letter from the Coast Guard and its envelope that was date stamped by the post office on Friday, 23 June 2000, in which it was sent, and responses sent by Mr. Hudson, Respondent's marine employer. The letter was dated Wednesday, 21 June 2000, but the envelope showed the date stamp by the post office of Friday, 23 June 2000.

Respondent's Exhibit 2, also marked Exhibit B, is the notice sent to Dr. Azman to have Mr. Abatie take a drug test by providing a urine sample.

Respondent's Exhibit 3, also marked Exhibit C, are negative chemical later test results taken of Lawrence P. Abatie. Respondent gave subsequent urine samples on 25 July 2000 and 09 February 2000 which were tested and reported as negative. However, it is well known that the human body flushes marijuana eventually out of the body.

Respondent's Exhibit 4, also marked Exhibit D, is an article from a local magazine, Hawaii Fishing News, in which Respondent is discussed in the September 2000 issue as a leading fish captain in the area.

Respondent's Exhibit 5, also marked Exhibit E, is a worksheet for Respondent showing that employer Mr. Hudson took Respondent off the schedule until a meeting was held with the Coast Guard regarding drug testing upon discovering that there was a problem.

Respondent's Exhibit 6, also marked Exhibit F, is a letter dated 20 July 2000, by the Chief of the Investigations Department, Lieutenant Commander Craig A. Petersen, to David Hudson of Finest Kind, Inc.

Respondent's Exhibit 7, also marked Exhibit G, is a report from West Maui Healthcare Center of Lahaina, Hawaii, signed by Dr. Ben K. Azman, M.D., MRO, who is a board certified MRO by the A.A.M.R.O. Organization.

Respondent's attorney and the Respondent requested that he be allowed to submit late documents in support of his case and a late witness list because Respondent did not obtain legal representation until after the fifteen (15) day deadline prior to the hearing to submit said documents. Respondent's attorney argued that Mr. Abatie did not know how to proceed in this matter until after Mr. Abatie obtained legal counsel. This was allowed.

They also argued that Respondent tested negative in a couple of tests that he had taken recently, much later than the specimen provided on the date in question, Monday, 26 June 2000.

It was established at the hearing, and is a well-known fact, that once a mariner or human being stops taking drugs such as marijuana, he can test negative forever once the marijuana has been flushed out, so to speak, of his system or his body. This does not prove that on 26 June 2000, he did not have marijuana in detectable amounts in his urinary system.

Respondent's attorney argued that Mr. Abatie took the test as soon as was practicable, pursuant to 33 Code of Federal Regulations (CFR) Section 95.035(b). They argued that the Coast Guard sent the original notice by facsimile to a person who is not a supervisory personnel for Finest Kind, Inc., the business that Mr. Abatie does contract work for as a fishing vessel captain. They argued that Mr. David Hudson, the supervisor (and chief executive officer) of Finest Kind, Inc., did not receive a letter from the Coast Guard until Saturday, 24 June 2000, and the earliest a test could be arranged was Monday, 26 June 2000.

They also argued that Respondent was not on duty at the time the alleged incident took place. Finest Kind, Inc. donated a vessel for a funeral service on that date. There was no money involved. There were two other captains on board who for some reason did not get reported as being seen using marijuana.

They further argued that the Respondent was under the impression that he could continue working until instructed to stop by the Coast Guard or Finest Kind, Inc.

They also argued there were mitigating circumstances. The Respondent is an excellent and dependable captain, as Mr. Hudson testified to. Captain Abatie has a good reputation as a charter boat fishing captain, as can be observed in one of the exhibits. Mr. Abatie has continued to voluntarily take chemical tests.

#### **FINDINGS OF FACT BASED UPON**

#### **THE ENTIRE RECORD CONSIDERED AS A WHOLE**

1. It has been established and proven by the Investigating Officers in this case that the Respondent's mailing address is P.O. Box 11851, Lahaina, Hawaii 96761 and the Respondent holds the following Coast Guard-issued credentials, namely U.S. Coast Guard-issued license number 779158.

2. It was alleged and proven that there was use of a dangerous drug. The Coast Guard alleged and proved that on Monday, 26 June 2000, the Respondent gave a urine sample and thereby took a reasonable suspicion/cause drug test due to reports by some people that he was seen smoking marijuana on a vessel.

3. A urine specimen was collected from Respondent by the West Maui Healthcare Center of Lahaina, Hawaii, on Monday, 26 June 2000. Respondent during the collection signed a "Federal Drug Testing Custody and Control Form" on Monday, 26 June 2000. The urine specimen was analyzed by a certified laboratory known as Quest Diagnostics Laboratory of San Diego, California, using the Enzyme Immunoassay

test and the Gas Chromatography/Mass Spectrometry (GC/MS) confirmatory test and procedures approved by the U.S. Department of Transportation and the U.S. Coast Guard.

4. Respondent's specimen collected on 26 June 2000 subsequently tested positive for THC (marijuana) by this said certified laboratory.

5. The MRO, Dr. Ben K. Azman, of West Maui Healthcare Center of Lahaina, Hawaii, interviewed the Respondent on or about Sunday, 02 July 2000. The MRO then determined that the test was a valid test for THC (marijuana) and reported the positive.

6. It was further proven that on Wednesday, 21 June 2000, Respondent was orally directed by a Coast Guard law enforcement officer, an investigating officer, to undergo a chemical test for reasonable cause testing as soon as practicable. The Respondent violated federal regulations by failing to comply with the Coast Guard's order to provide a urine specimen for the test until Monday, 26 June 2000. It was important to test as soon as possible because Respondent was reported to have been seen using marijuana on or about 11 June 2000. It was further important because as was testified to at the hearing and is well known that the human body flushes, so to speak, marijuana out of the urinary system and body at a rather rapid rate. Once it is completely flushed out, it will not register in the numbers looked for in these urine tests of the urine specimen. The tested person, if they no longer take marijuana, can test negative forever, no matter how many more tests they take, as long as they stay away from marijuana and any other drugs being tested for. This does not prove that on the date in question, Monday, 26 June 2000, Respondent did not have THC or marijuana in his urinary system. The laboratory tested and certified by the U.S. Government found a positive after providing both the Enzyme Immunoassay test and the confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test. A combination of both of these



tests is considered state of the art and most extremely accurate by the medical, scientific and legal communities in the United States.

7. Respondent was also proved to commit a violation of law and regulation in that it was proved by the Coast Guard Investigating Officers that around 02 July 2000, Respondent was informed by the MRO, Dr. Ben K. Azman, M.D., that the test was determined to be a valid test for marijuana (THC) and that he had failed it. The Respondent violated federal regulations by continuing to work under the authority of his Coast Guard license until 12 July 2000, as was established by the testimony of his marine employer and the employment records.

### **ULTIMATE FINDINGS**

1. It was established and proved that the Respondent failed a chemical drug test for marijuana because marijuana was found in his urinary system from the urine sample and specimen taken from him on 26 June 2000 at the office of the MRO. Respondent was also guilty of delaying five (5) days before he provided the urine specimen on Monday, 26 June 2000 and by working from the dates of 02 July 2000 to 12 July 2000 under his license after having been informed by the MRO that he had failed the drug test because marijuana was found in his urinary system and urine sample.

### **OPINION**

One of the statutes passed by Congress and signed by the President involved in this case is 46 U.S. Code 7704(c), which reads:

“If it is shown that a holder (of a license or document) 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.”

This statute first became public law on or about 26 August 1983 and has remained the law ever since, for approximately the past seventeen (17) years.

Subsequent to this statute, the Coast Guard stated its policy and gave guidelines of how the holder provides “satisfactory proof that the holder is cured” in one of the three Sweeney Appeal Decisions: Commandant’s Appeal Decisions Numbers 2535 (SWEENEY 1), 2546 (SWEENEY 2) and 2548 (SWEENEY 3) (1992). Commandant’s Appeal Decision Number 2535 (SWEENEY 1), detailed the guidelines for how a mariner holder provides satisfactory proof that the holder is cured and stated as follows:

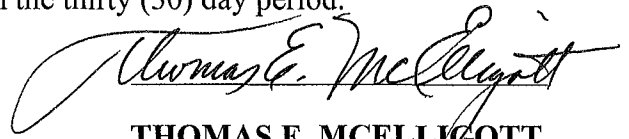
“1. The respondent must have successfully completed a bonafide drug abuse rehabilitation program designed to eliminate physical and psychological dependence. This is interpreted to mean a program certified by a governmental agency, such as a state drug/alcohol abuse administration, or in the alternative, certified by an accepted independent professional association, such as the Joint Commission on Accreditation of Health Care Organizations (JCAHO).

“2. The respondent must have successfully demonstrated a complete non-association with drugs for a minimum period of one year following successful completion of the rehabilitation program. This includes participation in an active drug abuse monitoring program which incorporates random, unannounced testing during that year.”

In light of these clear policy statements by the U.S. Congress, the President and the Commandant of the U.S. Coast Guard in the Sweeney Appeal Decision, which has also remained the policy of the Commandant ever since, Respondent’s captioned Coast Guard-issued license; and any U.S. Merchant Mariner’s Document (MMD) that he might possess from the U.S. Coast Guard, are **REVOKED** unless the Respondent within thirty (30) days of receipt of this Decision & Order by him or Respondent’s attorney representing him at the hearing starts complying with the Sweeney guidelines above. Within thirty (30) days of receipt, a letter signed by a proper drug rehabilitation program representative, director or coordinator will be sent by them or Respondent to the Senior Investigating Officer at the Marine Safety Office Honolulu, Hawaii, whose address is: Commanding Officer, U.S. Coast Guard Marine Safety Office, Chief, Investigations Department, 433 Ala Moana Boulevard, Honolulu, Hawaii 96813-4909.

This report or letter by the drug rehabilitation program will state that the Respondent has started or at least enrolled to start drug rehabilitation within that thirty (30) day period of receipt of this Decision & Order.

If the Respondent does not file such a letter with the Senior Investigating Officer in Honolulu, the Senior Investigating Officer, or an Investigating Officer under him, may file a motion requesting to invoke revocation of Respondent's captioned U.S. Coast Guard license due to failure to proceed immediately with the drug rehabilitation program by properly enrolling as soon as possible within the thirty (30) day period.



**THOMAS E. MCELLIGOTT**  
**Administrative Law Judge**  
**U.S. Coast Guard**

Dated: 31 October, 2000

**Copy:**  
**Lawrence P. Abatie, Respondent**  
**Ramon J. Ferrer, Esq., Counsel for Respondent**  
**MSO Honolulu, Attn: LTJG DeLuca, IO**  
**CCGD14(m)**  
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