

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

<b>UNITED STATES COAST GUARD,</b>	)	
<b>Complainant</b>	)	
	)	
vs.	)	<b>Docket Number: 99-0434</b>
	)	<b>PA Number: 99002511</b>
<b>JOHN WALTON</b>	)	
<b>Respondent</b>	)	
	)	

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**BEFORE: THOMAS E. MCELLIGOTT**  
**Administrative Law Judge**

**DECISION & ORDER**

**I**  
**PRELIMINARY STATEMENT**

This adversary hearing was initiated by the U.S. Coast Guard in the performance of its missions to protect lives and property at sea, enforce national laws and treaties, preserve marine natural resources, or promote national security interests.

The hearing was brought pursuant to the legal authority contained in 46 U.S. Code Chapter 77, including 46 U.S. Code 7701 through 7705; the U.S. Administrative Procedure Act, 5 U.S. Code 551 through 559; 46 CFR Parts 4, 5 and 16, as amended; 33 CFR Part 95; and 49 CFR Part 40.

At the drafting, signing and service of the document known as the "Complaint" upon the Respondent, the U.S. Coast Guard was represented by Investigating Officer Paul W. Turner, Lieutenant (Junior Grade), at the time stationed at the U.S. Coast Guard Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Houston, Texas 77029, and telephone number (713) 671-5196.

At the hearings before the undersigned Administrative Law Judge, the U.S. Coast Guard was represented by Investigating Officers Paul W. Turner, Lieutenant (Junior Grade), and Kimberly S. Wheatley, Ensign. The Respondent had been advised of his rights by the Investigating Officers at the time they served the "Complaint" upon him and by the Judge at the commencement of the hearing. The Respondent chose to represent himself *pro se*, although he had an adult friend with him at the hearing. Respondent, at the time of the hearing, resided at [REDACTED] plus he had a mailing address of [REDACTED]. Respondent's U.S. Coast Guard issued U.S. Merchant Mariner's License Number is [REDACTED] and his U.S. Coast Guard issued Merchant Mariner's Document Number is [REDACTED]. Respondent's full name is John P. Walton and documents show his date of birth as [REDACTED]. Thus, the Respondent is now 39 years of age, a mature adult.

The undersigned Judge received this case on January 02, 2000. The Judge sent out a "Notice of Hearing" dated January 03, 2000, served upon all parties. The "Complaint" was served upon the Respondent by certified mail on December 08, 1999. The "Complaint" alleged Misconduct and its jurisdictional allegations alleged the following:

1. Respondent has the following address of record [REDACTED]
2. Respondent is the holder of a U.S. Coast Guard issued License Number [REDACTED] and U.S. Merchant Mariner's Document Number [REDACTED]
3. Respondent acted under the authority of said License and U.S. Merchant Mariner's Document as defined by 46 CFR 5.57, on October 12, 1999, by serving as pilot of the M/V UNCLE NU.

The jurisdiction of these above jurisdictional allegations was admitted by the Respondent in his "Answer." The factual allegations were denied. The factual allegations are as follows:

On October 12, 1999, aboard the M/V UNCLE NU, the Respondent, wrongfully refused to provide a specimen for a required chemical test ordered by his employer, Horace Savoie Towing, Inc., in violation of company policy.

The Respondent also affirmatively alleged as a defense that "Never requested to provide a specimen."

There were three witnesses who were called to testify by the Investigating Officers under oath: Ms. Dana Henkins, Medical Records Assistant for Hollywood Marine, Inc. of 55 Waugh Drive, Port of Houston, Texas; Kenneth Scott, Master of the M/V UNCLE NU; and the Tankerman on the M/V UNCLE NU, Braddock McNeil. All three witnesses testified credibly under oath.

Of the Investigating Officer's documentary exhibits, which were offered into evidence, at least four were admitted into evidence by the Administrative Law Judge (Appendix A, List of Witnesses and Exhibits).

**II**  
**FINDINGS OF FACT BASED UPON THE ENTIRE HEARING**  
**RECORD CONSIDERED AS A WHOLE**

1. On or before Tuesday, October 12, 1999, the M/V UNCLE NU, which was chartered to Hollywood Marine, Inc., was chosen by Dana Henkins, Medical Records Assistant, in her computer to have her crewmembers submit a urine sample for a random drug screen test. At the time, the captioned Respondent, John P. Walton, was serving under the authority of his License as the vessel's pilot or relief captain. The Master of the vessel, Kenneth Scott, requested the Respondent to provide a urine sample for the

company and he did this in the presence of and within the hearing of Tankerman Braddock McNeil of the M/V UNCLE NU. Respondent did not provide a urine sample on that day to the urine specimen collector for Hollywood Marine, Inc. and his other marine employer mentioned in the "Complaint," Horace Savoie Towing, Inc.

2. It was testified, too, by Braddock McNeil, the Tankerman, that when Captain Scott asked Respondent for the urine sample for the drug test, the Respondent replied "he would not be able to pass such a test." Then Braddock McNeil, the Tankerman, said to him "but then they'll take your license." Respondent replied "that's what they have lawyers for."

3. The testimony of the witnesses and the documentary evidence clearly established and proved that the Respondent had knowledge of and received the orders and request to take the drug screen test by providing a urine specimen for drug testing purposes. Later, a notification letter from Hollywood Marine Inc., (the charter of the M/V UNCLE NU) was sent to the U.S. Coast Guard Marine Safety Office for the ports of Houston and Galveston region indicating Respondent's refusal to submit a urine sample for drug testing purposes. Investigating Officer Paul W. Turner drafted and served a "Complaint" on the Respondent. Respondent was advised of his rights at the time he was served with the "Complaint" and at the commencement of the hearing.

4. The Respondent's refusal to submit to a random drug screen test conducted by his marine employer has been clearly shown by a preponderance of the reliable, probative and substantial evidence.

5. The three credible testimonies by the witnesses under oath and the documented exhibits established by a preponderance of the evidence the charge of Misconduct to be sound.

### **III** **ULTIMATE FINDINGS**

1. Based upon the entire record considered as a whole, the said "Complaint" in this matter and its supporting allegations of Misconduct have been found proved by a preponderance of the reliable, credible and substantial evidence as alleged in the "Complaint" signed by U.S. Coast Guard Investigating Officer Paul W. Turner, Lieutenant (Junior Grade), of the Marine Safety Office for the ports and region of Houston-Galveston, Texas.

### **IV** **CONCLUSIONS OF LAW**

1. The U.S. Coast Guard and the 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 7701 to 7705; the U.S. Administrative Procedure Act, 5 U.S. Code 551 through 559; 46 CFR Parts 4, 5, and 16, as amended; and 33 CFR Part 95.

2. The Complaint alleging Misconduct for failing to provide a urine sample for drug testing purposes is found proved.

### **V** **OPINION**

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

The "Complaint" in this matter alleged Misconduct. Misconduct is defined in 46 CFR Part 5 as follows:

Misconduct is human behavior which violates some formal, duly established rule. Such rules are 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. It is an act which is forbidden or a failure to do that which is required.

The captioned Respondent was charged with refusal to submit to a drug test as directed by his marine employer. The gravamen of the offense is Respondent's conduct in refusing to obey the lawful order of the shipping company, his marine employer, as conveyed to him by his Supervising Captain, the Master of the vessel, Captain Kenneth Scott.

When Respondent refused on October 12, 1999 to submit to a random drug test by refusing to submit a urine sample when requested to do so by his marine employer, he was in violation of 46 U.S. Code Chapter 77 and 33 CFR Part 20, as well as 46 CFR Parts 4, 5 and 16, as amended.

Conference sworn telephonic testimony has been upheld on appeal. 46 CFR 5.535(f) Appeal Decision 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 (DOT) and NTSB, No. 90-70013 (9<sup>th</sup> Cir. 1991).

Drug testing of employee's urine samples has been upheld by the U.S. Court of Appeals for the Ninth Circuit in Bluestein v. Skinner (U.S. DOT Secretary and U.S. FAA, 908 F.2d 451 (9<sup>th</sup> Cir. 1990); Cert. den. by U.S. Supreme Court at 112 L.Ed 2<sup>nd</sup> 1042 (1991). Additional U.S. Supreme Court Decisions with similar rulings and

authority are National Treasury Employees Union v. Van Raab, 109 S.Ct. 1384 (1989); Skinner (U.S. DOT Secretary) v. Railway Labor Executives Association, 109 S.Ct. 1402 (1989).

Other decisions upholding drug testing of certain employees include American Federation of Government Employees v. Skinner (U.S. DOT), 885 F.2d 884 (D.C. Cir. 1989); National Federation of Federal Employees v. Cheney, 884 F.2d 603 (D.C. Cir. 1989); Thomson v. Marsh, 884 F.2d 113 (4<sup>th</sup> Cir. 1989); and Harmon v. Thornburgh, 878 F.2d 484, 487-488 (D.C. Cir. 1989).

The Respondent is advised of the right to appeal in accordance with 33 CFR Part 20, the relevant part of which is enclosed herein.

## **VI CONSIDERATION OF A PROPER ORDER**

The captioned Respondent did violate 46 CFR Parts 4, 5 and 16 and Volume 56 Federal Register 31030, regarding drug testing by Respondent's refusal to provide a urine specimen that could be tested for drugs on the date in question after it was formally and seriously requested from Respondent by his marine employer and his supervisor, the captain of the vessel.

The Commandant has held on appeal that a mariner's refusal to submit to a chemical test for dangerous drugs raise serious doubts of the individual's ability to perform safely and competently in the future. Commandant's Appeal Decision Number 2578 (CALLAHAN), page 7, (1996).

The captioned Respondent was employed as a relief captain or pilot aboard a towing vessel. The taking of drugs could endanger the lives of himself and his crew and those of other vessels in and on the Houston Ship Channel and other major ports of the

United States. Therefore, the Respondent's actions cannot be tolerated under the circumstances.

In light of the facts and the applicable law, the following Order will be entered in this case.

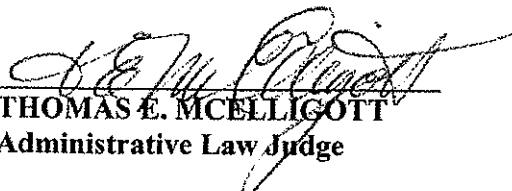
**VII**  
**ORDER**

IT IS ORDERED that the captioned Respondent's U.S. Coast Guard License Number [REDACTED] issued to John P. Walton and all other U.S. Coast Guard licenses, documents, certificates and authorizations issued to him and still valid are hereby REVOKED. If the Coast Guard is not already in possession of the Respondent's above referenced License, Respondent is hereby ordered and directed to deposit by mail the said License and Documents with the Senior Investigating Officer of the U.S. Coast Guard Marine Safety Office, 9640 Clinton Drive, P.O. Box 446, Galena Park, Texas 77547-0446, and fax number (713) 671-5177. This includes all originals and/or duplicates of these licenses and documents.

The procedures following are known as the U.S. Coast Guard's "Administrative Clemency Program." These may require three or more years. Procedures are provided by which a person, or Respondent, whose U.S. Merchant Mariner's license and/or document has 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" and in the Coast Guard Marine



Safety Manual for application for clemency by the U.S. Coast Guard's Administrative  
Clemency Review Board.

  
THOMAS E. MCELLIGOTT  
Administrative Law Judge

Dated: April 5, 2000  
Houston, Texas

Copy:  
MSO Houston-Galveston, Attn: LTJG Turner, IO  
John Walton, Respondent  
CCGD8(m)  
ALJ Docketing Center, Baltimore