



Respondent was served with this motion, and has failed to respond.

The following was alleged in the Coast Guard's complaint and are deemed admitted and true for the purposes of this motion.

Respondent is the holder of a Coast Guard issued credential or Merchant Mariner Document Number 358-68-0753. Respondent took a random drug test on June 1, 2000. An authorized collector of the Columbia Medical Center collected a urine specimen. Respondent signed a Federal Drug Testing Custody and Control Form. The urine specimen was collected and analyzed by Quest Diagnostics using procedures approved by the Department of Transportation. The specimen subsequently tested positive for cocaine metabolites.

Jurisdiction is established in this matter by reason of Respondent's licensure and deemed admission of jurisdiction. See, 46 U.S.C. §7704(c); NTSB Order No. EM-31 (STUART); Commandant Appeal Decision, No. 2135 (Fossani).

For some time now, the Coast Guard has brought cases charging use of a dangerous drug under 46 USC § 7704[c] based solely upon the results of chemical testing by urinalysis. 46 CFR § 16.201[b] provides that one who fails a chemical test for drugs under that part will be presumed to be a user of dangerous drugs. In turn, 46 CFR § 16.105 defines "fail a chemical test for dangerous drugs" to mean that a Medical Review Officer reports as "positive" the results of a chemical test conducted under 49 CFR § 40. In other words, 46 CFR § 16 establishes a regulatory presumption on which the Coast Guard may rely, provided the Coast Guard can satisfactorily show that a 49 CFR § 40 chemical test of a merchant mariner's sample or specimen was reported positive by a MRO. This presumption, however, does not dispense with the obligation to establish the presumption by the same standard of proof, *i.e.*, the elements of the case must be proven by a preponderance of the evidence. The elements of a case of presumptive use are as follows:

First, the Respondent was the person who was tested for dangerous drugs. Second, the Respondent failed the test. Third, the test was conducted in accordance with 46 CFR Part 16. Proof of these three elements establishes a *prima facie* case of use of a dangerous drug (*i.e.*, presumption of drug use) which then shifts the burden of going forward with the evidence to the Respondent to rebut the presumption. If the rebuttal fails then this Judge may find the charge proved solely on the basis of the presumption. See, Commandant Decision on Appeal 2592 (Mason) 2584 (Shakespeare); 2560 (Clifton).

The Coast Guard's complaint has alleged each of the three elements necessary to show as a matter of law a *prima facie* case of use of a dangerous drug. The burden was shifted to Respondent who has failed to respond to this motion.

Based solely on these proofs the Coast Guard is entitled to a judgment as a matter of law.

46 USC § 7704 [c] provides if it is shown that a holder of a merchant mariners document has been a user of a dangerous drug, the merchant mariner's document of the holder shall be revoked. This judge has no discretion in the matter.

IT IS THEREFORE ORDERED, the Merchant Mariner Document 358-68-0753 is hereby REVOKED.

DATED: February 5, 2001.



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EDWIN M. BLADEN  
Administrative Law Judge

**Certificate of Service**

I hereby certify that I have this day delivered foregoing Order upon the following parties and limited participants (or designated representatives) in this proceeding, at the address indicated as follows:

Marine Safety Office, Chicago  
Attn: CWO2 Brian K. McCaul  
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Lisa Pole  
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(First Class Mail)

ALJ Docketing Center  
(Federal Express - Government Overnight w/Activity Report)

Dated at Seattle, WA this 5<sup>th</sup> day of February, 2001.



MARY STRADFORD PURFEERST  
Legal Assistant to  
Administrative Law Judge