UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD	)	
	)	DOCKET NO. CG S&R 00-0839
v.	)	
	)	
ERICK LARONE HOSKINS,	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

This proceeding is brought pursuant to the authority contained in 46 U.S.C. § 7704; 5 U.S.C. §§ 551-559; 46 CFR Parts 5 and 16.

Respondent is charged with having been convicted of a dangerous drug law violation which requires under 46 U.S.C. § 7704(b) that his Merchant Mariner Document be revoked.

Respondent holds a Merchant Mariners Document Number 531-80-4905 issued to him by the Coast Guard on December 22, 1998. It qualifies him to serve as an Oiler, Lifeboatman, Ordinary Seaman and Steward's Department.

Jurisdiction is established in this matter by reason of Respondent's licensure. 46 U.S.C. §7704(b); NTSB Order No. EM-31 (STUART); Commandant Appeal Decision, No. 2135 (Fossani).

PROCEDURAL HISTORY

The Coast Guard filed the complaint on December 13, 2000. It alleged that Respondent was convicted of a dangerous drug law violation within the preceding ten years in the State of Washington.

The Coast Guard then filed a motion for default order on March 2, 2001 contending that Respondent had not timely answered the complaint. Respondent opposed the request and filed an answer.

I rendered a decision denying that motion. Among the factors, upon which I relied, was the fact that the complaint was not properly served upon Respondent because he was not living at his mother's home (where the complaint was served), but instead was then incarcerated after conviction under the State of Washington's Uniform Controlled

Substances Act. I point this out since the allegation in this complaint is that Respondent was convicted of a drug related offense, *i.e.* the very offense for which he was incarcerated when service was attempted.

Respondent's answer admitted:

1. He holds a U.S. Coast Guard issued MMD number 531-80-4905;
2. He was convicted of violating a drug law of the State of Washington within the preceding 10 years.

In his answer, Respondent also asserted that his conviction occurred prior to his obtaining the Coast Guard license and he has completed rehabilitation, relapse prevention, and has been drug free for approximately five years.

This matter was then scheduled for hearing in Seattle, Washington on October 2, 2001. Respondent's counsel withdrew and he obtained substitute counsel who then requested a six-week continuance that was denied.

The hearing commenced on October 2, 2001 At the conclusion of the hearing, the parties were accorded the opportunity to file written closing arguments, which was accepted.

The arguments have now been filed and this matter is ripe for decision. However, Coast Guard has objected to Respondent including in his closing argument an unsworn declaration of a witness who had not testified at the hearing. The argument is plain, the Coast Guard had no opportunity to confront this witness, cross-examine him and ascertain the veracity of his testimony in this declaration. In short, its inclusion in the closing argument is unfair. I agree, the declaration is rejected and will not be considered.

FINDINGS OF FACT

On May 15, 1998 Respondent applied for a Merchant Mariner's Document with the United States Coast Guard. His application revealed at that time he had been convicted in 1994 of a drug related offense. CG Exhibit 9

While the application was pending, Respondent also disclosed a pending, yet non-adjudicated 1996 charge of violation of the State of Washington Uniform Controlled Substance Act. CG Exhibit 12. The Coast Guard's application evaluator did not consider this pending charge. Subsequently, Respondent was convicted of this 1996 offense and was sentenced on February 19, 1999. CG Exhibit 13. Respondent has served his sentence. During his incarceration he has taken various courses of instruction and has undergone emotional treatment for his former drug lifestyle.

The Washington State Ferry System has employed Respondent, since licensure, as a deck hand. He returned to the System after his incarceration, and after a favorable conclusion of a disciplinary hearing where he was put on probation for six months in which the System managers would evaluate his performance.

According to the System's Human Resource Captain, Respondent is performing his job in an outstanding manner showing up for work, and is very customer service oriented. The Captain expressed his opinion that Respondent is no danger to the safety of the vessel, passengers or crew.

Respondent does have a criminal history, which he explains as his having made bad choices in life. But, he says he has turned his life around and has disassociated himself from drugs and that way of life. However, his criminal history shows a recent arrest in the year 2000 for another drug related offense – Violation of Uniform Controlled Substances Act. At the time of the hearing there was no disposition of that charge.

DISCUSSION

Administrative license or document revocation proceedings have the purpose not to render punishment, but rather to maintain sound, standards of conduct to protect the public, *i.e.*, safety of life and property at sea.

Proceedings to revoke a mariner's document or license for a dangerous drug offense conviction is mandated by 46 U.S.C. § 7704(b).

The fact of conviction of a dangerous drug related offense in 1999 after Respondent had been issued a MMD is clear and admitted. See Respondent's Answer, and CG Exhibit 13.

Respondent, however, attempts to rebut this fact by focusing upon a drug offense conviction in 1994, which he disclosed on his application for a MMD in 1998. CG Exhibit 9A. Unfortunately, this approach is out of focus. The Coast Guard knew of the earlier conviction and had the discretion to issue a MMD in spite of that conviction. See 46 CFR § 12.02-4 [person convicted of drug offense still eligible for license or MMD provided person meets the exception criteria in §§ 12.02-4(c)].

Additionally, Respondent argues that he also disclosed his pending drug offense proceeding, and despite that, the Coast Guard issued him a MMD. He points out that this offense occurred in 1996 but had yet to be fully adjudicated. Thus, the Coast Guard was on notice and deliberately misled him by issuing the document. Essentially, Respondent asserts an equitable estoppel defense.

The doctrine of equitable estoppel precludes a litigant from asserting a claim or defense, which might otherwise be available, against another party who has detrimentally altered their position in reliance on the other party's misrepresentation of, or failure to

disclose, some material fact. 3, Pomeroy, Equity Jurisprudence, Sec. 804, p. 189 (5th ed. 1941). See for example, *United States v. Georgia Pacific Co.*, 421 F.2d 92, 96 (9th Cir. 1970)[quoting *Hampton v. Paramount Pictures Corp.*, 279 F.2d 100, 104 (9th Cir. 1960).

Equitable estoppel has not been generally available to a party in litigation against the government. The theory is that government's laches or neglect of duty is no defense to a suit by the government to enforce a public right or protect a public interest. See, *Utah Power & Light Co. v. United States,* 243 U.S. 389, 409 (1917).

A leading case on estoppel is *Federal Crop Insurance Corp. v. Merrill,* 332 U.S. 380, 383-388 (1947). There a farmer's application for crop insurance on re-seeded land, and disclosed in the application, was approved. When his re-seeded crop failed, he applied for insurance coverage, which was rejected citing a rule, which forbid insurance on re-seeded crops. The farmer sued and asserted a claim of equitable estoppel against the Federal Crop Insurance Corporation (FCIC). The Court upheld the FCIC's decision and rejected the equitable estoppel claim relying on a proprietary-sovereign capacity distinction. A private insurer may have been bound, but a government insurer was not because it was engaged in a sovereign or governmental function. The Court also placed the risk on those who deal with a governmental official to ascertain whether the official is acting within the scope of his or her authority to render the advise, give the opinion, or make the decision upon which the citizen ultimately relies. The Court also concluded that the farmer was nevertheless bound by the contrary regulation since it was published in the Federal Register regardless of whether the farmer had actual knowledge of the contrary regulation.

The Supreme Court's decision in *Schweiker v. Hansen,* 450 U.S. 785 (1981) is instructive. Despite an erroneous opinion by a Social Security employee, about a person's eligibility for Social Security benefits, the Court held that the government employee's erroneous advice did not estop the Secretary of Health and Human Services from denying Hansen retroactive benefits. Hansen had appealed the denial and was awarded benefits, but also sought retroactive benefits, from the date of the misrepresentation. The employee, the court pointed out, was authorized to provide the advice given, even though it was erroneous.

These decisions leave me with the firm conclusion that in order for an equitable estoppel defense to be successful, the governmental employee must act beyond his or her authority and when doing so engage in affirmative misconduct.

From my examination of the record here, I find no evidence of any affirmative misconduct, or lack of authority on the part of the Coast Guard, or its representatives when they took Respondent's application and evaluated it together with the information about the pending drug charge and related information. I hold, therefore, the Coast Guard is not estopped from prosecuting this administrative proceeding. In that respect, Respondent's defense is rejected.

Next, Respondent argues that his life changing experiences in prison have made him a better person and suitable for continuation of his MMD and his job at the Washington Ferry System. He claims his life change has included his complete disassociation with dangerous drugs, including alcohol.

How can that be? After all, why was he charged last year with another drug offense? Is this some mistake? Yes, says Respondent. He claims the arresting officer was out to get him. He was a target. He has been unfairly singled out. See, Transcript of October 2, 2001 at pages 143-157.

Even if all of that is true, I am confronted with a harsh reality. Respondent was convicted in 1999 of a drug related offense one year after he obtained his MMD. Even though it was pending at the time of his original application in 1998 he had to know, or should have known of the statutory revocation mandate in 46 USC § 7704(b). *Federal Crop Insurance Corp. v. Merrill,* supra. [Despite representations of government official, farmer should have known of the regulation prohibiting insurance coverage for reseeded crop]. Respondent had to know the pending drug charge and an ultimate conviction would be his Trojan horse. Unfortunately, he relied upon the Ferry System's leniencies, which apparently lead him to believe he would not suffer an adverse licensing consequence from the conviction. The Washington State Ferry System's leniency could not annul the revocation mandate in 46 U.S.C. § 7704(b).[1]

Unlike the discretion allowed the Coast Guard in an original application for a license under 46 CFR § 12.02-4, I have none under 46 U.S.C. § 7704(b).[2] We are not at the original application stage.

SANCTION

The statute, 46 U.S.C. § 7704(b), provides if it is shown at a hearing, that a holder of a merchant mariner's document within 10 years before the beginning of the administrative proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the holder's document ***shall*** be revoked. Congress left me no discretion.

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[1] 46 U.S.C. § 7704(c) provides that a licensee or document holder can avoid a revocation where he is proven to be a drug user by showing he is *cured.* Part of Respondent's defense is that he has completely disassociated himself from the drug lifestyle and has not used drugs for five years. This is a *cure* argument. But, Respondent has not been charged with or proven to be a drug user. His *cure,* while commendable, is irrelevant to the proof of conviction within the ten years prior to the commencement of these administrative proceedings.

[2] Upon original application, a person convicted of a previous dangerous drug law violation may nevertheless be licensed provided, after evaluation of all the relevant information, the Coast Guard is persuaded he or she can be entrusted with the duties and responsibilities of the merchant mariner's document for which application is made. The Coast Guard made a favorable evaluation of Respondent in May, 1998. See 46 CFR § 12.02-4(c)(1).

The record is clear; it has been shown that Respondent was convicted of a dangerous drug law of the State of Washington within 10 years prior to the beginning of these administrative proceedings.

Respondent's Merchant Mariner's Document 531-80-4905 is therefore REVOKED.

Respondent shall immediately turn over his document to the Seattle Coast Guard Marine Safety Office.

Service of this s Decision upon you serves to notify you of your right to appeal as set forth in 33 CFR Subpart J, §20.1001. (Attachment A)

IT IS SO ORDERED.

Dated: January 9, 2002.

Edwin M. Bladen
Administrative Law Judge

Certificate of Service

I hereby certify that I have this day delivered foregoing Decision and Order upon the following parties and limited participants (or designated representatives) in this proceeding, at the address indicated as follows:

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Mr. George Jordan
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Electronic e-mail

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Dated at Seattle, WA this 9th day of January, 2002.

MARY PURFEERST
Legal Assistant to
Administrative Law Judge