

**UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD**

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UNITED STATES COAST GUARD

Complainant

vs.

DERRICK ANTHONY HIGH

Respondent

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Docket Number 2018-0084  
Enforcement Activity No. 5738054

**DECISION AND ORDER**

**Issued: June 14, 2018**

**By Administrative Law Judge: Honorable Michael J. Devine**

**Appearances:**

**James T. Staton  
USCG Sector Hampton Roads  
And  
Lineka Quijano, Esq.,  
Suspension and Revocation National Center of Expertise  
For the Coast Guard**

**Derrick Anthony High, Pro se  
Respondent**

## **PRELIMINARY STATEMENT**

In discharge of its duty to promote the safety of life and property at sea, the United States Coast Guard (Coast Guard) initiated this administrative action pursuant to 46 U.S.C. §§ 7703 and 7704, and conducted in accordance with the procedural requirements of 5 U.S.C. §§ 551-559, 33 C.F.R. Part 20, and 46 C.F.R. Part 5. The Coast Guard began this proceeding on March 14, 2018, by filing a Complaint seeking to revoke the Merchant Mariner Credentials (MMC) issued to Derrick Anthony High (Respondent) for use of, or addiction to the use of dangerous drugs. Respondent submitted an Answer form dated March 24, 2018, but left the majority of the form blank and failed to specifically admit or deny the allegations in the Complaint. Respondent did check the block to request settlement discussions.

The Complaint's jurisdictional allegations state Respondent is the holder of MMC000282911. The factual allegations of the Complaint state:

### **Charge 1 (Use of or addiction to the use of dangerous drugs)**

The Coast Guard alleges that:

1. On April 5, 2017, Respondent took a pre-employment (applicant) drug test for Military Sealift Command, in accordance with Civilian Marine Personnel Instruction 792 (CMPI 792), pursuant to Executive Order 12564, and Public Law 100-71 (PL 100-71).
2. On April 5, 2017, a urine specimen was collected by Moises Ming of NowCare Princess Anne, Virginia Beach, VA, in accordance with Department of Health and Human Services (DHHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs.
3. On April 5, 2017, Respondent signed a Federal Drug Testing Custody and Control Form for providing specimen ID#M0940212.
4. On April 11, 2017, urine specimen ID#M0940212 was analyzed pursuant to Mandatory Guidelines for Federal Workplace Drug Testing Programs by US Army

Forensic Toxicology Drug Testing Laboratory (FTDTL), Fort Meade, MD, a certified SAMHSA laboratory.

5. On April 11, 2017, urine specimen ID#M0940212 tested positive for marijuana metabolites as reported by FTDTL.
6. On April 14, 2017, after review and interpretation of the results, Dr. Robert Fierro the Medical Review Officer, reported that Respondent tested positive for Marijuana metabolites
7. Respondent has been the user of a dangerous drug as described by 46 USC § 7704(c).

On April 16, 2018, the undersigned Judge held a pre-hearing telephone conference in this matter. See 33 C.F.R. § 20.501. Respondent appeared on his own behalf (self-represented) at the telephone conference. The purpose of the conference was to discuss matters concerning scheduling of the hearing, address resources by which Respondent could obtain pro bono (no cost) counsel, and set deadlines for the exchange of discovery and witness and exhibit lists. See 33 C.F.R. § 20.807. During the telephone conference, the Coast Guard noted Respondent's failure to respond to the allegations in the Complaint may result in the facts of the Complaint being deemed admissions. The undersigned Judge explained to Respondent the need to submit a complete Answer that provided denial or admission of the allegations. The Judge directed the Coast Guard to provide another Answer form to Respondent and directed Respondent to submit a completed Answer form to amend his Answer. Following that conference, the undersigned Judge issued a Scheduling Order directing Respondent to file an Amended Answer and explained "the need to appropriately answer both the jurisdictional and factual allegations on the Answer form by admitting or denying them." The Judge directed Respondent to submit his Amended Answer by **May 1, 2018**. To date, Respondent has not filed an Amended Answer. Since Respondent failed to

deny the allegations in his Answer, such allegations may be deemed admitted. See 33 C.F.R. § 20.308(c).

On May 7, 2018, the Coast Guard submitted a Motion for Default Order (Motion) seeking a ruling that the failure to deny the allegations in the Complaint constituted admission of the allegations and requested the Court issue an Order revoking Respondent's credentials. Since Respondent submitted an Answer, even though not in compliance with the regulations, the Coast Guard Motion is more properly considered as a Motion for a Judgment on the pleadings based on the requirement in the regulations contained in 33 C.F.R. § 20.308(c).

To date, no Amended Answer has been submitted by Respondent and no response to the Coast Guard Motion has been received from Respondent. The record shows the Coast Guard Motion was received by Respondent. The record also shows the Scheduling Order issued by the Court on April 16, 2018 was delivered to Respondent electronically and by U.S. mail to his last known address. Service is valid in keeping with 33 C.F.R. § 20.304. On June 13, 2018, the Coast Guard filed a Motion requesting another telephone conference to address procedural and evidentiary matters and Respondent's failure to comply with deadlines.

Although Respondent is appearing on his own behalf (pro se), he was given information about the potential for pro bono counsel and an opportunity to amend his Answer to comply with the regulations. I find that in keeping with the regulations, Respondent's Answer submitted on March 24, 2018, which failed to deny the allegations, is deemed an admission to all the allegations in the Complaint. 33 C.F.R. § 20.308(c). Respondent also failed to contest the proposed sanction.

After careful review of the facts and circumstances of this case, including the applicable law, the Coast Guard's Motion, considered as a Motion for Judgment on the Pleadings is **GRANTED**.

### **FINDINGS OF FACT**

1. In a written Answer dated March 24, 2018, Respondent failed to either admit or deny the jurisdictional allegations of the Complaint including that he is the holder of MMC000282911.
2. In his written Answer dated March 24, 2018, Respondent neither admitted nor denied the factual allegations of the Complaint, which include allegations of a positive drug test for marijuana in violation of 46 U.S.C. § 7704 and 46 C.F.R. § 5.35.
3. To date Respondent has not provided any response to the Coast Guard's Motion for a Decision and has not presented any good cause explanation for failure to submit an Amended Answer as directed during the telephone conference and the Scheduling Order of April 16, 2018.

### **DISCUSSION**

The purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea. 46 U.S.C. § 7701. An ALJ has the authority to suspend or revoke mariner credentials if a mariner commits certain violations. See 46 U.S.C. §§ 7703-7704. Under Coast Guard procedural rules and regulations, the Coast Guard bears the burden of proof and shall prove any violation by a preponderance of the evidence. See 33 C.F.R. §§ 20.701-702; see also Appeal Decision 2485 (YATES) (1989). In this case, the Coast Guard seeks to prove, by a preponderance of the evidence that Respondent is a user of or addicted to

dangerous drugs as shown by a positive drug test result for amphetamines from a random drug test taken on July 26, 2013 (Charge 1).

These administrative proceedings are remedial and not penal in nature and are intended to help maintain standards for competence and conduct essential to the promotion of safety at sea. 46 C.F.R. § 5.5. The Court is bound by the regulations for these matters and must construe the procedural regulations so as to secure a just, speedy and inexpensive determination. 33 C.F.R. § 20.103(a). The regulations also provide that absent a specific provision in this part, the Federal Rules of Civil Procedure (Fed. R. Civ. P) control. 33 C.F.R. § 20.103(c). While the Coast Guard regulations do not contain a specific rule for a judgment on the pleadings, such a process is covered by Fed.R.Civ.P. Rule 12(c). The Coast Guard motion relies on 33 C.F.R. § 20.308(c) which results in finding that Respondent's Answer deems all allegations in the Complaint admitted and therefore the Coast Guard is entitled to judgment on the pleadings.<sup>1</sup>

In these proceedings, a respondent's admissions are sufficient to support a finding that an allegation is proved. See Appeal Decision 2654 (HOWELL) (2005). Respondent's deemed admissions also obviates the need for the Coast Guard to otherwise prove or establish a *prima facie* case, and constitutes a waiver of all non-jurisdictional defects and defenses. Appeal Decision 2385 (CAIN) (1985). Accordingly, there are no disputed issues of material fact based on the pleadings and the Coast Guard's Motion for Default considered as a Motion for Judgment on the Pleadings is **GRANTED**.

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<sup>1</sup> The Coast Guard's Motion could have also been filed as a Motion for Summary Decision. See 33 C.F.R. § 20.901. Since the Answer admits to all the factual and jurisdictional allegations, there are no genuine issues of material fact in dispute and the Coast Guard is entitled to a decision as a matter of law.

## ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Derrick Anthony High and the subject matter of this proceeding fall within the jurisdiction vested in Coast Guard under 46 U.S.C. § 7704(c).
2. The charge of use or addiction to dangerous drugs is **PROVED** based on Respondent's deemed admission of all Factual and Jurisdictional allegations and failure to demonstrate cure under 46 U.S.C. § 7704(c).

### SANCTION

One of the major purposes of suspension and revocation proceedings and trial-type hearings is to protect lives and properties against actual and potential dangers. 46 U.S.C. § 7701(a). Congress enacted 46 U.S.C. § 7704(c) and related statutes with the express intent of removing those individuals using a dangerous drug from service on board United States merchant marine vessels. See House Rep. 338, 98<sup>th</sup> Cong., 1<sup>st</sup> Sess. 177 (1983); see also Appeal Decision 2634 (BARRETTA) (2002). Under 46 U.S.C. § 7704(c), revocation of a merchant mariner's credentials is required when it is shown on a motion or proceeding that the merchant mariner is a user of, or addicted to, a dangerous drug unless the mariner provides satisfactory evidence of cure of all dangerous drug use. See generally 46 C.F.R. §§ 5.59 and 5.569.<sup>2</sup>

In Appeal Decision 2535 (SWEENEY) (1992), the Commandant held that a merchant mariner could establish proof of cure by showing that he had successfully completed a drug abuse rehabilitation program and that he had not had any associations with drugs for at least one year after completing the drug rehabilitation program, as evidenced by successful

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<sup>2</sup> A "dangerous drug" is "a narcotic drug, a controlled substance, or a controlled-substance analog (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802))." See 46 C.F.R. § 16.105. By definition, marijuana (also known as "tetrahydrocannabinol" or "THC") is recognized as a "dangerous drug". See Id.; 21 U.S.C. §§ 802(6) and (16); 21 U.S.C. § 812(c)(17) (listing marijuana as a Schedule I controlled substance).

participation in an active drug abuse monitoring or testing program which incorporates random, unannounced drug testing during that year. In later cases, the Commandant also held where a respondent demonstrates “substantial involvement in the cure process by proof of enrollment in an accepted [drug] rehabilitation program” a judge may stay the revocation and continue the hearing. Appeal Decision 2634 (BARRETTA) (2002); see also Commandant Review Decision 18 (CLAY). In this case Respondent has not provided any evidence of cure or substantial involvement in the cure process, therefore REVOCATION is the only proper order. See 46 C.F.R. § 5.569.

While revocation is a severe order, it is not necessarily permanent. Respondent’s attention is directed to 33 C.F.R. § 20.904(f), which allows a respondent, within three (3) years or less after his Coast Guard issued license or document is revoked, to file a written motion to reopen this matter and seek modification of the order of revocation upon a showing that the order of revocation is no longer valid and the issuance of a new license, certificate, or document is compatible with the requirement of good discipline and safety of lives and property at sea. In cases such as this one, the Revocation Order may be modified upon a showing by Respondent that he: (1) has successfully completed a bona fide, acceptable drug abuse rehabilitation program; (2) has demonstrated complete non-association with dangerous drugs for a minimum of one year following completion of a drug rehabilitation program; and (3) is actively participating in a bona fide drug abuse monitoring or testing program. See generally 46 C.F.R. § 5.901(d). The drug abuse monitoring program must include random, unannounced testing during that year. Appeal Decision 2535 (SWEENEY).<sup>3</sup>

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<sup>3</sup> After three years, Respondent is required to apply directly with the Commandant of the U.S. Coast Guard in Washington, D.C. for issuance of a new license. See 46 C.F.R. §§ 5.901 - 905.



WHEREFORE,

**ORDER**

**IT IS HEREBY ORDERED**, the Coast Guard Motion for Default, considered as a Motion for Judgement on the Pleadings, is **GRANTED**.

**IT IS HEREBY FURTHER ORDERED**, all of Respondent's Coast Guard issued Merchant Mariner Credentials including MMC000282911 are **REVOKED**.

**IT IS HEREBY FURTHER ORDERED**, the Coast Guard Motion for a Telephone Conference is **DENIED**.

**IT IS HEREBY FURTHER ORDERED**, the **Hearing** scheduled to commence at 9:30 AM on July 6, 2018 in Norfolk, Virginia is **CANCELLED**.

**IT IS FURTHER ORDERED**, Respondent shall immediately deliver by mail or in person his MMC and all other Coast Guard issued licenses, certificates or documents to the Coast Guard at USCG Sector Hampton Roads, attention of Mr. James T. Staton, 200 Granby Street, Suite 700, Norfolk, VA 23510. The period of revocation **shall begin on the date Respondent deposits his Credentials with the Coast Guard**. If you (Respondent) knowingly continue to use your credentials while they are revoked, you may be subject to criminal prosecution.

**PLEASE TAKE NOTICE**, under 33 C.F.R. 20.904(a) for good cause shown, an Administrative Law Judge may reopen the record of a proceeding to take added evidence. Parties may file a motion to reopen the record with the ALJ Docket Center, 40 S. Gay Street, Room 412, Baltimore, MD 21202, Facsimile (410) 962-1746. Service of this Decision on the

parties and/or parties' representative(s) serves as notice of appeal rights set forth in 33 C.F.R. §§ 20.1001 – 20.1004. (Attachment A).

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**Michael J. Devine**  
**US Coast Guard Administrative Law Judge**

Date:

**Attachment A**

**33 C.F.R. PART 20**

**SUBPART J  
APPEALS**

**§ 20.1001 General.**

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
  - (1) Whether each finding of fact is supported by substantial evidence.
  - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
  - (3) Whether the ALJ abused his or her discretion.
  - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

**§ 20.1002 Records on appeal.**

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
  - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
  - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

**§ 20.1003 Procedures for appeal.**

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
  - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --
    - (i) Basis for the appeal;
    - (ii) Reasons supporting the appeal; and
    - (iii) Relief requested in the appeal.
  - (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
  - (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
- (c) No party may file more than one appellate brief or reply brief, unless --
  - (1) The party has petitioned the Commandant in writing; and
  - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
- (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

**§ 20.1004 Decisions on appeal.**

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.