

UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY

UNITED STATES COAST GUARD

Complainant

vs.

JAMES EUGENE COLLIER,
Respondent.

Docket Number CG S&R 03-0384

CG Case No. 1813318

DECISION AND ORDER

Issued: February 26, 2004

Issued by: Peter A. Fitzpatrick, Administrative Law Judge

APPEARANCES

FOR THE COAST GUARD

LTJG Boris K. Towns
ENS Matthew Spolarich
Marine Safety Office Morgan City
800 David Drive, Room 232
Morgan City, LA 70380

FOR THE RESPONDENT

Captain Robert K. Lansden, Esq.
125 East Pine Street
P.O. Box 473
Ponchatoula, LA 70454

I.

PRELIMINARY STATEMENT

This case began on June 24, 2003 when the Coast Guard filed a Complaint against the Respondent, James Eugene Collier, under the statutory authority contained in 46 U.S.C. § 7703. Mr. Collier is the holder of Coast Guard-issued license number 930641 and a merchant mariner's document. The Coast Guard alleged that on May 20, 2003 Respondent refused a "[r]andom drug test while assigned to the M/V PETER CALLAIS (1062383)." The Investigating Officer sought the revocation of Captain Collier's Coast Guard-issued license and document. An amended complaint containing this same allegation but different address for the Respondent was filed on August 26, 2003.

The Respondent's Answer admitting all jurisdictional allegations of the Complaint was submitted on September 3, 2003. That Answer denied the factual allegations of the Complaint and asserted that Captain Collier "Did not refuse drug test."

The case was assigned to this Judge and it was scheduled for hearing on January 7, 2004 at Morgan City, LA. See Orders dated September 9, September 15, and December 10, 2003. On January 5, 2004 Respondent filed a Motion and Order of Dismissal with attached Exhibits. The Coast Guard filed their Response to the Motion and Order of Dismissal on January 6, 2004.

Witness and exhibit lists were timely served by the parties and the hearing commenced as scheduled. The Investigating Officers, the Respondent and his counsel were present. At the outset, I denied the Respondent's Motion to Dismiss. (Transcript, hereinafter TR, 15). During the hearing, the Coast Guard sponsored six witnesses and nine exhibits which were admitted on the record. The Respondent testified and recalled one of the Coast Guard witnesses, Richard C. Savoie. Respondent offered five exhibits which were admitted. The exhibits and witnesses are

identified in Appendices A and B.

After the testimony was completed and rulings made on the exhibits, both sides presented oral closing arguments. At that point, I announced that the allegation of the complaint that Respondent refused a random drug test was proved and that the remaining issue to be decided was the nature of the sanction to be issued against Captain Collier's license and document. The parties were given until January 21, 2004 to submit pleadings on the appropriate sanction. The Investigating officer's submission was served on January 21, 2004. Respondent did not submit a pleading. This case is now ripe for decision.

II.

FINDINGS OF FACT

1. James Eugene Collier is the holder of United States Coast Guard issued license number 930641 which authorizes him to serve as "Master of steam or motor vessels of not more than 100 gross registered tons (domestic tonnage) upon near coastal waters; also, Mate of steam or motor vessels of not more than 200 gross registered tons (domestic tonnage) of not more than 500 gross tons (ITC) upon near coastal waters." The license was issued on March 19, 2001 and expires on March 19, 2006. Mr. Collier also holds a merchant mariner's document.
2. The M/V/ PETER CALLAIS is an oil service vessel, 145 feet in length and 40 feet at the beam. (TR 278). It is designed to carry equipment such as "Yokohama fenders" to allowed oil tankers to transfer fuel to smaller ships. (TR 279-280). The vessel is four years old and owned and operated by Abdon Callais Offshore, LLC. (TR 280). On May 20-21, 2003 the vessel was on charter to Skaugen Petro Trans of Houston, TX. (TR 281). At that time it was in standby status at Dosco docks in Fourchon, Louisiana (TR 179, 223).

3. Abdon Callais crews the M/V/ PETER CALLAIS so that it is available for 24 hours service under the vessel's Certificate of Inspection. (TR 141-142, 223-224). The crew includes one Master, a licensed mate, and two deckhands. (TR 74). On May 20, the Respondent was serving as Master and James Strickland was the mate. Both the Master and mate are required to hold a Coast Guard-issued license to operate the vessel. (TR 77, 92, 93, 122, 141-142, 199-200).
4. Abdon Callais Offshore has a strict policy prohibiting the crew from leaving the vessel during the assigned work period. (TR 223-224). Crews work 28 days on and 14 days off. The crew can use the phone at the dock but even trips to buy groceries are not allowed without permission. (TR 72, 75-78, 109-110, 142-143, 148). The crew change is scheduled as near as possible at the end of the 28-day period. The full complement of two licensed personnel and two deckhands is required by the company to be aboard the vessel at all times. Otherwise, the vessel would be unseaworthy and unable to sail. (TR 75-76).
5. The Certificate of Inspection allows for a single licensed Master when the vessel is engaged in 12 hours service. (TR 283-284). To meet the requirements of the charterer Skaugen Petro Transport, Abdon Callais manned the vessel for 24 hours service which required two licensed officers. (TR 141-142).
6. James Eugene Collier was serving as Master of the vessel on May 20, 2003 when the incident involved here occurred. (TR 104). He was required by Abdon Callais Offshore to hold a Master's license to operate the vessel as a condition of his employment. (TR 49-50). On that date, the vessel was moored at Fourchon, Louisiana and there were five members of the crew. (TR 49-50, 60). They included Captain James Collier, Licensed Mate Larry Strickland and three others. (TR 49-50).

7. Abdon Callais Offshore publishes a safety manual and a drug and alcohol policy manual and employees are expected to read it. (TR 52-53). Captain Collier acknowledged this fact when he signed his employment application. (Exhibit IO-4, p.6; TR 54-55). Abdon Callais Offshore has a zero tolerance policy with regard to the use of drugs and alcohol on its vessels. (TR 53-54).
8. Captain James Collier began his recent employment with Abdon Callais on December 11, 2000. (Exhibit IO-4). He became the so-called "first" Captain or Master on the M/V/ PETER CALLAIS in October 2002. (TR 235). Captain Collier, as with the other crew members, worked 28 consecutive days aboard the vessel followed by a 14 day off duty period. (TR 240, 272, 284-285). His duty period immediately preceding the event here began on April 21, 2003 and he was scheduled to be relieved at the crew change at 0800 on May 21, 2004. (TR 240, 285).
9. Collier was due to be relieved by the licensed mate James Strickland on May 21, 2003. John Rowell was scheduled to relieve Strickland as the licensed mate at that same time. (TR 240-243).
10. On May 20, 2003 the day before the scheduled crew change on the 21st, Captain Collier served the 0600-1800 watch and left the vessel at 1930. (TR 239-252). He went home to Lockport, Louisiana which is located approximately 45 minutes from Fourchon. (TR 252). When he left the vessel, Collier told the mate Strickland that he was going home for a "little while and be back in the morning for crew change." (TR 125. See also TR 147). Collier left his "stuff" on the boat. (TR 126). He did not receive a relief and the vessel was manned at that point by one licensed officer (Strickland). (TR 288-289). Captain Collier

did not notify Abdon Callais Offshore that he was leaving the PETER CALLAIS. (TR 289-290).

11. Lafourche Services, Incorporated is the company that conducts Abdon Callais Offshore's drug testing program. (TR 81). A random drug test for all crewmembers serving aboard the M/V PETER CALLAIS was scheduled for approximately 2300 on May 20, 2003. (TR 166-168). During that evening James Strickland called the Respondent at home and advised him of the impending drug test. (TR 253). Captain Collier called Abdon Callais Offshore and spoke with Robert Lasseigne, the company's Personnel Coordinator. Mr. Lasseigne instructed Collier to return to the vessel to take the drug test but the Respondent replied that he had imbibed a couple of drinks and would not pass the alcohol test. (TR 99-100). (See also Tr. 253-254, 286, 287). Captain Collier did not return to the vessel and did not take the drug test. (TR 100, 108, 182-183).
12. Mr. Saint Pierre conducted the drug tests on behalf of Lafourche Services aboard the PETER CALLAIS on the night of May 20, 2003. (TR 179). He administered the test to three crew members and filled out a Drug Testing Custody and Control Form containing the Respondent's Social Security Number. (Exhibit IO-8). The form contains the collector's remarks "Refusal to Test." (Exhibit IO-8). Mr. Saint Pierre did not see Captain Collier aboard and was told by Abdon Callais's representative that Collier "had walked off the boat and refused to test." (TR 180-182).
13. The following day, Collier returned to the vessel and removed all his possessions. (TR 259). On May 22, two days after the drug test, he handed Mr. Richard Savoie, the company's Human Resources manager, a letter of resignation. (Exhibit IO-5). It reads as follows:

“This is to inform you of my official resignation, as of 18:00 Hrs. May 20th 2003.”

14. Ultimately, Captain Collier was fired by the company for refusing to take the drug test.
(TR 273).

III.

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. § 7703 provides in pertinent part:

7703. Bases for suspension or revocation

A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder--

(1) when acting under the authority of that license, certificate, or document--

(A) has violated or fails to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters; or

(B) has committed an act of incompetence, misconduct, or negligence;

. . .

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.
5. The Rules of Practice, and Evidence, for Formal Administrative Proceedings of the Coast Guard which apply to this proceeding are codified at 33 CFR § 20.

IV.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the Coast Guard pursuant to 46 U.S.C. §§ 7702-7703.
2. The Factual and Jurisdictional Allegations of the Complaint are proved by the preponderance of reliable, credible and substantial evidence.

V.

OPINION

1. Captain Collier is charged with Misconduct for refusing “a random drug test while assigned to the M/V PETER CALLAIS.” Misconduct is defined at 46 CFR § 5.27 as human behavior which violates some formal duly established rule. Such rules include “. . . 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.

Title 46 USC § 7703 provides in pertinent part, a Coast Guard-issued license may be suspended or revoked if the holder, when acting under the authority of that license, has committed an act of misconduct. The term “acting under authority of license” is defined at 46 CFR § 5.57 which provides that a person employed in the service of a vessel is considered to be acting under the authority of a license when the holding of such license is (1) required by law or regulation; or (2) required by an employer as a condition for employment. In this case, the Respondent was required to hold a Master’s license to operate the M/V/ PETER CALLAIS both by regulation and by his employer as a condition of employment

First, the PETER CALLAIS’s Certificate of Inspection requires a licensed Master to operate the vessel. (TR 74). Indeed, two licensed individuals with appropriate Master’s licenses are required to be aboard when the vessel is engaged in 24 hours service. (TR 141-142, 223-224). Captain Collier was Master and First Captain aboard the PETER CALLAIS and thus allowed Abdon Callais Offshore to operate the vessel in accord with its Certificate of Inspection. Title 46 U.S.C. § 8101 makes it clear that an inspected vessel cannot be operated without the crew required by the Certificate of Inspection.

Second, there is no question that Abdon Callais Offshore required Captain Collier to hold an appropriate Coast Guard-issued Master’s license to serve as Master of that vessel. (TR 74, 91, 92, 122, 199-200). Thus, the holding of that license was a condition of Captain Collier’s employment.

2. Turning now to the events of May 20, 2003, it is clear that Captain Collier returned to the PETER CALLAIS as Master on April 21, 2003 to commence his 28 day service period. (TR 240). He was scheduled to be relieved at the crew change at approximately 0730 on May 21, 2003. (TR 124). At that time the licensed Mate (Strickland) was scheduled to become the

new Master or First Captain of the vessel. (TR 138, 139, 240). Also, a third licensed officer (John Rowell) was scheduled to relieve the Mate thus keeping the vessel fully manned with two licensed officers. (TR 134-135, 318-322).

Moreover, there is no question that Abdon Callais Offshore maintained a strict policy of requiring all crewmembers to remain aboard the vessel during their 28 day service period. (TR 77-78). About the only exception to that rule was to allow crewmembers to use the telephone at the dock. (TR 142). As the company's Human Resource Manager testified (TR 319):

A. No. They are not to leave the vessel under any circumstances unless the office authorizes it. We, as far as, personals, groceries, we have it delivered to the vessel -

The company considered the vessel to be unseaworthy if the full complement of two licensed officers and two deckhands were not aboard. (TR 77).

After Captain Collier served his 12 hour watch (0600 – 1800) on May 20, 2003, the licensed Mate Strickland relieved him to serve the Mate's watch (1800 – 0600). (TR 139). At that point, Captain Collier told Strickland that he was going home and would be back in the morning. (TR 137). Collier did not inform the company he was leaving the vessel. (TR 289). At approximately 1930 on that evening (May 20, 2003) Collier went ashore and was met by his wife who drove him home to Lockport, LA about 45 minutes from the dock at Fourchon. (TR 249-252). Before he left the vessel, he signed off on the billing logs as Master showing the vessel at Fourchon on standby at 2400 on May 20, 2003. (Exhibit IO-6). Collier told Strickland that he was going home and would be back in the morning in time for the crew change. (TR 125, 147). Collier "left his stuff on the boat" and Strickland thought Collier intended to return. (TR 126).

Later that same evening the company scheduled a random chemical test for dangerous drugs and alcohol. James Strickland called Collier at his home and advised him of the impending test. (TR 252-253). In turn, Collier called the company Personnel Coordinator, Robbie Lasseigne, and asked what was going on. (TR 253). Lasseigne told him to go back to the vessel but Collier refused. (TR 253-254). Collier testified at the hearing that he had been drinking wine and did not think he would pass the alcohol portion of the test. (TR 287).

The drug and alcohol test was conducted at approximately 2300 hours for all crewmembers aboard the M/V PETER CALLAIS on the night of May 20, 2003. Lafourche Services Incorporated was the firm responsible for conducting Abdon Callais Offshore's drug and alcohol testing program. Jeremiah Saint Pierre and Craig Hendrix from Lafourche testified regarding the conduct of the tests aboard the vessel that night. Mr. Saint Pierre was given a work order to go to Dosco Docks at Fourchon, LA at 9:00 PM to do testing on all the crew aboard the PETER CALLAIS. (TR 98, 178-179). Mr. Saint Pierre did not encounter Captain Collier on the boat and he was unable to test him. (TR 182-183). The collector filled out a copy of the Drug Testing Custody and Control form with the Respondent's Social Security Number and entered the remark: "Refusal to Test." (Exhibit IO-8). After the tests on the other members were completed, the Respondent called Mr. Saint Pierre at home and said he had "walked" and would not be coming back to the boat. (TR 182-183).

3. The testimony of James Strickland regarding Captain Collier's statement that he was going home and would return in time for the crew change the next morning and that Collier left his stuff aboard is challenged by Captain Collier. The Respondent asserts that his relationship with Strickland was not harmonious and that the Mate's testimony is not correct. Collier

claims that he was properly relieved by Strickland at the end of the Captain's watch at 1800 and that he shook the Mate's hand and told him "It's all yours." (TR 271).

I have listened to the testimony of both men and believe the Mate's statements are credible. I believe Captain Collier fully intended to come back to the vessel in time for the crew change. He did not notify anyone at the company that he was leaving the vessel at that time. (TR 289). Indeed, this is not surprising in view of the company's strict policy of prohibiting the crew from leaving the vessel during their 28 day duty period. (TR 77). Also, by his absence, the vessel was short the required number of two licensed personnel and thus could not have responded to all customer calls. As Mr. Dufremes, Abdon Callais Safety Coordinator, explained (TR 213-214):

A. Because a vessel can be called to go on a job at anytime. I mean, it wouldn't be practical to allow your mate or your captain to leave the vessel, and they live an hour away, and the customer calls and tell you, "I need the boat to leave, now, to come offshore with supplies," or "I need the boat to leave, now, to come offshore because I need fuel, water," or "I have a injured person offshore, I need to get him in." I mean, you can't wait for a captain to return to a boat or a mate to return or a deckhand.

4. Captain Collier's defense to the charge of refusing to take the drug test is that he was relieved by the licensed mate at 1800 on May 20, 2003 and went home and was off duty at 1930 that evening. Thus, he was not required to return to the vessel for the test because he was no longer a member of the crew. Respondent continues that the licensed Mate Strickland was scheduled to relieve him as Master of the vessel at the crew change the next morning on the 21st of May and that the change was made instead at 1800 on the 20th when Strickland relieved him. Since such relief is a relatively informal matter and usually accomplished orally, Captain Collier maintains that nothing further was required. He testified too that the vessel was at the dock and that Strickland's relief (Rowell) was on the way to the vessel.

Finally, he urged that the vessel's Certificate of Inspection allows one licensed Master instead of two when the vessel is engaged in 12 hour service. Since no trips were scheduled on the night of the 20th, the requirements of the Certificate of Inspection were met and the vessel was manned to sail.

I rejected this argument at the hearing and affirm that ruling now. (TR 345-346). The evidence is very clear in this case that the PETER CALLAIS was manned for 24 hour service and the company employed two licensed personnel to be on board at all times. As the company's representative testified, the vessel had to be ready to respond to their customer's requests for service and it could not be known what trips would be involved. (TR 213-214). The company considered the PETER CALLAIS to be unseaworthy and unable to sail if two licensed personnel were not aboard. (TR 77). After Captain Collier left the PETER CALLAIS at 1930 on May 20, 2003 the vessel was short one of those required licensed officers.

Secondly, Mate Strickland relieved Captain Collier of the watch at 1800 on May 20, 2003 but not the position as the vessel's Master. That particular relief was to occur the next morning at the crew change. Indeed, the Captain told the mate he would return for the crew change. Moreover, Captain Collier did not notify Abdon Callais Offshore that he was off duty almost 12 hours before the scheduled crew change. When he did contact the company Personnel Coordinator he was told to return to the vessel to take the drug test. The company understood he was the Master of the vessel at that time. (TR 108-109).

In sum, Captain Collier was the vessel's Master at the time the drug and alcohol tests were administered. He was required to be on board until the crew change the following

morning. He was obligated to take the company ordered drug test and he refused to do so.

The Coast Guard's allegations in the Complaint are **PROVED**.

5. The remaining issue to be considered is the nature of the order to be issued against Captain Collier's license. There is no question that Abdon Callais Offshore had a drug and alcohol policy in effect when the Respondent was hired and on May 20, 2003 when he refused to return to the PETER CALLAIS to take the chemical drug and alcohol test here. When he was hired on December 11, 2000 he agreed to abide by the rules set out in those company manuals. (Exhibit IO-4, p. 6). Also, he agreed to submit to a drug urinalysis at that time and was notified that "Drug and alcohol testing will be done at unscheduled intervals, including random, post accident, probable cause, and etc." (Exhibit IO-4, p. 10).

The Investigating Officer seeks revocation of the Respondent's Coast Guard credentials on the grounds that a refusal to test is an attack upon the effectiveness of the drug testing program itself. In Appeal Decision 2578 CALLAHAN (1996), p. 8, the Commandant stated that "... if mariners could refuse to submit to chemical testing, it is difficult to imagine why anyone that may have used drugs would ever consent to be tested." See also Appeal Decision 2624 (DOWNS) (2001), pp. 18-19); Appeal Decision 2641 (JONES) (2002). The Commandant held in CALLAHAN supra that the refusal to submit to a post accident chemical test raises serious doubt about a mariner's ability to perform safely and competently in the future (CALLAHAN at p. 8). In DOWNS supra at p. 18-19, the Commandant held that doubt about the ability of a mariner to perform may even be a stronger consideration where the mariner's conduct, behavior and appearance are the basis for a probable cause test.

In this case, the Investigating Officer asserts that there should not be a sanction less than revocation where a random test is refused since it is a test designed to prevent the type

of conduct which the mariners in CALLAHAN (marine casualty) and DOWNS (driving while intoxicated) exhibited. The Coast Guard contends that there should be no difference in the sanction for refusal to take a drug test regardless of the circumstances. Moreover, the Investigating Officer asserts that a random test like the one involved here is a preventative test designed to remove mariners from duty before they are involved in a casualty or become intoxicated and are unable to perform safely.

After considering this argument, I am persuaded the Investigating Officer is correct. A mariner's refusal to take a chemical test for drugs and alcohol when ordered to do so by his marine employer, as part of the required Coast Guard drug testing program (as here), regardless of the type of test is involved (post accident, pre-employment, random, probable cause, or periodic), must result in the revocation of that individual's Coast Guard-issued license and document. There can be no distinction between the type of DOT drug test involved and the sanction issued. Each type of test is an integral part of the congressional and Coast Guard's effort to root out substance abuse in the merchant marine. All refusals raise the specter of the mariner's use of illicit drugs and place in doubt the ability of a mariner to safely carry out their duties and responsibilities on the vessel. These considerations are particularly applicable in this case when the Master of the vessel refused to take the drug/alcohol test. Clearly, he must be held accountable for such action.

VI.

ORDER

For all of the foregoing reasons Respondent's Coast Guard-issued license number 930641 and his Merchant Mariner's Document are **HEREBY REVOKED**.


PETER A. FITZPATRICK
Administrative Law Judge
United States Coast Guard

Done and Dated on February 26, 2004 at
Norfolk, Virginia