

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

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UNITED STATES COAST GUARD

Complainant

vs.

LARRY DARNELL BRADLEY,  
Respondent.

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Docket Number CG S&R 01-0487  
CG Case No. PA01001044

**DECISION AND ORDER**

**Issued: December 3, 2002**

**Issued by: Peter A. Fitzpatrick, Administrative Law Judge**

**APPEARANCES**

**FOR THE COAST GUARD**

LT Ann DeYoung  
LT M.L. Herring  
Marine Safety Office Norfolk  
200 Granby Street  
Norfolk, VA 23510-1888

**FOR THE RESPONDENT**

Larry D. Bradley, Pro Se

This case involves the interpretation of the terms of a Settlement Agreement entered into between the Coast Guard and Larry D. Bradley. On July 31, 2001, United States Coast Guard Chief Judge Ingolia issued a Consent Order Approving Settlement Agreement which was executed between the parties on July 23, 2001. That agreement arose out of the Complaint filed by the Coast Guard on July 23, 2001 alleging that Respondent violated 46 U.S.C. § 7704(c) by testing positive for marijuana metabolite on a random drug test collected and analyzed using procedures approved by the United States Department of Transportation. The Complaint asserted that the Respondent used or was addicted to the use of dangerous drugs and that his Coast Guard credential (Merchant Mariner's Document No. 225-84-6274) should be revoked.

In the Settlement Agreement, the Respondent agreed to complete a drug rehabilitation program that establishes that the Respondent is drug free and that the risk of subsequent use of such drugs by the Respondent is sufficiently low to justify Mr. Bradley's return to work. In relevant part here the Respondent agreed to participate in a drug rehabilitation program and a follow up substance abuse monitoring program such as AA/NA for one year thereafter. Also, the Respondent agreed to:

2. f. participate in a random, unannounced drug-testing program for a minimum period of one-year following successful completion of the rehabilitation program, taking at least 12 random drug tests conducted in accordance with Department of Transportation procedures found in Title 49 Code of Federal Regulations (CFR) Part 40;
- g. contact Marine Safety Office Hampton Roads every three months to demonstrate compliance with the terms of this Settlement;
- ...
- j. provide adequate evidence of successful completion of all elements of the rehabilitation and drug testing programs;

- k. advise the Investigations Department at Marine Safety Office Hampton Roads of any change of address and/or telephone number by mail;

The Agreement also provides (No. 3) that the Coast Guard shall review the evidence and (1) accept it; (2) reject it and grant the Respondent 30 days to correct the differences; or (3) reject it and seek a stipulated order in accordance with paragraph 5. That paragraph states that "if the Respondent fails to satisfactorily complete these conditions by July 23, 2002 then the Respondent's document will be revoked." (No. 5).

In the accompanying joint Motion for Approval of Settlement Agreement for Drug Use or Addictions dated July 23, 2001, the Respondent and the Coast Guard agreed that the Settlement Agreement was binding on the Respondent and that approval would have the same force and effect "as would a decision made after a hearing." (No. 6). The Motion also states that the Respondent waives any right to a hearing, and that "subsequent procedural steps before the Administrative Law Judge (ALJ) in this matter shall be contained in this Settlement Agreement." (No. 5).

Nearly one year later on June 13, 2002 the Coast Guard filed a Notice of Failure to Complete Settlement Agreement alleging that Respondent "has not supplied evidence of successful completion of the terms of the agreement." The Notice stated that the stayed order (Revocation) "is in full force and effect unless the Respondent requests a hearing under the terms of the agreement."

On June 19, 2002 the Respondent submitted a letter objecting to the required drug screening tests required under the Settlement Agreement. That objection was viewed as a request for a hearing as allowed in paragraph 4 of the Settlement Agreement. Accordingly, this matter was assigned for hearing to this Judge on July 11, 2002. Subsequently, the Coast Guard

requested a Pre-Hearing conference and it was held with both sides on July 21, 2002. At that session the Investigating Officer disputed the random nature of the drug test results submitted by Mr. Bradley and offered to extend the testing period to allow the Respondent to comply. Mr. Bradley urged that he had done everything possible to comply with the agreement and disputed the Coast Guard's claim.

The matter was set for hearing October 22, 2002 at Norfolk, VA on the issue of whether the Respondent had complied with the Agreement. At the hearing the Investigating Officers and the Respondent were present. The Coast Guard's case consisted of one witness (Lt. Michael Herring), United States Coast Guard, Hampton Roads Marine Safety Office and ten exhibits. The Respondent testified but he did not present any exhibits. The exhibits are identified on Attachment A.

At the conclusion of the hearing I took the matter under advisement. The case is now ripe for decision.

### **DECISION**

The issue in this case is whether Mr. Bradley has complied with one of the terms of the Settlement Agreement he signed on July 23, 2001. Specifically, he agreed to participate in a **random unannounced** drug-testing program for a minimum period of one year following successful completion of the rehabilitation program. Twelve such tests were required. See Settlement Agreement (2f). Mr. Bradley took 10 tests but none were taken as part of a random, unannounced program. Mr. Bradley requested the drug screen on each of the occasions involved here. He visited the Seafarers Union Hall at Piney Point, MD, received the appropriate papers, and then proceeded to Calvert Internal Medicine Group for the drug screen test. The Coast

Guard Investigating Officer checked each drug screen with Calvert and each test was done at Mr. Bradley's request. None were unannounced.

Mr. Bradley does not dispute these facts but in his defense, asserts that he tried to find a random unannounced program in the Piney Point, Maryland area but was unable to do so. He claims that no such program exists and the Coast Guard has imposed an impossible requirement. He testified that he has done everything possible to comply with the Settlement Agreement. All of the tests involved here have a negative (clean) result which purportedly show that he has distanced himself from illegal drugs. Also, he successfully completed the drug rehabilitation program at Seafarers Addiction Rehabilitation Center, Valley Lee, MD and the required follow up monitoring program at AA/NA.

The problem regarding the suitability of his drug tests arose partially because he did not keep in contact with the Investigating Officer during the term of his rehabilitation as required by the Settlement Agreement. That section provides (2g):

- g. contact Marine Safety Office Hampton Roads every three months to demonstrate compliance with the terms of this Settlement;

The Investigating Officer testified that the purpose of that provision is to review the Respondent's progress during the rehabilitation period and discuss any misunderstanding before it is too late. Here, Mr. Bradley never contacted the Marine Safety Office during the entire rehabilitation period. Thus, his failure to participate in an unannounced testing program was not known until he had taken 10 tests and the rehabilitation period was nearly over. The Coast Guard asserts that without such unannounced tests, it is not possible to determine whether the Respondent is drug free since he can assure a favorable result on the test by abstaining from drugs for a few days before the day he selects to be tested.

I agree. The purpose of unannounced tests is to monitor the Respondent's drug use by ordering him to take a drug test without notice. Without that requirement, it is not possible to determine whether a Respondent is drug free and the risk of his subsequent use of dangerous drugs is sufficiently low to justify a return to work.

The Investigating Officer offered to seek an extension of time for Mr. Bradley so that he could take the required number of unannounced drug tests but the mariner refused. He believes the ones he has taken are sufficient.

Mr. Bradley signed the Settlement Agreement and agreed to take 12 unannounced random drug tests during the one year following successful complete of the formal rehabilitation program. He has not done so and he refuses to do so in the future.

I do not believe he has met the terms of the Settlement Agreement he signed. Accordingly, under paragraph 5 of that Agreement, his Merchant Mariner's Document must be revoked.

**ORDER**

For all of the foregoing reasons, Merchant Mariner's Document No. 225-84-6274 issued by the United States Coast Guard is hereby **REVOKED**.

  
**PETER A. FITZPATRICK**  
Administrative Law Judge  
United States Coast Guard

Done and Dated on December 2, 2002 at  
Norfolk, Virginia