

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

UNITED STATES COAST GUARD)	
Complainant)	
)	
vs.)	Docket Number: 01-0248
)	PA Number: 01000673
BRUCE WAYNE DEVINE)	
Respondent)	
_____)	

DECISION & ORDER

**I
PRELIMINARY STATEMENT**

In this hearing, the U.S. Coast Guard was represented by Investigating Officer (IO) T. Blaine Hoover, Marine Science Technician 2 (MST2), at the time stationed at the U.S. Coast Guard Marine Safety Office for the ports of Houston-Galveston, 9640 Clinton Drive, Houston, Texas 77029 and by Investigating Officer Lieutenant (Junior Grade) Kimberly Wheatley of the same office.

Respondent was duly notified of this case when he was served with the Complaint by Investigating Officer T. Blaine Hoover, on or about April 9, 2001. On or about May 21, 2001, Respondent was advised of the date and time of the hearing, to be held on July 11, 2001, at 9:00 a.m., stating the location of the hearing room in Houston, Texas. Respondent was sent a copy of the Notice of Continuance by Janice M. Emig, Legal Assistant to the Houston Administrative Law Judge. It was sent to his last known residence address on May 21, 2001.

In addition, Respondent signed his Answer to the IO's Complaint on April 23, 2001. Respondent then filed his Answer to the Complaint on May 7, 2001, with the ALJ

Docketing Center in Baltimore, Maryland, in which Respondent denied the jurisdictional allegations as well as all factual allegations and requested a hearing before an Administrative Law Judge. The factual allegations gave Respondent's address as P.O. Box 1331 Bay Haven, Livingston, Texas 77351 and his telephone number. They also alleged Respondent holds the following Coast Guard-issued credentials, namely License Number 847854 and U.S. Merchant Mariner's Document (MMD) Number 268 38 1140. The Complaint further alleged that Respondent acted under the authority of that license or document on November 26, 2000, while serving as pilot or captain aboard the vessel UTV RMS ORION, as required by law or regulation.

The factual allegations were Misconduct. The Coast Guard alleges that on November 26, 2000, while serving onboard UTV HMS ORION, the Respondent wrongfully refused to provide a specimen for a required chemical test ordered by his marine employer, Ryan Marine Services, Inc., of the port of Galveston, Texas, in violation of company policy. Respondent dated his Answer to the Complaint on April 23, 2001, and filed his Answer on May 7, 2001, in Baltimore, Maryland. Respondent denied all jurisdictional and factual allegations and Respondent requested a hearing. After being properly notified, the Respondent chose to be absent from his hearing, and he did not send anyone to represent him, so the matter proceeded in absentia.

II
FINDINGS OF FACT BASED UPON THE ENTIRE HEARING RECORD
CONSIDERED AS A WHOLE

1. Respondent's last known residence address is P.O. Box 1331 Bay Haven #1, Livingston, Texas 77351 and telephone number 936-566-5137. Respondent was issued and holds the following U.S. Coast Guard-issued credentials: License Number 847854 and U.S. Merchant Mariner's Document Number 268 38 1140. Respondent was acting

under the authority of his license or document on November 26, 2000, while serving as captain or pilot aboard the vessel UTV RMS ORION, as required by law or regulation. He was employed at the time by Ryan Marine Services, Inc. of the port of Galveston, Texas, the owner or operator of said vessel.

2. On the date of November 26, 2000, while serving as captain aboard the vessel UTV RMS ORION, the captioned Respondent wrongfully refused to provide specimens for a required chemical and alcohol test ordered by his marine employer, Ryan Marine Services, Inc., in violation of company policy and applicable statutes and regulations, including 46 U.S. Code 7703 and 7704.

3. On the date in question, November 26, 2000, at about 1810 hours, or 6:10 p.m. local, central standard time, Respondent Devine went to the dispatch office of Ryan Marine, Inc. in Galveston, Texas for the purpose of buying groceries for the company's vessel known as the RMS ORION and its contract. Respondent was talking with the official company dispatcher, Ms. Sandy J. King, on November 26, 2000 at this time, in the dispatch office. She was alone and in charge of the office for the evening shift, working from approximately 5 p.m. until about 7 a.m. the next morning. At first the Dispatcher was on the radio with the vessel ORION and Mr. Richard Ryan, the president of the company. Devine left but said he would be back. She expected him to be back with the groceries within the usual approximately 45 minutes. When he did not show up with the groceries by 2120 hours, or 9:20 p.m., over 3 hours later, the Dispatcher called President Richard Ryan regarding whom to send for the "groceries" for the vessel. Mr. Ryan said to call him back when Devine arrived.

4. At 2140 hours, or 9:40 p.m., Devine arrived back at the dispatcher's office. Devine brought no "groceries." The Dispatcher asked him why he did not come back to provide the groceries. Devine said he went to some store and he didn't want the

groceries to spoil. The Dispatcher told Devine he knew he was supposed to go for the “groceries;” then she called Richard Ryan, the president of the company. Mr. Ryan talked with Mr. Devine on the telephone. Devine told Ryan he went to the racetrack and Wal-Mart. Then Devine gave Dispatcher King back the telephone. On the telephone, Richard Ryan asked the Dispatcher if she thought Devine had been drinking. She told Ryan yes. Ryan said have Devine sit there; don’t let him out of the gate and call Ralph McDermott, the Human Resources Manager, or the Personnel Manager for the company. Mr. Ryan wanted the company Human Resource Manager to take Respondent for two tests regarding use of alcohol and/or drugs.

5. At 2145 hours, per IO’s Exhibit 13, or 9:45 p.m., the Dispatcher called Ralph McDermott and he was coming down to the dispatcher's office to take Respondent Devine for a drug and alcohol test to a local hospital in Galveston, Texas.

6. At 2150 hours, or 9:50 p.m., the Dispatcher called Richard Ryan back because Devine was using profanity and saying he wants to go to the “boat” and leave. Devine stood up very abruptly and Devine said he was leaving, to open the gate and demanding that she do so. At the time, R. Ryan was on the phone with the Dispatcher. Devine said the Dispatcher could not hold him at the dispatch office and to call the police. R. Ryan had called the police and he was on his way down to the dispatcher’s office by this time. After carefully observing all witnesses at this hearing, I find them and their testimony credible.

7. At about 2205 hours, or 10:05 p.m., someone called to stay on the phone with the Dispatcher until a captain of another vessel, Billy Frank Moore, Jr., came back from a local store. The female dispatcher was afraid of Respondent because he displayed symptoms of being under the influence of alcohol or drugs and was very belligerent.

8. At 2210 hours, or 10:10 p.m., R. Ryan arrived and came up to the dispatcher's office. Devine told Ryan something and R. Ryan called police as to why they had not arrived yet.

9. At 2220 hours, or 10:20 p.m., two officers from the Galveston Police Department arrived and came up to the dispatcher's office. They talked to Richard Ryan, Devine and Dispatcher King. R. Ryan explained to the officers and Devine about U.S. Coast Guard rules. Ryan told Devine that Ralph McDermott, the Personnel Manager, was going to take Devine for tests and that Ralph McDermott was on his way to the dispatch office now. Devine refused the tests. R. Ryan then asked Dispatcher Sandy King to witness Ryan telling the police and them that Devine refused the tests. Dispatcher Sandy King did witness Ryan and Devine saying this in front of the police officers. Richard Ryan and the two police officers also witnessed it.

10. At about 2225 hours, or 10:25 p.m., R. Ryan asked Dispatcher King to call Ralph McDermott and tell McDermott there was no need to come down because Devine refused the tests. The police and Richard Ryan took Devine to the "boat" where he had been serving; and was still serving and assigned as the captain of the vessel. He was assigned on the motor vessel CYCLOPS during these incidents. Devine collected his gear and belongings and was escorted off the property and told not to come back by the police officers or he would be arrested.

11. At 2240 hours, or 10:40 p.m., Richard Ryan left Dispatcher King's office and made sure everything was locked up. He advised female Dispatcher Sandy King that if Respondent Devine came back to call the police since she would soon be alone in the office at that time.

III
ULTIMATE FINDINGS

1. Based upon the entire record considered as a whole, the said Complaint in this matter and its supporting allegations of Misconduct have been found proved by a preponderance of the reliable, probative and substantial evidence, as alleged in the official Complaint signed and served on Respondent Devine by U.S. Coast Guard Investigating Officer T. Blaine Hoover, MST2, of the Marine Safety Office for the ports and region of Houston-Galveston, Texas.

IV
CONCLUSIONS OF LAW

1. The U.S. Coast Guard and the Administrative Law Judge have jurisdiction over the subject matter of this hearing under the provisions of 46 U.S. Code Chapter 77, including 46 U.S. Code 7701 to 7705; the U.S. Administrative Procedure Act, 5 U.S. Code 551 through 559; 46 CFR Parts 4, 5, and 16, as amended; and 33 CFR Part 95.

2. The official Complaint alleging Misconduct for failing to provide a urine sample for drug testing purposes is found proved.

V
OPINION

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

It was proved and established that the captioned Respondent, with the identifying Coast Guard license and MMD stated in the Complaint, refused just cause drug and alcohol tests on the November 26, 2000, while employed as a captain under the authority of his license for his marine employer, Ryan Marine Services, Inc. of the port of

Galveston, Texas. A later notification letter from the Manager of Human Resources, Mr. Ralph E. McDermott, of Ryan Marine Services, Inc., was received by the U.S. Coast Guard Marine Safety Office Houston-Galveston, reporting the refusal by the Respondent to take a reasonable cause drug and alcohol screen test. Respondent displayed many symptoms of being under the influence of alcohol and/or drugs that day in question to R. Ryan, the female company Dispatcher and the second company Captain, who also arrived at the company dispatching office. The captioned Respondent was charged by an Investigating Officer's Complaint prepared and served on Respondent by the IO, T. Blaine Hoover, at the time stationed at the Marine Safety Office for the ports of Houston and Galveston, Texas. Respondent was to appear for a hearing to answer to the charge of Misconduct with its supporting allegations. The IO served the Complaint on Respondent by Certified Return Receipt U.S. Mail on April 9, 2001. Respondent received and completed Respondent's written formal Answer to the Complaint and forwarded it to the ALJ Docketing Center on or about April 23, 2001. The substance of the charge was explained to the Respondent in a letter dated April 6, 2001, as well as in the official IO's Complaint. Page 2 of the IO's Complaint included Respondent's right to an attorney, right to have witnesses and relevant information subpoenaed, right to cross-examine witnesses testifying against him, right to introduce relevant information into the record or to remain silent.

The IO proved his case by the testimony of five (5) credible witnesses and the introduction into evidence of fifteen (15) documentary exhibits. The first witness was Mr. Richard Ryan, the President of Ryan Marine Services, Inc. of the port of Galveston, Texas. The second witness was Ms. Sandy King, the company Dispatcher employed by Ryan Marine Services, Inc. on the date in question. The third witness was Mr. Billy Frank Moore, Jr., another vessel captain for this company. The fourth witness was

Mr. Eugene Albert, Vice-President of Marine Personnel for Marine Transport Lines, Inc. of Rye Brook, New York. The fifth witness was the Personnel Manager of Human Resources, Mr. Ralph McDermott, employed with the company for approximately the last five to six years. He was employed as the Personnel Manager on the date in question, Sunday, November 26, 2000.

It was clearly established by the documentary evidence and the testimony of these credible witnesses, that the Respondent was definitely under the influence of alcohol and/or drugs on the day in question. His breath smelled of alcohol, he had an unsteady gait, his eyes were bloodshot, he was not stating complete and proper sentences and acted in a belligerent manner toward Mr. Richard Ryan and the small female dispatcher, Ms. Sandy King, the dispatcher and a supervisor for the company. Mr. Eugene Albert of Marine Transport Lines of Rye Brook, New York testified that their records show that while Respondent was employed by Marine Transport Corporation aboard the vessel known as the MARINE CHEMIST, Respondent was serving as an Able Seaman on January 28, 1995, and he was dismissed or "fired" because he reported to the vessel intoxicated, as shown by this witness' testimony and IO's Exhibit 15. The credible testimony was that the Respondent reeked of alcohol in the dispatcher's office on the date in question in front of the Dispatcher, Ms. Sandy King; the President of the company, Mr. Richard Ryan; the two police officers; and a fellow captain, Billy Frank Moore, Jr.

The Respondent's refusal to submit to a reasonable cause drug and alcohol screen test has been clearly proved in the hearing held on July 11, 2001, in Houston, Texas, as scheduled, although the Judge did wait ten (10) minutes for the Respondent before commencing the hearing to see if he was just late. However, although the hearing took approximately an hour and a half, the Respondent never appeared at the hearing room, and we did not hear anything from him on the day of the hearing. The sworn credible

testimony by five (5) witnesses and the documented fifteen (15) exhibits proved by a preponderance of the reliable, probative and substantial evidence the charge of Misconduct, as alleged in the IO's official Complaint properly served on Respondent well prior to the hearing date.

In Commandant's Appeal Decision Number 2551 (LEVENE), it was held and affirmed that evidence of intoxication includes "personal observation of an individual's manner, disposition, speech, muscular movement, general appearance, or behavior."

In Mr. Ryan's credible testimony, he stated that the Respondent was under the influence of drugs and/or alcohol by numerous symptoms such as smelling of beer or alcohol, and a swaying gait. The other witnesses testified to the same thing and to blurred words and sentences, bloodshot eyes and a belligerent attitude. Ms. King testified that Devine's words were slurred, his odor smelled of alcohol or beer and his behavior was belligerent. In Captain Moore's credible testimony, he stated he could smell alcohol from Devine's breath and that Respondent's behavior was also an indication he was under the influence of drugs and/or alcohol, such as bloodshot eyes and a swaying gait or walk. All three (3) of the above mentioned witnesses heard the Respondent being requested or offered a drug/alcohol drug screen test and Respondent's refusal to submit to the drug and alcohol tests the day in question.

In accordance with 46 U.S. Code 7704(c), the Investigating Officers seek revocation due to the facts of this case and that Respondent's past work history shows that he has a problem with alcohol.

VI **ORDER**

In accordance with Commandant's Appeal Decision Number 2551 (LEVENE) and Commandant's Appeal Decision Number 2578 (CALLAHAN), Respondent's

captioned license and/or U.S. Coast Guard-issued Merchant Mariner's Document are hereby revoked. Respondent is directed to deliver in person or by mail his captioned license and document to the attention of Investigating Officer T. Blaine Hoover, MST2, of the U.S. Coast Guard Marine Safety Office Houston-Galveston, at 9640 Clinton Drive, Houston, Texas 77029, telephone number (713) 671-5108. This must be accomplished as soon as possible. If Respondent continues to work under the authority of his captioned license and/or document, he will be subject to criminal charges being brought against him.

YOU ARE HEREBY NOTIFIED that any party may file a notice of appeal from this decision within thirty (30) days. If neither party files an appeal pursuant to 33 C.F.R. Subpart J, this Decision and Order will constitute final Coast Guard action. An appeal notice, if any, shall be served on all parties and filed with: U.S. Coast Guard Administrative Law Judge Docketing Center, Attention: Hearing Docket Clerk, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202-4022, phone number (410) 962-7434, fax number (410) 962-1742, AND with the undersigned Judge, U.S. Coast Guard, 8876 Gulf Freeway, Number 370, Houston, Texas, 77017-6542, fax number (713) 948-3372. See enclosure of 33 C.F.R. Subpart J.

The rules and procedures for appellate review are found in 33 C.F.R. Part 20, Subpart J, specifically, §§ 20.1001–1103. A copy of Subpart J has been provided to the Respondent as part of the service of this order.

Each party appealing this Decision and Order has sixty days (60) following the issuance of this decision or receipt of the transcript to file an appellate brief. An appellate brief shall be served on all parties and filed with: U.S. Coast Guard Administrative Law Judge Docketing Center, Attention: Hearing Docket Clerk, 40 S.

Gay Street, Room 412, Baltimore, Maryland 21202-4022, phone number (410) 962-7434, fax number (410) 962-1742, AND with the undersigned Judge, U.S. Coast Guard, 8876 Gulf Freeway, Number 370, Houston, Texas, 77017-6542, fax number (713) 948-3372.

Alternative procedures are also provided by which a person, or a Respondent, whose U.S. Merchant Mariner's License and/or Document has been revoked, may apply to any Commanding Officer of any Marine Safety Office of the U.S. Coast Guard for administrative clemency. This is known as applying to the Coast Guard "Administrative Clemency Review Board." These rules and requirements are found in 46 C.F.R. Subpart L (46 C.F.R. sections 5.901, 5.903, and 5.905) entitled "Issuance of New Licenses, Certificates or Documents After Revocation or Surrender," and can also be found in the U.S. Coast Guard Marine Safety Manual.


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

Dated: August 24, 2001

Copy:
MSO Houston-Galveston, Attn: MST2 T. Blaine Hoover, IO
Bruce W. Devine, Respondent
CCGD8(m)
ALJ Docketing Center, Baltimore