

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

---

UNITED STATES COAST GUARD  
Complainant

vs.

DENNIS LYNN BLAKE II  
Respondent

---

Docket Number 2017-0058  
Enforcement Activity No. 5735256

**DECISION AND ORDER**

**Issued: March 19, 2019**

**By Administrative Law Judge: Honorable Dean C. Metry**

**Appearances:**

**LT Kristin D. Kam, Mr. David Barnes, & LT Israel J. Parker  
Sector Jacksonville**

**Andrew J. Norris, Esq.  
Suspension and Revocation National Center of Expertise**

**For the Coast Guard**

**Jonathan Michael Rowe, Esq.**

**For the Respondent**

The United States Coast Guard (Coast Guard) initiated this Suspension and Revocation proceeding seeking revocation of Dennis Lynn Blake II's (Respondent) Merchant Mariner Credential (MMC) Number 000142522. This action is brought pursuant to the authority contained in 46 U.S.C. § 7703 and its underlying regulations codified at 46 C.F.R. Part 5 and 33 C.F.R. Part 20.

The Coast Guard issued a Complaint against Respondent on March 3, 2017, and subsequently filed an Amended Complaint on March 8, 2017.<sup>1</sup> The Amended Complaint charges Respondent with one count of misconduct pursuant to 46 U.S.C. § 7703(1)(B) and one count of violation of law or regulation pursuant to 46 U.S.C. § 7703(1)(A). Specifically, the Amended Complaint alleges that on February 27, 2017, Respondent had possession of a loaded 40 caliber handgun aboard a documented vessel without previously obtaining the permission of the owner or master of the vessel. The Amended Complaint asserts Respondent's actions constitute misconduct because they violate Respondent's employer's company policy. Further, the Amended Complaint asserts Respondent's actions are a violation of law because they violate 18 U.S.C. § 2277's prohibition against carrying a dangerous weapon on board a documented vessel without the permission of the vessel's master or owner. On May 5, 2017, Respondent filed an Answer admitting all jurisdictional allegations and denying all factual allegations in the Amended Complaint.

The undersigned Administrative Law Judge (ALJ) held a hearing in this matter from June 13, 2018 to June 14, 2018, in Jacksonville, Florida.<sup>2</sup> The hearing was conducted in accordance with the Administrative Procedure Act (APA) as amended and codified at 5 U.S.C. §§ 551-559,

---

<sup>1</sup> The Coast Guard amended the Complaint to correct the statutory authority cited, amend the jurisdictional allegations, and modify some of the factual allegations for clarity. The Amended Complaint does not contain any additional charges not included in the original Complaint.

<sup>2</sup> The hearing in this matter was initially scheduled for September 13, 2017. Pursuant to the agreement of both parties, the hearing was continued to February 21, 2018, due to Respondent's counsel's personal family health issues. Additionally, pursuant to the agreement of both parties, the hearing was further continued to June 13, 2018, due to Respondent's counsel's health issues.

and Coast Guard procedural regulations set forth in 46 C.F.R. Part 5 and 33 C.F.R. Part 20.

Andrew J. Norris, Esq., and Lieutenant Kristin D. Kam represented the Coast Guard; Jonathan M. Rowe, Esq., appeared on behalf of Respondent. At the hearing, the Coast Guard presented the testimony of four (4) witnesses and had eleven (11) exhibits admitted into the record. Respondent presented the testimony of one (1) witness. Additionally, he offered twenty-four (24) exhibits and had twenty-one (21) exhibits admitted into the record.<sup>3</sup> The list of witnesses and exhibits is contained in **Attachment A**.

At the conclusion of the hearing, Respondent and the Coast Guard agreed by stipulation that Respondent violated his employer's company policy and 18 U.S.C. § 2277 by possessing a 40 caliber handgun while on board the ISLA BELLA. Tr. Vol. II at 116-118. Therefore, the undersigned found the allegations in the Amended Complaint **PROVED** by stipulation and ordered Respondent to turn his MMC over to the Coast Guard. Tr. Vol. II at 116-129.<sup>4</sup> The undersigned permitted the parties to file post hearing briefs regarding the proper sanction. On October 12, 2018, both parties filed post hearing briefs.<sup>5</sup>

After careful review of the entire record, including the witness testimony, applicable statutes, regulations, and case law, the undersigned finds the Coast Guard **PROVED** by stipulation one count of misconduct pursuant to 46 U.S.C. § 7703(1)(B) and one count of violation of law or regulation pursuant to 46 U.S.C. § 7703(1)(A). Accordingly, for the reasons discussed below, Respondent's MMC is **SUSPENDED OUTRIGHT FOR 12 MONTHS**.

---

<sup>3</sup> R Ex. 2, 3, and 4 were not admitted on the ground they were not relevant to the proceeding. Tr. Vol. 2 at 25.

<sup>4</sup> The undersigned stated the allegations in the "Complaint" were proved. However, when he made this statement, he meant the allegations in the Amended Complaint were proved.

<sup>5</sup> At the conclusion of the hearing, the undersigned ordered the parties to submit post hearing briefs within 30 days of receiving the hearing transcript. Tr. Vol. 2 at 118-119. Pursuant to the agreement of both parties, the deadline was extended to October 12, 2018.

## FINDINGS OF FACT

The following are aggravating and mitigating findings of fact used in determining the proper sanction. These findings of fact are based on a thorough and careful analysis of the documentary evidence, testimony of witnesses, and the entire record taken as a whole:

1. Respondent has been in the maritime industry for 14 years, including 8 years sailing ships. (Tr. Vol. II at 31).
2. On February 21, 2017, Respondent was assigned to the ISLA BELLA. (Tr. Vol I at 117; Tr. Vol. II at 61).
3. Respondent had to pack and leave the same day as his assignment to the ISLA BELLA. (Tr. Vol. II at 61).
4. On February 21, 2017, Respondent was in the process of packing to move into a new home and had an infant child. (Tr. Vol. II at 61-65, 79-80).
5. At all relevant times herein, Respondent possessed a concealed firearm license. (R Ex. 1).
6. On February 27, 2017, Respondent possessed a loaded 40 caliber handgun while on board the ISLA BELLA. (Tr. Vol. I at 83-84, 148; Tr. Vol. II at 34; R Ex. 1).<sup>6</sup>
7. On February 27, 2017, Respondent did not have permission from the ISLA BELLA's master or owner to possess a handgun while on board the vessel. (Tr. Vol. I at 148).
8. The ISLA BELLA uses Liquefied Natural Gas to power its engine and two main generators. (Tr. Vol. I at 144).<sup>7</sup>
9. Liquefied Natural Gas can explode if ignited. (Tr. Vol. I at 145).
10. The discharge from a 40 caliber handgun can ignite Liquefied Natural Gas. (Tr. Vol. I at 148).
11. On February 27, 2017, Respondent possessed a bottle of urine for the purpose of helping crewmembers defeat drug tests. (CG Ex. 9; Tr. Vol. II at 56-57).

---

<sup>6</sup> The parties stipulated Respondent possessed a 40 caliber handgun while on board the ISLA BELLA. Based on a review of the record, the undersigned finds the gun was loaded. Tr. Vol. I at 58, 83-84.

<sup>7</sup> In addition to being propelled by Liquefied Natural Gas, the ISLA BELLA is also propelled by diesel fuel. Tr. Vol. I at 154.

12. On September 19, 2017, Respondent pled *nolo contendere* to the criminal charge of introduction of a firearm onto seaport property brought against him in Duval County, Florida Circuit Court. (CG Ex. 12).

### **DISCUSSION**

The purpose of Coast Guard Suspension and Revocation proceedings is to promote safety at sea. 46 U.S.C. § 7701(a). In furtherance of this goal, ALJs have the authority to suspend or revoke a mariner's license, certificate, or document for violations arising under 46 U.S.C. § 7703. In this case, the Coast Guard alleges Respondent committed misconduct by violating Tote Services Inc.'s Drug, Alcohol, and Contraband Policy (Contraband Policy). The Coast Guard asserts Respondent violated the Contraband Policy by possessing a 40 caliber handgun while on board the ISLA BELLA, a vessel operated by Tote Services Inc. Furthermore, the Coast Guard also alleges Respondent violated 18 U.S.C. § 2277 by possessing a 40 caliber handgun while on board the ISLA BELLA without the permission of the vessel's owner or master.

At the conclusion of the hearing, the parties stipulated Respondent violated the Contraband Policy by possessing a 40 caliber handgun while on board the ISLA BELLA. The parties also stipulated Respondent violated 18 U.S.C. § 2277 by possessing a 40 caliber handgun while on board the ISLA BELLA. Based on these stipulations, the undersigned found the Coast Guard proved the allegations of misconduct and violation of law contained in the Amended Complaint.

### **SANCTION**

Having found the Coast Guard's allegations proved, the undersigned must now issue an appropriate sanction. 33 C.F.R. § 20.902(a)(2). The Coast Guard asserts revocation is the appropriate sanction. Contrarily, Respondent argues suspension followed by probation is the proper sanction.

The appropriate sanction for a particular offense is dependent on the type and circumstances of the offense. See 46 C.F.R. § 5.569. Statutes, regulations and decisions on appeal mandate a particular sanction for certain offenses, whereas other offenses give the ALJ discretion in crafting the appropriate sanction. Id. Where the sanction is discretionary, an ALJ may consider the following factors in determining an appropriate sanction: (1) remedial actions which have been undertaken independently by Respondent; (2) the prior record of Respondent, considering the period of time between prior acts and the act or offense for which presently charged is relevant; and (3) evidence of mitigation or aggravation. See 46 C.F.R. § 5.569(b).

Title 46 C.F.R. § 5.569 includes a Table entitled “Suggested Range of an Appropriate Order,” which “is for the information and guidance of Administrative Law Judges and is intended to promote uniformity in orders rendered.” 46 C.F.R. § 5.569(d). However, ALJs are not bound by the Table. See Appeal Decision 2628 (VILAS) (citing Appeal Decision 2362 (ARNOLD) and Appeal Decision 2173 (PIERCE)). The Commandant has stated that “[i]n the absence of a gross departure from the Table of Recommended Awards, the order of the ALJ will not be disturbed on review.” Appeal Decision 2628 (VILAS) (citing Appeal Decision 1937 (BISHOP)).

In this case, the undersigned has discretion to determine the proper sanction for both of Respondent’s violations. The Table states a 1-3 month suspension is the appropriate sanction for Respondent’s violation of law. The Table is silent as to a sanction for Respondent’s act of misconduct. However, Respondent’s act of misconduct is most closely related to the offense of failing to obey a master’s written instruction. For this offense, the Table states a 2-4 month suspension is appropriate.

In addition to the sanctions suggested by the Table, the undersigned shall also consider all aggravating and mitigating factors. Here, in addition to the charges found proved, the Coast Guard demonstrated Respondent possessed a bottle of urine for the purpose of helping crew

members defeat drug tests. CG Ex. 9; Tr. Vol. II at 56-57. The undersigned finds this is a significant aggravating factor because Respondent's use of this urine has the potential to greatly increase the threat to safety at sea by enabling a crewmember using drugs to circumvent a drug test. Additionally, the Coast Guard established Respondent brought a loaded 40 caliber handgun onto a vessel with a significant risk of explosion if a firearm is discharged because it is propelled by Liquefied Natural Gas. Tr. Vol. I at 144-148. The undersigned finds this is an aggravating factor because of the significant risk to safety at sea created by bringing a loaded gun onto such a vessel.

Further, on September 19, 2017, Respondent pled *nolo contendere* to the criminal charge of introduction of a firearm onto seaport property brought against him in the Duval County, Florida Circuit Court. CG Ex. 12. However, this offense was based on the same facts that formed the basis of the charges in the Amended Complaint. CG Ex. 7, 12; Tr. Vol. 1 at 196-199. Since this criminal case arose from the same facts as the charges in the Amended Complaint, the undersigned does not consider the plea of *nolo contendere* to be a prior offense or aggravating factor.

In mitigation, Respondent demonstrated he has been in the maritime industry for 14 years, including 8 years sailing ships, and there is no indication he has committed any prior offenses other than the plea of *nolo contendere* discussed *supra*. CG Ex. 12; Tr. Vol. II at 2-4, 31. The undersigned considers this a significant mitigating factor because Respondent served as a mariner for a substantial period of time without any incidents other than those at issue in this case.

Respondent asserts he should receive a mitigated sanction because he did not know he had the 40 caliber handgun with him when he boarded the vessel. Respondent established he has a concealed firearm license and that he packed his belongings under rushed and hectic circumstances. R Ex. 1. Respondent was rushed due to the fact his assignment on the ISLA

BELLA was a “pier head jump,” which meant he had to pack and leave the same day he was offered a job on the ISLA BELLA. Tr. Vol. II at 61. Additionally, Respondent was in the process of packing to move into a new home and had a newborn baby, which created a hectic situation at his home while he packed his belongings to bring on the ISLA BELLA. Tr. Vol. II at 61-65, 79-80. Respondent asserts these circumstances led him to inadvertently pack his belongings in a bag that already had his 40 caliber handgun inside of it and that he then brought the bag onto the ISLA BELLA without knowing he was in possession of the gun. However, despite the circumstances surrounding Respondent’s packing, the undersigned finds Respondent failed to demonstrate he was unaware he possessed the gun when he boarded the vessel.

Respondent also asserts he should receive a mitigated sanction because he submitted to a drug test one day before the hearing, and the test result was negative. See Attachment A to Respondent’s Post Hearing Brief. Assuming the drug test was conducted in a reliable manner, its negative result reflects positively on Respondent. Nevertheless, the undersigned does not consider this to be a mitigating factor because the charges in this case do not revolve around drug use. Accordingly, taking into account all the facts and circumstances of this case, the undersigned finds **12 MONTHS’ OUTRIGHT SUSPENSION** is the appropriate sanction.

### **ORDER**

**IT IS HEREBY ORDERED**, the allegations in the Amended Complaint are found **PROVED**.

**IT IS HEREBY FURTHER ORDERED**, Merchant Mariner Credential 000142522 and all other Coast Guard licenses, certificates and documents issued to Respondent, Dennis Lynn Blake II, are hereby **SUSPENDED OUTRIGHT FOR 12 MONTHS**.

**IT IS HEREBY FURTHER ORDERED**, the 12 month suspension shall be considered to have commenced on June 14, 2018, the date Respondent surrendered his MMC to the Coast Guard. See 46 C.F.R. § 5.567.



**PLEASE TAKE NOTICE**, service of this Decision and Order on the parties serves as notice of appeal rights set forth in 33 C.F.R. § 20.1001–20.1004, a copy of which can be found in **Attachment B**.

**SO ORDERED.**


<hr/>
<b>Dean C. Metry</b> <b>U.S. Coast Guard Administrative Law Judge</b>
Date: March 19, 2019

**ATTACHMENT A**  
**WITNESS AND EXHIBIT LIST**

**WITNESS LIST**

**COAST GUARD'S WITNESSES**

1. Jonathan Tyler
2. Darin Witte
3. Raymond Thompson
4. William Hill Chaires

**RESPONDENT'S WITNESSES**

1. Dennis Lynn Blake II (Respondent)

**EXHIBIT LIST**

**COAST GUARD'S EXHIBITS**

- CG Ex. 1 Tote Services Notice of TSI Policies
- CG Ex. 2 Crew Bag Check Sheet
- CG Ex. 3 Master's Statement
- CG Ex. 4 Chief Mate's Statement
- CG Ex. 5 CBP Officer's Statement
- CG Ex. 6 CBP Custody Receipt
- CG Ex. 7 Police Arrest Report
- CG Ex. 8 Photograph
- CG Ex. 9 Bottle of Liquid and Hand Warmer
- CG Ex. 10 Home Drug Test Kit
- CG Ex. 11 Tote ISPS Policy (not offered or admitted)
- CG Ex. 12 Conviction Record

**RESPONDENT'S EXHIBITS**

- R Ex. 1 Concealed Weapon License
- R Ex. 2 Drug Test Document (not admitted)
- R Ex. 3 Drug Test Document (not admitted)
- R Ex. 4 Drug Test Document (not admitted)
- R Ex. 5 Non-DOT Alcohol Testing Form
- R Ex. 6 Letter
- R Ex. 7 Letter
- R Ex. 8 Letter
- R Ex. 9 Letter
- R Ex. 10 Letter
- R Ex. 11 Letter
- R Ex. 12 Letter
- R Ex. 13 Letter

R Ex. 14 Letter  
R Ex. 15 Letter  
R Ex. 16 Letter  
R Ex. 17 Letter  
R Ex. 18 Letter  
R Ex. 19 Letter  
R Ex. 20 Letter  
R Ex. 21 Letter  
R Ex. 22 Letter  
R Ex. 23 Letter  
R Ex. 24 Letter