

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

UNITED STATES COAST GUARD)	
Complainant)	
)	
vs.)	Docket Number: 99-0278
)	PA Number: 99001649
JEFFERY D. CARTWRIGHT)	
Respondent)	
_____)	

BEFORE: THOMAS E. MCELLIGOTT
 Administrative Law Judge

DECISION & ORDER

I

PRELIMINARY STATEMENT

This adversary hearing was initiated by the U.S. Coast Guard while performing its missions to protect lives and properties at sea and on navigable waters, enforce national laws and treaties, preserve marine natural resources, and/or promote national security interests.

It was brought pursuant to the legal authority contained in 46 U.S. Code (U.S.C.) Chapter 77, including 46 U.S.C. 7701 through 7705; the U.S. Administrative Procedure Act, 5 U.S.C. 551 through 559; the U.S. Coast Guard Drug Testing Rules included in 46 CFR Parts 4, 5 and 16, as amended; the U.S. Department of Transportation Drug Testing Rules of 49 CFR Part 40; and the Mandatory Guidelines for Federal Workplace Drug Testing Programs, published in 53 Federal Register 11970 on 11 April 1998.

At the signing and service of the "First Complaint" and the "Second Amended Complaint" upon the captioned Respondent, the U.S. Coast Guard was represented by Senior Investigating Officer (SIO) Denis John Fassero, Lieutenant, and Investigating Officer Thomas O. Candler, Chief Warrant Officer, both at the time stationed at the U.S. Coast Guard Marine Safety

Office for the ports and region of Corpus Christi, Texas, 400 Mann Street, Suite 210, Corpus Christi, Texas 78401-2046.

The "First Complaint" was dated September 22, 1999 and the "Second Amended Complaint" was dated the same and both were served upon the Respondent, as shown by his signature on page 2 of the Complaints.

The purpose of the "Second Amended Complaint" was merely to amend the statutory authority on page one to state not 46 U.S. Code 7704(b), but correctly 46 U.S. Code 7704(c) "Use of or Addiction to the Use of Dangerous Drugs" and with the regulatory authority at 46 CFR 5.35.

The Respondent was advised in the "First Complaint," and the "Second Amended Complaint," that "The Coast Guard has initiated an administrative proceeding against his U.S. Coast Guard License and Merchant Mariner's Document (MMD)."

The Coast Guard listed the following jurisdictional allegations:

1. Respondent's last known residential address is as follows: 12660 Uhr Lane, Apartment 1114, San Antonio, Texas 78217, and his present telephone number is (210) 871-6746.

2. Respondent holds the following Coast Guard-issued credentials: License number 844380.

The factual allegations are entitled – "Use of or Addiction to the Use of Dangerous Drugs." The Coast Guard proved that:

1. On 07 July 1999, the Respondent took a pre-employment drug test.
2. A urine specimen was collected by (collector) Dr. Murray Lappe, later amended to Errol King, of and for Dr. Murray Lappe and/or the company known as Ira Jane Hurst & Associates, Lafayette, Louisiana.

3. The Respondent signed a "Federal Drug Testing Custody and Control Form."

4. The urine specimen was collected and analyzed by the laboratory, LabCorp, using procedures approved by the Department of Transportation.

5. That specimen subsequently tested positive for cocaine metabolite.

The Coast Guard proposed "Revocation" of Respondent's license in accordance with 46 U.S. Code 7704.

Respondent filed his formal "Answer" to these complaints, dated 14 October 1999, in which he denied all jurisdictional allegations and their supporting paragraphs and he denied all factual allegations and their supporting paragraphs. He affirmatively alleged as a defense the expiration of time limitation for service of complaint (46 CFR 5.55).

It is found that there was no expiration of the time limitations for service of the complaint since this incident started at or about 07 July 1999 and the Respondent was served on or about 22 September 1999 with the complaint. The service of these complaints on Respondent was well within the time limits.

Respondent stated that he wished to be heard on the proposed order. He also affirmatively alleged as a defense, "Will bring evidence of tampering with my ingested fluids by a individual prior to my test."

Both the Investigating Officers and the Respondent checked off 08 December 1999 as a favorable date for the hearing for both sides. Thus the hearing was so scheduled by the Judge and held as requested on 08 December 1999, at the Marine Safety Office Hearing Room, 400 Mann Street, Suite 210, in the port of Corpus Christi, Texas. On 04 November 1999, the undersigned U.S. Administrative Law Judge mailed a Notice of Hearing and Schedule to the Respondent and to the Investigating Officers (IOs) advising that the hearing would be held on the agreed date, Wednesday, 08 December 1999, commencing at 9:30 a.m. (local time) at the Marine Safety Office Corpus Christi, 400 Mann Street, Suite 210, Corpus Christi, Texas 78403-

1621.

In addition, both parties were advised that they were to be present at the hearing with all witnesses and/or exhibits or stipulations and be fully prepared to proceed until this matter is completed. All witness lists, exhibit lists and/or documents intended to be offered for consideration at hearing, must be submitted to the Judge by or before fifteen (15) calendar days before the hearing. The Respondent did not respond with any witness lists or exhibit lists by or before fifteen (15) calendar days before the hearing, but the Investigating Officers did.

At the hearing, the Judge was present together with the two said Officers from the U.S. Coast Guard, but the Respondent was absent, or *in absentia*. Respondent was, therefore, found in default at the hearing.

As a result of the Respondent's default at the hearing, he was served with an "Order to Show Cause" by the Judge, to which he was to reply to by or before 28 January 2000. All documents were mailed to Respondent's last known residential address. Respondent again defaulted by 28 January 2000. The case is now ripe for decision.

II

FINDINGS OF FACT BASED UPON THE ENTIRE

RECORD CONSIDERED AS A WHOLE

1. It has been established by the Respondent's two defaults, at the hearing and by the "Order to Show Cause," and by the documents and evidence produced by the Investigating Officers, that the Respondent is in default and, therefore, all jurisdictional allegations and factual allegations are found proved by default.

It is found that the Coast Guard had properly initiated an administrative proceeding against the captioned Respondent's license and/or merchant mariner's document (MMD) under the statutory authority of 46 U.S. Code 7704(c) when they alleged "Use of or Addiction to the Use of Dangerous Drugs," with the regulatory authority at 46 CFR Part 5, especially including section 5.35.

The Coast Guard established that Respondent's last known residential address was as listed in the Complaint as 12660 Uhr Lane, Apartment 1114, San Antonio, Texas 78217, former telephone number (210) 871-6746.

The Respondent holds the following Coast Guard-issued credentials: U.S. Coast Guard License Number 844380 and U.S. Merchant Mariner's Document Number 449-02-7197.

Factual allegations in the Complaint: the Coast Guard did prove that there was use of or addiction to the use of a dangerous drug. The Coast Guard further alleged and proved that on or about 07 July 1999, the captioned Respondent took a pre-employment drug test by providing a urine specimen for drug testing purposes to his prospective marine employer. The urine specimen was collected by the collector, Mr. Errol King, employed by the company Ira Jane Hurst & Associates, 221 Southpark, Lafayette, Louisiana 70508. Mr. Errol King had approximately eight years of experience collecting urine specimens for drug testing purposes. He has tested thousands of donors. He had Respondent identify himself by a picture identification card, such as a Coast Guard U.S. Merchant Mariner's Document with his picture photograph and/or a State of Texas Driver's License with the same. The Collector carefully and properly collected the specimen and completed and signed the collection document. Respondent signed copy 4, which is sent directly to the Medical Review Officer. Respondent printed his name and signed Step 4, entitled: "To be completed by donor." Respondent gave his date of birth as 10/17/56, date of collection 7/7/99. Respondent signed his full name Jeffrey Dewitt Cartwright, with his then daytime telephone number (210) 871-6746.

After the laboratory performed its two required tests, namely an Immunoassay Screen test and the Gas Chromatograph/Mass Spectrometry (GC/MS) test, which when combined are most

reliable and state-of-the-art. They found a positive for cocaine under both tests at the federally tested and certified laboratory.

The Respondent signed the "Federal Drug Testing Custody and Control Form" in the presence of the collector, and the urine specimen was properly collected and analyzed by LabCorp Occupational Testing Services, a tested and certified laboratory approved by the U.S. Department of Health and Human Services. The Respondent's urine specimen tested positive for the metabolite of cocaine by both testing methods. The Respondent was then interviewed by the Medical Review Officer (MRO), who previously examined the collection documents and the laboratory testing results and made efforts to interview the Respondent. After that, the MRO confirmed the positive for cocaine in the Respondent's urine specimen on 12 July 1999, as shown in IO's Exhibit 4, the "Federal Drug Testing Custody and Control Form," signed by the MRO as a positive for cocaine use.

The Coast Guard has proved that the captioned Respondent, Jeffrey Dewitt Cartwright, was and is the holder of Coast Guard License Number 844380 and U.S. Merchant Mariner's Document Number 449-02-7197. He was seeking employment with a marine employer, known as Aries Marine, to work under the authority of that license and document, when he tested positive for cocaine use on or about 09 July 1999.

The proper chain of custody, laboratory analysis and Medical Review Officer's confirmation verify the complaint's allegations of use of a dangerous drug to be sound. Namely, that the Respondent was found to have cocaine in his urine specimen. The Investigating Officers stated on the record at the hearing that the Respondent, Mr. Cartwright, had previous opportunities to start to prove cure and show his intent to work on a drug rehabilitation program. However, Respondent chose not to do so. The requirements to prove

cure of cocaine use were discussed with the Respondent by the Investigating Officers prior to the hearing date. During the course of the investigation, several attempts were made by the Investigating Officer to discuss these drug rehabilitation procedures, including during the discovery stage. The Investigating Officer pointed out that the Respondent failed to provide or file any list of witnesses or documentary exhibits, which the Judge's Office requested in the "Notice of Hearing" sent to the Respondent. Contact with Mr. Cartwright was further complicated for the Investigating Officers, later, because his telephone was disconnected. The Coast Guard seeks "Revocation" of the captioned Respondent's U.S. Merchant Mariner's License and U.S. Merchant Mariner's Document.

III

ULTIMATE FINDINGS

The "Complaint" and its supporting allegations and paragraphs are found proved by a preponderance of the reliable, probative and substantial evidence and also by default by the Respondent, both at the hearing and after the "Order to Show Cause" following the hearing, up to and including 01 February 2000. The "Complaint" proved Respondent's "Use of or Addiction to the Use of Dangerous Drugs," (cocaine) under 46 U.S. Code Section 7704(c). The supporting allegations in the "Complaint" above are found proved.

IV

CONCLUSIONS OF LAW

1. The U.S. Coast Guard and the U.S. Administrative Law Judge have jurisdiction over the subject matter of this hearing under the provisions of 46 U.S. Code Chapter 77, including 46 U.S. Code, sections 7701 through 7705; the U.S. Administrative Procedure Act, 5 U.S. Code,

sections 551 through 559; 46 CFR Parts 4, 5 and 16, as amended, and 33 CFR Part 20 of the U.S. Coast Guard; and 49 CFR Part 40 of the U.S. Department of Transportation.

2. The supporting jurisdictional and factual allegations of the “Complaint” served upon the Respondent are found proved by a preponderance of substantial evidence of a reliable and probative character and by Respondent’s two defaults, both at the hearing and following the “Order to Show Cause” following the hearing.

3. The “Complaint” of “Use of or Addiction to the Use of Dangerous Drugs” (cocaine) in violation of 46 U.S. Code 7704(c) is found proved by a preponderance of the evidence and by default.

V

OPINION

The above Preliminary Statement, Findings of Fact and Conclusions of Law are incorporated herein as if set forth in full.

46 U.S. Code 7704 is entitled “Dangerous drugs as grounds for revocation.” Paragraphs (b) and (c) state as follows:

“(b) If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or merchant mariner’s document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be revoked.

(c) If it is shown that a holder has been a user of, or addicted to, a dangerous drug, the mariner’s document shall be revoked unless the holder provides satisfactory proof that the holder is cured.”

Respondent violated 46 U.S. Code section 7704(c) above, and 46 CFR Parts 4, 5 and 16 and 49 CFR Part 40.

It has been determined in the case of the Transportation Institute, SIU and MEBA v. the U.S. Coast Guard and DOT, 727 F.Supp. 648 and 1990 AMC 494 (1990), as well as by the U.S. Supreme Court, that such human urine drug testing is reasonable and does not violate the Fourth Amendment of the U.S. Constitution. National Treasury Employees v. Von Raab (U.S. Treasury Department), 489 U.S. 656, 109 S. Ct. 1384 (1989); and Skinner (U.S. Department of Transportation) v. Railway Labor Executives' Association, 489 U.S. 602, 109 S. Ct. 1402 (1989). The same determination was reached in the U.S. Circuit Court for the District of Columbia in the case of Harmon v. Thornburg, 878 F.2d 484, 487-488 (D.C. Cir. 1989).

Conference sworn telephonic testimony has been upheld on appeal. [46 CFR 5.535(f)] Appeal Decisions 2538 (Smallwood); 2503 (Moulds); 2492 (Rath); and 2476 (Blake), aff'd sub.nom., Commandant v. Blake, NTSB Order EM-156 (1989); aff'd sub.nom. Blake v. U.S. Department of Transportation and NTSB, No. 90-70013 (9th Cir. 1991).

The charge and supporting specification ruled proved and the findings in this matter have been found to be supported by and in accordance with a preponderance of the reliable, probative and substantial evidence. Steadman v. SEC, 450 US 91, 67 L.Ed. 2d 69, 101 S. Ct. 999 (1981); Commandant's Appeal Decision 2468 (Lewin); 46 U.S. Code Chapter 77; 5 U.S. Code 556(d); and Title 46 CFR 5.63.

The charge and supporting specification rule proved and the findings in this matter have also been found to be supported by Commandant's Appeal Decisions 2535 (Sweeney I), reversed on other grounds sub. nom. Commandant v. Sweeney, NTSB Order No. EM-152 (1992), 2526 (Wilcox), 2522 (Jenkins), 2383 (Swiere), 2330 (Strudwick) and 2557 (Francis); and the Decision of the Vice Commandant on Review Number 18 (Clay); the Commandant's Appeal Decisions 2535 (Sweeney), 2556 (Lanton), and 2544 (Gener), 2554 (Devonish) and 2557 (Francis); the

U.S. Department of Transportation's 49 CFR Part 40; and the U.S. Coast Guard's 46 CFR Parts 4, 5 and 16, as amended.

The Respondent is advised of his right to appeal in accordance with Subpart J of 33 CFR Part 20, which is enclosed herein.

After findings were made upon the record, Respondent's prior record was inquired into. It was stipulated that the Respondent had a clear prior disciplinary record with the U.S. Coast Guard before failing this drug test for cocaine use.

The Respondent has two choices. One is letting his document be revoked and then he can try to get his captioned license/document replaced or reinstated by filing an administrative clemency application. The details of the procedure are spelled out in the last paragraph below.

The Respondent's second choice is if he goes to and enrolls within thirty (30) days of the date of this decision in a proper drug rehabilitation program for cure of drug use, then he would have an opportunity to get his captioned license and/or document back in approximately thirteen (13) to fourteen (14) months. Thus, if Respondent, within thirty (30) days of the date of this "Decision and Order" is mailed to him, advises the Senior Investigating Officer in Corpus Christi, Texas, in writing, with documents from the rehabilitation program as evidence that Respondent has already entered or enrolled to start a proper drug rehabilitation program, with a letter from the administrator or coordinator of that program, U.S. Administrative Law Judge will modify this Order accordingly. Otherwise, the Order will be one of "Revocation" of Respondent's captioned U.S. Merchant Mariner's License and Document. Respondent can telephone the investigating officers at the Marine Safety Office in Corpus Christi, Texas for more information on these local rehabilitation programs in or near San Antonio, Texas.

Respondent can also call Dr. Suzanne Sergile or Dr. Bertrane Lee, the Medical Review Officers in Los Angeles, California, affiliated with Dr. Murray Lappe, in care of Ira Jane Hurst & Associates, 221 Southpark, Building B, P.O. Box 82113, Lafayette, Louisiana 70598. The phone number is (318) 837-1616 and fax phone number is (318) 837-2406.

If the captioned Respondent, J. D. Cartwright, fails to enroll in a proper drug rehabilitation program within thirty (30) days from the date this "Decision and Order" is mailed to him, then the order will be as follows:

VI

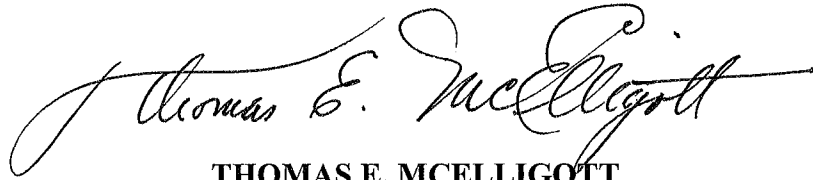
ORDER

Based upon the facts, the applicable law and the entire record, and the fact that the captioned Respondent has not shown he has entered into, or is willing to enroll quickly in a proper drug rehabilitation program, the captioned Respondent's U.S. Coast Guard Merchant Mariner's License and U.S. Merchant Mariner's Document are hereby REVOKED. This includes all duplicates of that document and any other U.S. Coast Guard Merchant Mariner's Licenses or Documents issued to this Respondent that have not expired. The captioned Respondent's said Merchant Mariner's License and Document are to be delivered by hand or mail to the Senior Investigating Officer, U.S. Coast Guard Marine Safety Office, 400 Mann Street, Corpus Christi, Texas 78401-2046, telephone number (361) 888-3192, extension 261.

The procedures following are known as the "U.S. Coast Guard Administrative Clemency Program." Procedures are provided by which a person, or Respondent, whose U.S. Merchant Mariner's license and/or document have been revoked and surrendered, may apply to any Commanding Officer of a Marine Safety Office of the U.S. Coast Guard, after an applicable waiting period, for the issuance of a new license or document. These rules and conditions are

found in 46 CFR Subpart L (46 CFR sections 5.901, 5.903 and 5.905) entitled "Issuance of New Licenses, Certificates or Documents After Revocation or Surrender."

Whether to grant clemency will be decided upon by the Coast Guard "Administrative Clemency Review Board" (ACRB), in accordance with Commandant's G-MOA Policy Letter 8-96, dated 26 November 1996 and the Marine Safety Manual (MSM), Volume V, Chapter 11 (Commandant's Instruction M16000.10), and 46 CFR Subpart L above.



THOMAS E. MCELLIGOTT
Administrative Law Judge

Dated: 07 March, 2000

Copy:
MSO Corpus Christi, Attn: LT Fassero, IO
Jeffery D. Cartwright, Respondent
CCGD08(m)