

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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Docket No. 00-0553
Case Number PA00000543

vs.

WILLIAM G. BULLOCK, JR. *

DECISION AND ORDER

PETER A. FITZPATRICK
Administrative Law Judge

APPEARANCES

FOR THE COAST GUARD

LT Edmond Miner
LT Steven Lowe
United States Coast Guard
Marine Safety Office
103 Commercial Street
Portland, ME 04101-4726

FOR THE RESPONDENT

Robert G. Bullock, Jr., Pro Se

I.

PRELIMINARY STATEMENT

This case began when the United States Coast Guard filed a Complaint against the Respondent William G. Bullock, Jr., holder of License Number 913020 and Merchant Mariner's Document No. 219-68-4970 on August 31, 2000 under the statutory authority contained in 46 U.S.C. § 7703. In the Complaint, the Coast Guard alleged that Mr. Bullock failed a Pre-employment drug test on January 19, 2000.

Mr. Bullock filed a timely Answer to the Complaint on September 16, 2000. The Answer admitted all Jurisdictional and Factual Allegations but the Respondent wished to be heard on the proposed Order. In the Complaint, the Investigating Officer sought the Revocation of Mr. Bullock's Coast Guard License and Merchant Mariner's Document in accord with 46 U.S.C. § 7704.

A hearing was scheduled for October 25, 2000 at Portland, ME and the Respondent and the Investigation Officers appeared at that session. Mr. Bullock affirmed his Answers of Admission to the Complaint and sought a less severe sanction against his license and document.

The Coast Guard presented the following witnesses: Mr. Frank Rios, the Collection Site Person, Quest Diagnostics, Inc; Mr. George M. Ellis, President Greystone Health Sciences Corporation; Dr. David M. Katsuyama, M.D., Medical Review Officer; and Mr. James Callies, Scientific Director for Quest Diagnostics Substance Abuse Testing Laboratory, San Diego, CA. The documentary evidence submitted included copies of the Drug Testing Custody and Control Form, the testing laboratory report, and the Quest Diagnostics Litigation Package. See Appendix A for a complete listing.

Mr. Bullock testified on his own behalf and introduced various commendations, letters of recommendation, certificates, and professional achievements. Some of these were marked for identification at the hearing. Others were referred to at that time and submitted later. They are now included in the record. See Appendix B for a description of these exhibits. The case is now ripe for decision.

II.

STATUTES AND REGULATIONS INVOLVED

A. Procedural Matters

1. This proceeding is governed by the Administrative Procedure Act , which is incorporated into these proceedings under 46 U.S.C. 7702, which reads:

§ 7702. Administrative procedure

- (a) Sections 551-559 of title 5 apply to each hearing under this chapter about suspending or revoking a license, certificate of registry, or merchant mariner's document.
2. 46 U.S.C.§§ 7701-7705 sets out the general procedures governing the suspension and revocation of merchant mariners' licenses and documents. 46 U.S.C. § 7704 provides in pertinent part:

§ 7704. Dangerous drugs as grounds for revocation

- (c) If it is shown that a holder has been a user of, or addicted to, a dangerous drug, the license, certificate of registry, or merchant mariner's document shall be revoked unless the holder provides satisfactory proof that the holder is cured.
3. The regulations governing the performance of chemical tests for dangerous drugs adopted by the United States Department of Transportation are codified at 49 CFR § 40. The specimen collection procedures are set out at 49 CFR § 40.25.

4. The Coast Guard regulations governing chemical testing for dangerous drugs are codified at 46 CFR § 16. Specifically, 46 CFR § 16.201(b) provides that:

Subpart B – Required Chemical Testing

§ 16.201 Application.

(b) If an individual fails a chemical test for dangerous drugs under this part, the individual will be presumed to be a user of dangerous drugs.

5. The Coast Guard Rules of Practice which apply to this proceeding are codified at 33 CFR § 20.

III.

FINDINGS OF FACT

A. Jurisdictional Allegations Admitted by the Respondent

1. The Respondent is the holder of License No. 91320.
2. The Respondent is the holder of Merchant Mariner's Document Number 219-68-4970.

B. Factual Allegations Admitted by the Respondent

1. On January 19, 2000 Respondent took a Pre-employment drug test.
2. A urine specimen was collected by Frank Rios of Quest PSC.
3. The Respondent signed a Federal Drug Testing Custody and Control Form.
4. The urine specimen was collected and analyzed by Quest Diagnostics, Inc. using procedures approved by the Department of Transportation
5. That specimen subsequently tested positive for Marijuana Metabolite.

IV.

OPINION

A. General


1. The Coast Guard has jurisdiction over Respondent and this matter pursuant to 46 U.S.C. 7704, which states that "if it is shown that a holder has been a user of, or addicted to, a dangerous drug, the license, certificate of registry, or merchant mariner's document shall be revoked unless the holder provides satisfactory proof that the holder is cured." The Coast Guard has the burden of proving the charge and its supporting specification by a preponderance of the evidence or "by substantial, reliable and probative evidence." 46 C.F.R. § 5.539; 46 C.F.R. § 5.63; Appeal Decision No. 2603 (HACKSTAFF) (1998); See also, Dept. of Labor v. Greenwich Collieries, 512 U.S. 267 (1994); Steadman v. SEC, 450 U.S. 91, 100-103 (1981). The proceeding is conducted under the provisions in 46 C.F.R. Part 5, 33 C.F.R. Part 20, and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*
2. Mr. Bullock admits all allegations of the Complaint but urges that the sanction of Revocation is too severe given his alleged innocent exposure to marijuana smoke and his commendable career in the Merchant Marine. With respect to the former, he asserts that he was required to live with certain unidentified musicians in the New York area for nine days while he was waiting for an assignment aboard ship. There he was exposed to marijuana smoke from others although he himself did not use the illegal drug. He claims that this exposure from passive inhalation of the drug used by his co-residents caused the positive results of the drug test here. He also asserts that the life of a merchant mariner is not an easy one and that his record of commendable service should be considered before his license and documents are revoked.

3. Mr. George Ellis testified about the effects of second hand marijuana smoke on a non-smoker and stated that the regulations have included a cut off level (15 mg/ml) to deal with this circumstance. He testified that studies have shown that even under the most intense passive exposure to marijuana smoke the test subjects have not tested positive under the Federal guidelines involved here. Even if Mr. Bullock's claims were substantiated, which they are not, the evidence here is persuasive that the Respondent would not have tested positive under the circumstances he described.
4. Mr. Bullock's claim that he did not use marijuana but was the innocent victim of its use by others is difficult to believe in light of his record. In June 1992 he plead No Contest to the charge Use of Dangerous Drugs after failing a chemical test for dangerous drugs on December 16, 1991. There too, the illicit drug was marijuana. See United States Coast Guard v. William G. Bullock, Jr. (Docket No. 05-0015-PAF-92B). His license was suspended for six months for that offense.
5. I am of the opinion that Mr. Bullock has had an opportunity to overcome his drug usage and has failed to do so. In view of the statutory mandate set out at 46 USC § 7704(c), I have no choice but to apply the law. Mr. Bullock is a drug user and his continued service in the merchant marine cannot be allowed. Apparently, he has decided to continue his use of marijuana rather than stop and save his career at sea. Unfortunately, his license and document must be Revoked.

V.

ORDER

For all of the foregoing reasons, **IT IS ORDERED THAT** License No. 91320 and Merchant Marine Document No. 219-68-4970 are hereby **REVOKED**.


PETER A. FITZPATRICK
Administrative Law Judge
United States Coast Guard

Done and dated this *29* of November 2000 at
Norfolk, Virginia