

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

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Complainant

vs.

RANDAL D. MERRILL,

Respondent.

Docket Number CG S&R 00-0079
CG Case No. 00000167

DECISION AND ORDER ON REMAND

Issued by: Archie R. Boggs, Administrative Law Judge

A Coast Guard Investigating Officer at New Orleans, LA, filed an Original Complaint against Mr. Merrill on 26 January 2000 which alleged “Use of or Addiction to the Use of Dangerous Drugs” in that Mr. Merrill took a post accident test and his specimen subsequently tested positive for cocaine metabolite. After a hearing the undersigned dismissed the Complaint and issued a Decision and Order to that effect.

The Investigating Officer appealed the Decision to the Commandant of the United States Coast Guard on 1 May 2001. As a result of that appeal the Commandant on 3 September 2002 remanded the Decision and Order to the undersigned with instructions to make a determination as to whether Mr. Merrill voluntarily submitted to the relevant drug test.

On remand Mr. Merrill was represented by Troy G. Ingram, attorney at law, 2065 First

Street, Suite 102, Slidell, LA, 70458. Mr. Ingram requested that the matter be reopened and he be afforded an opportunity to supplement the record.

In his remand decision the Commandant stated:

“The record clearly indicates that the ALJ did not make a determination as to whether Mr. Merrill’s drug test was voluntary. Pursuant to 33 CFR 20.1004, when deciding a case on appeal, I may ‘...affirm, modify, or reverse the ALJ’s decision or...(may)...remand the case for further proceedings.’ Given my authority and the fact that the ALJ did not make a determination as to the voluntariness of Mr. Merrill’s urinalysis, I am remanding this case. The ALJ should determine whether Mr. Merrill voluntarily submitted to the relevant drug test and, if the ALJ finds in the affirmative, whether that determination would be sufficient to alter the outcome of this case. While the ALJ may hold further proceedings to assist in this determination, if he finds that the issue has sufficiently been developed in the record, he may determine whether Mr. Merrill voluntarily submitted to the relevant drug test absent further proceedings.” (Underscore mine)

“The ultimate purpose of the drug testing regulations is to insure that people holding merchant mariner’s licenses and merchant mariner’s documents do not use dangerous drugs.”

The record clearly shows that Mr. Merrill had no objection to taking the drug test and his submission of a urine specimen was entirely voluntary on his part.

ORDER

License No. 796883 and merchant mariner’s document No. [Redacted] issued to

Randall D. Merrill are REVOKED.

ARCHIE R. BOGGS
Administrative Law Judge

Dated _____ January 2003