

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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vs.

MERCHANT MARINER'S LICENSE
No. 849615
CAMERON J. LEWIS

Docket Number
CG S&R 00-0469

Coast Guard Case Number
PA 00001267

APPEARANCES:

Robert Foster, Esq.
PO Brett Major,
For the Coast Guard
Cameron J. Lewis, Hearing held in absentia
For the Respondent

BEFORE: **Hon. Parlen L. McKenna**
United States Coast Guard

DECISION AND ORDER

This suspension and revocation proceeding was instituted by the United States Coast Guard in the discharge of its duty to promote the safety of life and property at sea. It was brought pursuant to the legal authority contained in Title 46 U.S.C. § 7701-7705 and was conducted in accordance with the procedural requirements of Title 46, code of Federal Regulations (CFR) part 5 and Title 33 CFR part 20.

The hearing in this matter commenced at the U.S. District Court, Panama City, Florida, on November 8, 2000. Petty Officer Brett Major and Robert Foster, Esq., USCG duly authorized Investigating Officers of Marine Safety Office, United States Coast Guard, appeared for and represented the Coast Guard. The Respondent failed to appear at the hearing and pursuant to regulations, the hearing was held in absentia. A record of the hearing was made by Professional Court Reporting Services, Inc., of Panama City, Florida. A list of the witnesses who testified and the exhibits entered into evidence are set forth in the Attachment A.

On July 20, 2000, the Coast Guard filed a Complaint pursuant to 46 U.S.C. § 7704 and 46 C.F.R § 5.35 charging the Respondent with Use of or Addiction to Dangerous Drugs as follows:

ALLEGATIONS: Use of or Addiction to Dangerous Drugs

- (1) That on May 10, 2000, the Respondent took a Pre-employment drug test;
- (2) That a urine specimen was collected from the Respondent by K. Chouest of LaFourche Service, Inc.;
- (3) That the Respondent signed a Federal Drug Testing Custody and Control Form;
- (4) That the urine specimen was collected and analyzed by Pharmchem Laboratories, Inc., using procedures approved by the United States Department of Transportation; and
- (5) That the specimen subsequently tested positive for Marijuana Metabolite.

On August 3, 2000, the Respondent filed his answer to the Complaint arguing that his rights were somehow violated since no legal counsel was present. As an affirmative defense, the Respondent argues that (1) his specimen was tampered with and/or was not his; and (2) that there was a mistake in processing the specimen. Finally, the Respondent argues that he had asked for, but was not given, a re-test of his sample.

The Respondent failed to attend the hearing that was duly scheduled for November 8, 2000, in Panama City, Florida. At the commencement of the hearing, the Investigating Officer proffered a letter from the Respondent dated November 5, 2000. The Investigating Officer stated that he had received the letter the night before the hearing. This letter has been marked and admitted into evidence as Respondent's Exhibit No. B. Therein, the Respondent states:

"I, Cameron John Lewis, do hereby resign as a 100 ton Captain of the merchant marine. I resign in protest!! Prior to the preemployment urinalisis I had not worked on a motor vessel or in the marine industry for 8 months. Therefore you are judging me on my alledged private life and this has nothing to do with a vessel or related incident. There were no laws broken on any motor vessel.

I feel to lose my license and be forced into a rehab is unjust and harsh punishment for failure of a preemployment test. There was no incident however you are taking my license and asking me to give up my personal freedom for a year in order to regain my Captain's license. That license means I have no personal and private rights. Therefore until the regulations are changed for the betterment of the mariner I don't want your license!

I am being punished for my own private lifestyle. My freedom is worth more than my 100 ton Captain's license so I no longer wish to argue this point.

Revoke my license and please leave me and my family alone."

46 CFR § 5.203 provides that a Respondent may voluntarily surrender his license in preference to appearing at a hearing. Based upon Respondent's Exhibit No. B, it appears to the undersigned that the Respondent wishes to avail himself of this regulation. This determination is made despite the fact that the Respondent has not filled out the Coast Guard standardized forms to voluntarily surrender his license. Accordingly, the Respondent's letter will be treated as a Motion to dismiss based upon the fact that he surrenders his Merchant Mariner's license. That Motion is hereby granted without prejudice to the Coast Guard to refile should the circumstance of this case so warrant.

Importantly, 46 CFR § 5.203(b) sets forth the conditions the Coast Guard establishes in order for a Respondent to effectuate a voluntary surrender to avoid a hearing. These conditions are set forth as follows:

- (1) The surrender is made voluntarily in preference to appearing at a hearing;
- (2) All rights to the license, certificate or document surrendered are permanently relinquished; and
- (3) Any rights with respect to a hearing are waived.

In Respondent's Exhibit No. B, Mr. Lewis states that he "hereby resign[s] as a 100 Ton Captain of the Merchant Marine" until the regulations are changed so that he is not forced into rehabilitation for a year so that he can get his license back. The Respondent feels that such a punishment is excessive and unduly harsh. Indeed, the Respondent notes that he had not worked in the maritime industry for eight (8) months prior to this pre-employment drug test. Under this circumstance, the Respondent does not feel it is fair to punish him for his "own private lifestyle". In closing, Mr. Lewis writes "revoke my license and please leave me and my family alone".

Neither the Coast Guard nor myself learned that the Respondent would not attend the hearing until just prior to its commencement. Since the Coast Guard was prepared to present its case and I wanted to consider how I would treat Respondent Exhibit No. B and Mr. Lewis' failure to attend the hearing, the Coast Guard was directed to proceed with the hearing in absentia. Thus, while this matter has been dismissed without prejudice, an adjudication on the merits is also made in the event that the Respondent in the future disputes that his actions constituted a voluntary surrender under 46 CFR § 5.203(b).

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Respondent was charged in this case with "Use of Dangerous Drugs" which is defined for the purposes of these remedial suspension and revocation proceedings in 46 U. S. Code § 7704. The allegation supportive of that charge alleged, that on May 10, 2000; the Respondent used a dangerous drug, to-wit, Marijuana Metabolite. The Coast Guard meet its burden of establishing a prima facie case against the Respondent.

46 U.S.C. § 7704(c) provides:

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.

46 U.S.C. 7704(a) defined "dangerous drug" to include marijuana metabolite (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) (Present version at 46 USC 2101(8a)). In drug use cases, the only authorized sanction is revocation unless the Respondent successfully demonstrates cure 46 U.S.C. 7704(c); 46 CFR 5.59; Appeal Decision 2476 (BLAKE) affd sub nom Commandant v. Blake, NTSB Order EM-156 (1989); and 2518 (HENNARD). The burden of establishing cure is on Respondent. Appeal Decision 2526 (WILCOX). The Respondent failed to meet that burden since he did not attend the hearing or present any rebuttal evidence.

An examination of the law applicable to this case discloses that 46 U.S.C. § 7704 and its predecessor 46 U.S.C. § 239(b) have been in existence for a great many years. These statutes have enunciated the declared policy of keeping the merchant vessels of our country free of drugs in the interest of the safety of life and property at sea. In an early case (Appeal Decision No. 314-Roman) the Commandant expressed the same policy of these requirements as:

"Offenses involving the unlawful possession, use, or sale of narcotics are considered among the pernicious arising within the administration of the Coast Guard. It is considered that no greater single threat to the safety of a vessel or its personnel exists than a person under the influence of narcotics and the Coast Guard will act protectively to remove such offenders".

After considering all of the evidence, the factual allegations were found to be PROVED.

FINDINGS OF FACT

1. Cameron J. Lewis, the Respondent, was at all times relevant herein the holder of Merchant Mariner's License No. 849615. Respondent's license was issued at New Orleans, LA and expires on March 11, 2003. It authorizes him to serve as: Master of Steam or Motor Vessels of not more than 100 Gross Tons upon near Coastal Waters (no additional endorsements) (See Government Exhibit No. 2).

2. That this matter is hereby dismissed without prejudice based upon the Respondent's voluntary surrender of United States Coast Guard License No. 849615; and assuming arguendo that no such voluntary surrender was made, the foregoing Findings of Fact are set forth disposing of this case on the merits.

3. In connection with a random drug screening required by his employer (C & E Boat Rentals), Respondent went to LaFourche Service, Inc., in Golden Meadow, Louisiana on May 10, 2000, under the supervision of Kritty Chouest and submitted a urine sample. This urine sample was identified as sample No. 246142880. Collection of the sample and its preparation for shipment to the testing laboratory was done in complete accordance with the procedures prescribed by applicable regulations (See 46 C.F.R. Part 16 and 49 C.F.R. Part 40).

4. There were no discrepancies from the normal routine. As part of the collection procedure, Respondent signed a certification that he had provided the sample identified as 246142880. He also certified that the sample bottle was sealed with a tamper proof seal in the presence with the above-noted identification number affixed to the sample's seal (*See Government Exhibit No. 3*).

5. The sample was sent by courier with a fully documented chain-of custody certification to the Pharmchem Laboratores, in Fort Worth, Texas. The sample arrived at Pharmchem on May 12, 2000, and was given Accession identification number of "994796145". A full and proper analysis of an aliquot (portion) of the sample, made in full accordance with all of the applicable regulations, was completed on May 15, 2000 (See 46 CFR Part 16 and 49 CFR part 40). The initial screening, performed by "Enzyme Immunoassay" testing, revealed a "Positive" test result showing the present of THC metabolite at levels in excess of the Cut-off amount. of 15 ng/ml. The actual test showed 43 ng/ml (*See Government Exhibit No. 4*).

6. A final report showing the "Positive" result was forwarded by Pharmchem Laboratories to Seacon on May 15, 2000. Seacon was under contract to perform the Medical Review Officer (MRO) functions required under the applicable regulations. (See 46 CFR Part 16 and 49 CFR Part 40). A Medical Review Officer (Dr. Ronald N. Padgett) employed by Seacon reviewed the case. The Respondent declined the right to speak with the Medical Review Officer. After a complete review of the case, the Medical Review Officer found no alternate medical explanation for the positive test results.

7. On May 25, 2000, this finding was conveyed to C&R Boat Rentals and to the U. S. Coast Guard, Marine Safety Office, Panama City, Florida by Mr. Billy Webb, an administrative assistant for Seacon (*See TR at Page 8*).

8. Timely and proper notice was given to the Respondent of the date, time and place of the hearing as required by 33 C.F.R. § 20.304(D) (*See Government Exhibit No. 1*).

9. Pursuant to a hand-written letter submitted by Respondent on November 5, 2000, Respondent writes that he wishes to resign his license, however, he does so in protest; that prior to the pre-employment drug test he had not worked in the merchant marine industry for eight months; that it's unfair for him to lose his license under those circumstances for a year to go through Sweeny cure and be forced into rehabilitation; and that there was no mariner incident or casualty as a result of his testing positive. Respondent further states that the Coast Guard is depriving him of his personal and private rights and that until the regulations are changed for the betterment of the mariner, he doesn't wish to have his license (*See Respondent's Exhibit No. B*).

10. By the submission of the above detailed evidence, the Coast Guard has presented a prima facie showing that the Respondent violated 46 U.S.C. § 7704 as charged.

11. The Respondent not being present, nor appearing by and through counsel, presented no rebuttal.

12. The Respondent failed to meet his burden to rebut this prima facie showing. Thus, the allegation stand PROVED.

13. The acts and conduct of Respondent are within the suspension and revocation jurisdiction provided by Title 46 U.S.C. § 7704 and 46 C.F.R. Part 5.

14. The Respondent's prior disciplinary record, maintained by the U. S. Coast Guard, was examined by me in accordance with 46 C.F.R. § 5.565 after a finding of PROVED was entered. The record indicates that Respondent has a "negative" prior record (See Government Exhibit No. 7).

CONCLUSIONS OF LAW

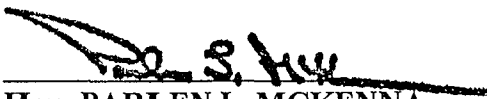
1. The Respondent and the subject matter of the hearing are within the jurisdiction vested in the United States Coast Guard by 46 U.S.C. § 7704.

2. The allegation supportive of the Charge of Use of Dangerous Drugs (marijuana metabolite) is proved by reliable, probative and substantial evidence, that is, by the preponderance of the evidence.

Based upon the foregoing Findings of Fact and Conclusions of Law and for good cause shown, it is hereby

ORDERED

THAT pursuant to 46 CFR § 5.203(b), this Matter is hereby DISMISSED WITHOUT PREJUDICE as a result of the Respondent's voluntary surrender of his Merchant Mariner's License No. 849615; Alternatively, should the Respondent dispute that his actions in this case constituted a voluntary surrender, after a full and fair hearing on the merits, it is hereby found that Merchant Mariner's License No. 849615 issued to CAMERON J. LEWIS be, and it hereby is REVOKED.



Hon. PARLEN L. MCKENNA
United States Coast Guard

Dated: January 10, 2001
Alameda, California