

**UNITED STATES OF AMERICA
UNITED STATES DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD**

UNITED STATES COAST GUARD,

Complainant,

vs.

MATEO AARON BUTLER,

Respondent.

**Docket Number 2019-0447
Enforcement Activity No. 5773532**

DECISION AND ORDER

Issued: March 10, 2021

By Administrative Law Judge: Honorable Michael J. Devine

Appearances:

**JENNIFER A. MEHAFFEY, ESQ.
Suspension & Revocation National Center of Expertise**

**CWO DANIEL A. SAMMONS
MSU Pittsburgh**

For the Coast Guard

**MATEO AARON BUTLER, *Pro Se*
Respondent**

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I. PROCEDURAL HISTORY

The United States Coast Guard (Coast Guard or USCG) initiated this administrative action seeking revocation of Mateo Aaron Butler's (Respondent) Merchant Mariner Credential (MMC) number 000376465. This action is brought pursuant to the legal authority contained in 46 U.S.C. § 7704(a) and 46 U.S.C. § 7703(1) and the underlying regulations codified at 46 C.F.R. Part 5.

The Coast Guard filed the Complaint against Respondent on November 8, 2019, alleging Respondent violated 46 U.S.C. §§ 7703(1)(B) and 7704(a). Specifically, the Coast Guard alleges Respondent was convicted of violating a dangerous drug law and committed misconduct by making a false statement on his Coast Guard MMC endorsement application, in violation of 18 U.S.C. § 1001. On February 10, 2020, Respondent submitted an Answer to the Complaint, denying all of the allegations and requesting a hearing.

On June 23, 2020, the Coast Guard filed a Motion for Summary Decision only on Charge 1 – violation of 46 U.S.C. § 7704(a), conviction of a dangerous drug law violation. The Coast Guard attached the affidavit of the Investigating Officer and certified copies of Respondent's guilty plea and dismissal order for a September 11, 2018 conviction of possession of a Schedule I or II drug under the Commonwealth of Virginia's criminal code. Respondent did not file a response to the Motion for Summary Decision. On July 16, 2020, the undersigned Administrative Law Judge (ALJ) found there was no dispute of material fact in regard to Respondent's conviction and partially granted the Coast Guard's Motion for Summary Decision, finding Charge 1 of the Complaint **PROVEN**, but deferring any ruling regarding a sanction.

The undersigned ALJ conducted a telephonic hearing on July 28, 2020, concerning Charge 2 and sanction, in accordance with the Administrative Procedure Act codified at 5 U.S.C.

§§ 551-59, the Coast Guard administrative procedure statute codified at 46 U.S.C. § 7702, and the procedural regulations set forth in 33 C.F.R. Part 20. CWO Daniel Sammons, Investigating Officer, and Jennifer Mehaffey, Esq., of the USCG Suspension & Revocation National Center of Expertise, appeared for the Coast Guard. Respondent represented himself (*pro se*).

The Coast Guard presented the testimony of two (2) witnesses, and offered seven (7) exhibits into evidence. The ALJ denied admission of Exhibit 5, and admitted all other Coast Guard exhibits into evidence. Respondent did not offer any exhibits at the hearing, but did testify on his own behalf. The witness and exhibit lists are contained in **Attachment A**. At the conclusion of the hearing, the Coast Guard moved under 46 C.F.R. § 5.521(b) to hold Respondent's MMC pending the issuance of a decision, and the ALJ granted the motion. Additionally, the ALJ continued the case to allow Respondent time to provide information to the Coast Guard regarding his participation in substance abuse treatment and to discuss the possibility of settlement; however, no settlement was reached.

The case is now ripe for decision. For the reasons set forth below, I find the Coast Guard **PROVED** Charge 2. Considering the record as a whole, including both Charge 1 (conviction of a dangerous drug offense) and Charge 2 (misconduct), I find **REVOCATION** is the appropriate sanction.

II. FINDINGS OF FACT

The undersigned ALJ finds the following facts proved by preponderant evidence based on a thorough and careful analysis of the documentary evidence, testimony of witnesses, and the entire record taken as a whole.

1. At all relevant times, Respondent Mateo A. Butler was the holder of MMC number 000376465. (Ex. CG-001).

2. On September 11, 2018, Respondent pled guilty in the Circuit Court of the City of Virginia Beach to possession of a Schedule I or II drug under the criminal laws of the Commonwealth of Virginia, Va. Code Ann. § 18.2-250. (Ex. CG-006).
3. The Circuit Court of the City of Virginia Beach deferred entry of judgment on the charge and placed Respondent on probation. (Ex. CG-006).
4. On September 12, 2019, Respondent submitted an application, OMB No. 1625-0040, for an endorsement to his MMC, on which he answered “No” to a question asking if he had ever been convicted of a dangerous drug law violation of the United States or any State. (Ex. CG-003).
5. On January 21, 2020, the Circuit Court of the City of Virginia Beach entered an order dismissing the charge on the basis of Respondent having complied with the terms of his probation. (Ex. CG-007).
6. When Respondent submitted the application on September 12, 2019, he knew that he had pled guilty to possession of a Schedule I or II drug as part of a deferred adjudication and knew he should have disclosed this information on his application. (Ex. CG-007; Tr. at 60-61).

III. DISCUSSION

The purpose of Coast Guard suspension and revocation (S&R) proceedings is to promote safety at sea. 46 U.S.C. § 7701. To assist in this goal, Coast Guard ALJs have the authority to suspend or revoke mariner credentials if a mariner commits certain violations. See 46 U.S.C. §§ 7703-7704.

A. Jurisdiction

Under Coast Guard case law, jurisdiction is a question of fact and must be determined before the substantive issues of the case are decided. Appeal Decision 2620 COX (2001). When the Coast Guard charges violation of a dangerous drug law, jurisdiction exists so long as the respondent holds a credential at the time the Coast Guard initiates the proceedings. Appeal Decision 2712 (MORRIS) (2016); Appeal Decision 2721 (TOWNSEND) (2018). Respondent’s Answer generally denied both the jurisdiction and the factual allegations, but at the hearing

conducted on July 28, 2020, he did not dispute holding MMC 000376465 on September 12, 2019, or that he submitted an application for an endorsement to his credential on that date.

For Charge 2, misconduct, jurisdiction exists if the mariner was acting under the authority of his or her credential at the time of the alleged misconduct. 46 U.S.C. § 7703(1)(B). A person acts under the authority of the credential when he or she is engaged in official matters regarding the credential, such as when applying for a rating or endorsement. See 46 C.F.R. § 5.57(b). Here, the alleged misconduct was Respondent's answer of "No" to a question on his September 12, 2019 Coast Guard application for an MMC endorsement. Accordingly, Respondent was acting under the authority of his credential when the alleged misconduct occurred. (Ex. CG-006). This Court therefore has jurisdiction in this case.

B. Burden of Proof

The Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559, applies to Coast Guard S&R hearings before United States ALJs. 46 U.S.C. § 7702(a). The APA authorizes sanctions if, upon consideration of the entire record as a whole, the charges are supported by reliable, probative, and substantial evidence. 5 U.S.C. § 556(d). Under Coast Guard procedural rules and regulations, the burden of proof is on the Coast Guard to prove the charges are supported by a preponderance of the evidence. 33 C.F.R. §§ 20.701, 20.702(a). "The term substantial evidence is synonymous with preponderance of the evidence as defined by the U.S. Supreme Court." Appeal Decision 2477 (TOMBARI) (1988); see also Steadman v. Securities and Exchange Commission, 450 U.S. 91, 107 (1981).

The burden of proving a fact by a preponderance of the evidence "simply requires the trier of fact 'to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's

existence.” Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 622 (1993) (citing In re Winship, 397 U.S. 358, 371-72 (1970) (Harlan, J., concurring) (brackets in original)). Therefore, the Coast Guard must prove by credible, reliable, probative, and substantial evidence that Respondent more likely than not committed the charged violation.

C. The Coast Guard Proved Respondent Committed an Act of Misconduct

The Coast Guard may seek revocation of a mariner’s MMC on a charge of misconduct, under 46 U.S.C. § 7703(1)(B). Misconduct is defined under Coast Guard regulations as behavior “which violates some formal, duly established rule,” found in, among other places, “statutes, regulations, the common law, the general maritime law, a ship’s regulation or order, or shipping articles and similar sources.” 46 C.F.R. § 5.27. In this case, the Coast Guard alleged Respondent violated 18 U.S.C. § 1001, which prohibits “[making] or [using] any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry” in connection with any matter within the jurisdiction of the executive branch of the U.S. government. (Compl. at Charge 2, Para. 4). The Coast Guard bases the charge on Respondent’s September 12, 2019 conduct regarding his application for an endorsement to his MMC. Specifically, Respondent answered “No” to a question on the application asking if he had ever been convicted of a dangerous drug law violation.

As established in the Summary Decision Order, the Commonwealth of Virginia convicted Respondent on September 11, 2018, of possession of a Schedule I or II drug under Va. Code Ann. § 18.2-250. (Ex. CG-006). The Circuit Court of the City of Virginia Beach (Virginia Court) deferred entry of judgment and placed Respondent on probation. (Ex. CG-006). On September 11, 2019, a hearing was held wherein the Virginia Court removed Respondent from

probation but continued the case until December 9, 2019, to allow Respondent to pay court costs. (Ex. CG-007). On December 9, 2019, another hearing was held wherein the Virginia Court dismissed the charge against Respondent. The Order dismissing the charge was entered into the record on January 21, 2020. (Ex. CG-007). Coast Guard regulations make clear that a plea of guilty is a conviction for purposes of applying for a Coast Guard credential, even if the court defers entry of judgment pending completion of probation. 46 C.F.R. § 10.107.

On September 12, 2019, one day after his court proceeding, Respondent completed and submitted an application to the Coast Guard seeking an endorsement to able-bodied seaman. (Tr. at 36; Ex. CG-003). At Section III of the application, the form asks “Have you ever been convicted of violating a dangerous drug law of the United States, District of Columbia, or any state, or territory of the United States?” In response, Respondent checked the box for “No.” (Ex. CG-003).

Respondent testified that when he submitted the application, he believed a dismissed charge did not qualify as a “conviction” for purposes of the application. (Tr. at 60). Respondent further testified his belief at the time of submitting the application was, “I got a dismissal, I’m clear to go.” (Tr. at 60). On cross-examination, the Coast Guard established Respondent pled guilty to the offense and received a deferred adjudication, and the charge had not actually been dismissed at the time of the submission of the application. (Tr. at 62-63; Exs. CG-006 and 007). Respondent stated that he thought his conviction was dismissed after speaking to his attorney. (Tr. at 12). Respondent did not provide information as to how his attorney advised him in regard to his guilty plea or the effect of a deferred adjudication. See id. The documentary evidence shows the charge was not actually dismissed until a further hearing was held on December 9, 2019, and an Order dismissing the charge was entered on January 21, 2020. Id. The Order

memorializing the September 11, 2019 hearing does not state Respondent's case was dismissed; to the contrary, it states the case was continued. (Ex. CG-007). Considering Respondent's testimony regarding his understanding of both the status of his conviction and the requirement to disclose the conviction, and the documentary evidence that conflicts with that testimony, I find Respondent knew that the information regarding his guilty plea should have been disclosed in his September 12, 2019 application for an MMC endorsement.

Under Coast Guard regulations, a plea of guilty constitutes a conviction, even if adjudication is deferred and the individual is granted probation. See 46 C.F.R. § 10.107. Respondent is not an attorney and is not expected to hold the same understanding of legal technical terms. However, mariners are required to be aware of the requirements for safety at sea, including the fact that offenses relating to dangerous drugs or driving while under the influence of alcohol are issues that must be disclosed when applying for renewals or upgrades of MMCs. This matter is an administrative proceeding, not a criminal case. Even if the evidence the Coast Guard presented in this administrative proceeding may not be sufficient to find Respondent possessed the intent required to find one criminally liable for violation of 18 U.S.C. § 1001, Respondent may still be found to have committed misconduct in this administrative proceeding based on making a false statement in a matter before a federal agency as described by 18 U.S.C. § 1001. Appeal Decision 2456 (BURKE) (1987). I find Respondent knew that the information regarding his guilty plea should have been disclosed in his September 12, 2019 application for an MMC endorsement. Submitting an application with false information to the Coast Guard, a federal agency, is a violation of a duly established rule.¹ Therefore, I find Charge 2—misconduct under 46 U.S.C. § 7703(1)(B) and 46 C.F.R. § 5.27—**PROVEN**.

¹ While Respondent's action may not constitute a "fraudulent" application, the evidence shows he presented an application containing false information. See Appeal Decision 2663 (LAW) (2007).

IV. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent and the subject matter of this hearing are properly within the jurisdiction of the Coast Guard, in accordance with 46 U.S.C. §§ 7703-7704, 46 C.F.R. Part 5, and 33 C.F.R. Part 20.
2. Respondent's guilty plea on September 11, 2018, under Va. Code Ann. § 18.2-250 of possession of a Schedule I or II drug, constitutes a conviction pursuant to 46 C.F.R. § 10.107.
3. Respondent's conviction under Va. Code Ann. § 18.2-250 constitutes a violation of a dangerous drug law under 46 U.S.C. § 7704(a) and 46 C.F.R. § 5.35.
4. On September 12, 2019, Respondent knowingly failed to provide notice of his dangerous drug offense on a Coast Guard application for an endorsement to his Merchant Mariner Credential when he answered "No" to the question "Have you ever been convicted of violating a dangerous drug law of the United States, District of Columbia, or any state, or territory of the United States?"
5. By submitting the application on September 12, 2019, Respondent committed misconduct under 46 U.S.C. § 7703(1)(B) and 46 C.F.R. § 5.27.

V. SANCTION

In this case, the Coast Guard proved by credible, reliable, probative, and substantial evidence that 1) Respondent had been convicted of a dangerous drug law violation within the past ten (10) years, in violation of 46 U.S.C. § 7704(a), and 2) Respondent committed misconduct in violation of 46 U.S.C. § 7703(1)(B).

Regarding Respondent's September 11, 2018 conviction, Respondent participated in a diversion program for deferred adjudication and did not dispute the facts of the conviction. The sanctions to be imposed for these violations are remedial, not penal, in nature, and "are intended to help maintain standards for competence and conduct essential to the promotion of safety at sea." See 46 C.F.R. § 5.5. Further, the purpose of suspension and revocation proceedings is to "promote, foster, and maintain the safety of life and property at sea." Appeal Decision 2294 (TITTONIS) (1983); 46 U.S.C. § 7701(a). When a mariner is proven to have a violation involving dangerous drugs, the mariner has an opportunity to demonstrate cure in order to retain

or regain merchant mariner credentials. See Appeal Decision 2535 (SWEENEY) (1992); Appeal Decision 2729 (COOK) (2020).

In Appeal Decision 2678 (SAVOIE) (2008), the Commandant held an ALJ is statutorily authorized to consider a lesser sanction of suspension rather than revocation. Pursuant to the regulations, Commandant Decisions on Appeal are considered binding authority. 46 C.F.R. § 5.65. Likewise, pursuant to 46 U.S.C. § 7703, a merchant mariner's license and document may be suspended or revoked upon proof of misconduct, and the making of a false statement in an application may be a basis for an order of revocation. See Appeal Decision 2613 (SLACK) (1999).

At the conclusion of the hearing on July 28, 2020, I continued the case until September 28, 2020, to allow Respondent time to provide information to the Coast Guard regarding his participation in substance abuse treatment and to discuss the possibility of settlement, because Respondent was seeking to demonstrate cure in keeping with SWEENEY, *supra*. (Tr. at 75-77). Since Charge 1 was found proven, I also directed Respondent to surrender his MMC to the Coast Guard immediately, in keeping with 46 C.F.R. § 5.521(b), and as a condition for the continuance. However, no settlement was reached. On November 4, 2020, the Coast Guard submitted a Post-Hearing Brief with proposed findings of fact and conclusions of law, requesting a sanction of revocation. To date, Respondent has not submitted anything further.

I have carefully reviewed the record and considered all of the evidence presented in this matter. The proposed sanction of revocation is within the suggested range of sanctions contained in Table 5.569 of 46 C.F.R. § 5.569. Respondent presented testimony on his own behalf, including his efforts in seeking treatment. The undersigned ALJ considered this evidence in Respondent's favor, which served as mitigating evidence.

As noted above, the nature of S&R proceedings is remedial and the purpose is to maintain standards for competence and conduct essential to the promotion of safety at sea. I find Respondent's conviction for a dangerous drug offense and his admission to ongoing issues with substance abuse raises a clear concern for safety at sea. (Tr. at 60-61, 65-67). This charge and evidence alone would support the sanction of revocation. Based on the record as a whole, I find the Coast Guard provided sufficient evidence to support the sanction of revocation.


In addition to the appeal rights which are contained in **Attachment B**, Respondent may seek relief through 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. Respondent's efforts at rehabilitation may also be considered in an application for a new license under 46 C.F.R. § 5.901.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED, the Merchant Mariner Credential and all other Coast Guard licenses, certificates, and documents issued to Respondent Mateo Aaron Butler are **REVOKED**. If Respondent has not already properly surrendered his credentials, Respondent must immediately submit his Coast Guard-issued credentials to the Coast Guard, at Marine Safety Unit Pittsburgh, 1041 Washington Pike, Suite 300, Bridgeville, PA 15017. If Respondent knowingly continues to use his credentials, he may be subject to criminal prosecution.

PLEASE TAKE FURTHER NOTICE that service of this Decision and Order on the parties and/or parties' representatives serves as notice of appeal rights as set forth in 33 C.F.R. §§ 20.1001-1003. (**Attachment B**). If requested during the time period for submitting an appeal, a copy of the transcript of the hearing will be provided at no cost to Respondent. The time period to file a notice of appeal is thirty (30) days or less after issuance of the decision. 33 C.F.R. § 20.1001.


Michael J. Devine
~~US Coast Guard Administrative Law Judge~~
Michael J. Devine
Administrative Law Judge
United States Coast Guard

March 10, 2021
Date: