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

UNITED STATES COAST GUARD, **Complainant,** **vs.** **DAVID MICHAEL TATUM,** **Respondent**	**Docket Number: 01-0738** **PA Number: 01001917**

BEFORE: Joseph N. Ingolia
Chief Administrative Law Judge

ORDER DENYING WITHOUT PREJUDICE
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

On October 31, 2001, the parties in the above referenced matter submitted a Motion for Approval of a Settlement Agreement and Entry of a Proposed Consent Order to be approved as a settlement of this case under 33 C.F.R. § 20.502. The approval of the Settlement Agreement was delayed due to a significant error in Paragraph 5 of the stipulation. The original stipulation called for the Respondent to establish cure by December 31, 2001, when in fact, it should have read December 31, 2002. The parties corrected the stipulation and submitted a revised Settlement Agreement for final consideration on December 12, 2001.

I have carefully reviewed the terms of the Settlement Agreement and find that it is not in compliance with Coast Guard chemical testing regulations codified at 46 C.F.R. Part 16. The Coast Guard retains the dual role of the Medical Review Officer ("MRO") in the verification of positive chemical tests and in the return-to-duty decision process. *See* Chemical Testing, 66 Fed. Reg. 42964-42968 (Aug. 16, 2001) (to be codified at 46

C.F.R. Parts 4, 5, and 16). In Coast Guard proceedings, it is the MRO, and not the Substance Abuse Profession ("SAP"), who determines when an individual is ready to return to work after failing a required chemical test for dangerous drugs. *Id*. The applicable regulations specifically provide that "the MRO must determine that the individual is drug–free and the risk of subsequent use of dangerous drugs by that person is sufficiently low to justify his or her return to work." *See* 46 C.F.R. § 16.201(f); *see also* 49 C.F.R. § 1.45(e) (delegating authority from the Secretary of Transportation to the Coast Guard to issue appropriate regulations).

For whatever reason, the parties to this settlement agreement call for a return to work determination from an SAP rather than the MRO. The parties should either recast the settlement agreement using the MRO for the return to work determination as required under 46 C.F.R. § 16.201(f) or the parties should submit reasons why they believe an SAP should be used in this case. If the parties choose to file a revised settlement agreement, said amended agreement will not alter the date in which cure must be satisfied unless the parties agree to the contrary. The revised settlement agreement or the reasons why an SAP should be used shall be submitted to this office no later than 5 p.m., Eastern Standard Time on February 5, 2002.

WHEREFORE,

IT IS HEREBY ORDERED that the parties shall either file a revised settlement agreement calling for a return to work determination by the MRO or submit reasons why the SAP should be used in this case.

IT IS FURTHER ORDERED that the filing or submission shall be received in this office no later than 5 p.m., Eastern Standard Time on February 5, 2002.

SO ORDERED:

Joseph N. Ingolia
Chief Administrative Law Judge
U.S. Coast Guard

Dated this 22nd day of January, 2002
Baltimore, Maryland

Copy:
MSO Memphis, Attn: LT(jg) Janine Donovan, IO
David M. Tatum, Respondent
CCGD08(m)