

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

UNITED STATES COAST GUARD)	
Complainant)	
)	
vs.)	Docket Number: 00-0313
)	PA Number: 98001186
JAMES EDGAR WILLIS)	
Respondent)	
)	

**BEFORE: THOMAS E. P. MCELLIGOTT
ADMINISTRATIVE LAW JUDGE**

DECISION & ORDER

PRELIMINARY STATEMENT

At the hearing held at the port of Houston, Texas, on 30 August 2000, the U.S. Coast Guard was represented by the following Investigating Officers: Lieutenant Dennis C. Miller, Ensign Kimberly S. Wheatley and First Class Petty Officer Spencer L. James. All of these Investigating Officers were stationed at the time at the Marine Safety Office for the ports and region of Houston-Galveston, 9640 Clinton Drive, Houston, Texas 77029. These matters were heard and decided by Judge Thomas E. P. McElligott.

The Respondent, after being given due and adequate notice by the Investigating Officer's Complaint, his filing of his Answer to the Complaint, and especially by the Scheduling Order dated 06 June 2000 which was mailed to his last known residence address by First Class Mail on 07 June 2000, did not appear for the hearing nor send anyone to represent him.

This matter commenced with the service of the Complaint upon the Respondent by Investigating Officer (IO) K. S. Wheatley, which stated jurisdictional allegations that

Respondent's address at the time was 10805 La Crosse Street, Houston, Texas 77029. Respondent possessed U.S. Coast Guard-issued credentials, namely U.S. Merchant Mariner's Document Number 461-73-7136.

Respondent's filed Answer to the Complaint denied these jurisdictional allegations and Respondent denied also the following factual allegations: "Use of or Addiction to the Use of Dangerous Drugs." The Complaint further alleged that:

1. On 14 April 1998, Respondent took a pre-employment drug test.
2. A urine specimen was collected by Collector B J Templeton of Baycoast Medical Center.
3. The Respondent signed a "Federal Drug Testing Custody and Control Form."
4. The urine specimen was collected and analyzed by the laboratory Medexpress using procedures approved by the U.S. Department of Transportation.
5. That specimen subsequently tested positive for marijuana metabolite.

The Coast Guard proposed order was one of revocation of Respondent's above stated U.S. Merchant Mariner's Document.

The Investigating Officers' case included the sworn testimony of the Collector for Baycoast Medical Center of Baytown, Texas, Dorothy Jane Templeton.

The second IO witness sworn under oath was Dr. Elizabeth S. Keith, B.S., M.S. and Ph.D. in Biological Science. She testified on behalf of the Lab Corporation of America Holdings, Inc. of Memphis, Tennessee. This is a federally certified and inspected drug testing private laboratory.

The third IO witness was Dr. James R. Baber, M.D., the Medical Review Officer (MRO) for Drug Free, Inc., P.O. Box 8520, Little Rock, Arkansas 72215.

In addition, six (6) of the seven (7) Investigating Officers' exhibits were admitted into evidence by the Judge. The seventh exhibit was an article on "Drugs of Abuse" by

Dr. Ed Uthman, American Board of Pathology, dated April 1993. It was marked for identification only since Dr. Uthman was not called to testify by the Investigating Officers. (See Appendix A, List of Witnesses and Exhibits, enclosed.)

FINDINGS OF FACT BASED UPON

THE ENTIRE RECORD CONSIDERED AS A WHOLE

1. It has been established and proved by the Investigating Officers in this case that the last known residence address for the Respondent is 10805 La Crosse Street, Houston, Texas 77029. Respondent holds the following Coast Guard-issued credential, namely U.S. Merchant Mariner's Document Number 461-73-7136.

2. The Investigating Officers also proved by a preponderance of the reliable, probative and substantial evidence the following factual allegations supporting the charge of "Use of or Addiction to the Use of Dangerous Drugs."

3. They established that on 14 April 1998, a urine specimen was collected from the Respondent when he took a pre-employment drug test by providing his urine specimen.

4. A urine specimen was collected by Collector Dorothy Jane Templeton, Ph.D. for what was then known as Baycoast Medical Center. It is now known as Jacinto Medical Corporation. She is the Administrator of the clinic and a collector when needed. She has many years of experience as a collector and administrator of collectors.

5. The collection, the testing at the certified laboratory and the review by the Medical Review Officer are in conformance and in compliance with the applicable statutes and regulations.

6. The Respondent signed a "Federal Drug Testing Custody and Control Form" on the date and time he provided his urine specimen for the collector. The urine specimen was properly collected and analyzed by the laboratory then known as

Medexpress using procedures approved by the U.S. Department of Transportation and the U.S. Department of Health and Human Services. Medexpress is now part of Lab Corporation of America Holdings, Inc. of Memphis, Tennessee, as testified to by Dr. Elizabeth S. Keith, B.S., M.S. and Ph.D. in Science.

7. The laboratory reported its findings by 22 April 1998 and the Medical Review Officer reviewed the reports and findings by the collector and laboratory and confirmed the findings of a positive because marijuana was found in Respondent's urine specimen by the certified laboratory. The Medical Review Officer confirmed and dated his finding on 24 April 1998.

8. The Complaint was mailed by IO Kimberly Wheatley to the Respondent's last known residence address. He was identified by his name, Mr. James Edgar Willis. It was mailed to him on 04 May 2000.

9. The Respondent then filed his Answer to the IO's Complaint with the Marine Safety Office for Houston-Galveston on 01 June 2000. The Answer was then filed with the ALJ Docketing Center in Baltimore, Maryland on 05 June 2000.

10. The Investigating Officers presented their witnesses and evidence and then one of them filed a Motion for Default Order based upon the fact that Respondent did not file an Answer to the Complaint. However, since the Respondent did file an Answer to the Complaint, that Motion for Default Order is denied. It is found, however, that the Investigating Officers' exhibits and three witnesses' credible testimony clearly established and proved by a preponderance of the reliable, probative and substantial evidence, all of the allegations in the IO's Complaint.

11. In addition, I took official notice of the following Commandant's Decisions on Appeal (CDOA). These are CDOA 2535 (SWEENEY); CDOA 2544 (GENER); CDOA 2595 (MASON); CDOA 2554 (DEVONISH); CDOA 2556 (LANTON); CDOA

2557 (FRANCIS); the DOT Employers Guide; 49 CFR Part 40; 46 CFR Part 5, including section 5.59; and 33 CFR Part 20.

ULTIMATE FINDINGS

1. It was proved that the captioned Respondent failed a chemical drug test for marijuana because marijuana was found in his urinary system from the urine sample or specimen provided by him on or about 14 April 1998. This urine specimen was found positive for marijuana by the said certified laboratory on 22 April 1998 and confirmed by the said Medical Review Officer on 24 April 1998.

OPINION

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

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.”

ORDER

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 U.S. Merchant Mariner's Document (MMD) is **REVOKED** unless the Respondent within thirty (30) days of receipt of this Decision & Order starts complying with 46 USC 7704(c) and the Sweeney guidelines above. Within thirty (30) days of receipt by the Respondent of this Decision and Order, a letter signed by a proper drug rehabilitation program representative, director or coordinator should be mailed or faxed by them or by the Respondent to the Senior Investigating Officer at the Marine Safety Office Houston-Galveston, Texas, whose address is: Commanding Officer, U.S. Coast Guard Marine Safety Office, Chief, Investigations Department, P.O. Box 446, Galena Park, Texas 77547; fax number 713-671-5177.

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

If the Respondent does not file such a letter with the Senior Investigating Officer at the Marine Safety Office Houston-Galveston, 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 document due to Respondent's failure to

proceed immediately with the drug rehabilitation program by properly enrolling as soon as possible within the thirty (30) day period.



**THOMAS E. P. MCELLIGOTT
ADMINISTRATIVE LAW JUDGE
U.S. DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD**

Dated: December 15, 2000

**Copy:
MSO Houston-Galveston, Attn: YN1 James
James E. Willis, Respondent
CCGD8(m)
ALJ Docketing Center, Baltimore**