

UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF HOMELAND SECURITY  
**UNITED STATES COAST GUARD**

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UNITED STATES COAST GUARD

Complainant

vs.

JOSHUA JAMES SHELDRIK

Respondent.

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Docket Number: CG S&R 04-0572  
CG Case No. 2227646

**ORDER DENYING MOTION FOR SUMMARY  
DISPOSITION AND ORDERING USCG TO SHOW  
CAUSE WHY COMPLAINT SHOULD NOT BE  
DISMISSED**

**Issued: November 30, 2004**

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**Issued by: Jeffie J. Massey, Administrative Law Judge**

**BACKGROUND**

On November 10, 2004, the United States Coast Guard ("USCG" herein) filed a Motion for Summary Disposition ("Motion" herein), pursuant to the provisions of 33 CFR §20.901. In the Motion, the USCG requests that the undersigned Administrative Law Judge issue a Summary Disposition Decision and Order against the Respondent Joshua James Sheldrick ("Respondent" herein), revoking all Coast Guard issued documents held by the Respondent.

On November 30, 2004, Respondent filed his "Motion to Countermove Against Apposing [sic] Affidavit" ("Response" herein), generally arguing against the relief requested by

the USCG. Respondent makes numerous references to the documents attached to the USCG Motion; however, it is not necessary for purposes of this Order to discuss in detail the claims/arguments advanced by the Respondent in his Response.

### **DISCUSSION**

In its Motion, the USCG alleges that there are no genuine issues of material fact in this proceeding. The USCG alleges that the Respondent failed to disclose all of his prior convictions on his application for a Merchant Mariner's Document and application for a raise in grade. The USCG attaches two applications—the first an application for first issue (Exhibit 1 to the Motion) dated August 22, 2000; and the second an application for a raise in grade (Exhibit 2 to the Motion) dated December 18, 2001. The Motion specifically alleges that the Respondent failed to disclose a July 1999 conviction for driving without proof of insurance (in Florida), and a July 2000 conviction for driving without a valid drivers license (also in Florida) on his August 2000 application.

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The Motion further alleges that the Respondent failed to disclose a conviction for breach of peace or disorderly conduct in September 2001 (again in Florida), and a conviction for fail to yield blue lights and driving while under the influence (DUI) in October 2001 (in Mississippi). Attached to the Motion are various records which the USCG alleges support its request for summary disposition. A quick summary of those documents is as follows:

- (1) Abstract of Court Record (Mississippi)  
Charge: fail to yield blue lights  
Date of violation: 10/30/01  
Judgment of Court: Guilty  
Court date: 00//0  
Fine paid: \$100 (plus assessment)

- (2) Abstract of Court Record (Mississippi)  
 Charge: DUI – FIRST OFFENSE  
 Date of violation: 10/30/01  
 Judgment of Court: Guilty  
 Court date: 00//0  
 Fine paid: \$250 (plus assessment) (to attend alcohol [sic] assessment [sic] program in Florida)
- (3) Courtviewer Records Search (Escambia County Florida Clerk of the Cir. Court)  
 Offense: Proof of Insurance Required  
 Offense Date: 7/14/1999  
 Disposition Date: July 21, 2000  
 Disposition Code: Disposed Other than Hearing (Infraction)  
 Fine paid: \$48 (plus clearance fee)
- (4) Courtviewer Records Search (Escambia County Florida Clerk of the Cir. Court)  
 Offense: Breach of Peace or Disorderly Conduct  
 Offense Date: 5/09/2001  
 Disposition Date: 5/30/2001  
 Disposition Code: Disposed By Plea (Guilty/Nolo) Criminal  
 Punishment: Adjudication Withheld; Probation 6 months (Probation Terminated on 12/7/2001)
- (5) Courtviewer Records Search (Escambia County Florida Clerk of the Cir. Court)  
 Offense: No Valid Drivers License  
 Offense Date: 8/14/1999  
 Adjudication: Guilty  
 Disposition Code: Disposed By Plea (Guilty/Nolo) Criminal  
 Disposition Date: 2/4/2000  
 Punishment: ~~30 days commitment to County Jail; all but 10 days suspended;~~  
 Fined \$200<sup>1</sup>

Per the provisions of §20.901(b), a summary disposition is appropriate only when there are no material issues of fact present in the proceeding. In its Motion, the USCG alleges that the attachments to its Motion provide all the proof necessary for the undersigned to determine that there are no material issues of fact in this proceeding. Turning to the Complaint, I note that the USCG joins two separate factual allegations in one paragraph charging Misconduct. Specifically, they allege Respondent committed Misconduct by failing to disclose “prior

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<sup>1</sup> With respect to this incident, the Respondent apparently missed his first court date, was arrested on a capias warrant, found in contempt of court (probably from the missed court date), was given credit for 10

convictions” which resulted in “fraudulent statements” on “two separate occasions.” The first occasion would have been his August 22, 2000 application. The second occasion would have been his December 18, 2001 application.

### **The August 22, 2000 Application**

In response to the question about his history of convictions for offenses other than minor traffic violations, the Respondent indicated “no.” In response to the question about his history of convictions for traffic violations arising out of a fatal traffic accident, reckless driving, racing on the highway, or operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance, the Respondent indicated “no.”

Turning to the court records and abstracts attached to the USCG’s Motion, documentation for two convictions prior to August 22, 2000 are noted: first, the February 4, 2000 conviction for “no valid drivers license”; and, second, the July 21, 2000 conviction for “Proof of Insurance Required.”<sup>2</sup> Clearly, the Respondent’s August 22, 2000 application does not give the USCG notice of these convictions. The question at issue, however, is whether or not he was *required* to give notice of these two convictions on his application. A plain reading of the questions to which the Respondent answered “no” does not indicate that he would have been required to advise the USCG of these two convictions—both are traffic offenses. The records do not indicate that there was a fatality, reckless driving, racing on the highway, or driving under the influence involved with either incident. (Even where the records indicate there was a car wreck, this is not the legal equivalent of a conviction for “reckless driving”, as contemplated in the question on the application.) Accordingly, the undersigned cannot agree

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days time served, ordered to pay restitution (there was a car wreck involved with this incident), failed to pay restitution in a timely manner, then ultimately paid all monies due.

with the USCG that a summary disposition is appropriate with respect to a charge of Misconduct based on fraudulent statements on the August 22, 2000 application.

### **The December 18, 2001 Application**

In response to the question about his history of convictions for offenses other than minor traffic violations, the Respondent indicated “yes.” In response to the question about his history of convictions for traffic violations arising out of a fatal traffic accident, reckless driving, racing on the highway, or operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance, the Respondent indicated “yes.” The explanatory statement attached to this application contained a statement to the effect that the Respondent had been convicted in December of 1997 of reckless driving. He further claimed that “this” was “on record” at the Regional Exam Center in New Orleans.

Turning to the court records and abstracts attached to the USCG’s Motion, documentation for one *conviction* between the August 22, 2000 application and the December 18, 2001 application is noted: the May 30, 2001 conviction for Breach of Peace or Disorderly Conduct, for which the Respondent received a probated sentence. The record also indicates charges of “fail to yield blue lights” and “DUI”, both offenses occurring on October 30, 2001. However, contrary to the USCG assertions, the records obtained by the USCG and attached to its Motion do not indicate *a date of conviction* for these two offenses. I cannot find that the Respondent made a fraudulent statement on his December 18, 2001 application with respect to these two charges based on the record before me. Accordingly, a Motion for Summary Disposition is not appropriate with respect to an allegation of Misconduct based on the omission of these two incidents from the Respondent’s disclosure.

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<sup>2</sup> It appears that the USCG misquoted the actual conviction dates for these offenses in its Motion.

As for the May 30, 2001, conviction for Breach of Peace or Disorderly Conduct, I do not have sufficient information in front of me to determine whether or not this conviction constitutes a conviction for an offense “other than a minor traffic violation.” To determine this with certainty, I would need to know the specifics of how the breach of peace or disorderly conduct was committed, as some state statutes provide a variety of ways that these offenses can be committed, including with a motor vehicle. In so far as the failure to disclose this offense is concerned, I therefore cannot find it appropriate to grant the USCG Motion in so far as it is based on a charge of Misconduct based on the Respondent’s failure to disclose the existence of this conviction.

#### **STATUTE OF LIMITATIONS—ORDER TO SHOW CAUSE**

Per the provisions of 46 CFR §5.55, the USCG is limited in its ability to bring allegations of Misconduct against Mariners such as Respondent. Within §5.55, specific time limitations are established for the service of Complaints on Respondents based on various offenses. With respect to Complaints charging Misconduct, unless the underlying incident is among those specifically listed in §5.59(a) or §5.61(a), the general three year limitation established in §5.55(a)(3) applies. In this proceeding, that means that the allegation of Misconduct with respect to disclosures not made in connection with the Respondent’s August 2000 application are barred as a matter of law.

In this proceeding, for whatever reason, the USCG chose to join what could have been two separate and distinct charges of Misconduct into one charge. The Complaint in this case requires the USCG to prove BOTH of the factual allegations underlying the one charge of Misconduct if it wants to prevail in this proceeding. In other words, the manner in which the

USCG chose to present its Complaint means that the facts alleged with respect to fraudulent statements on the August 2000 **AND** the December 2001 applications must **both** be proven in order for one finding of Misconduct to be entered in this proceeding.

Because it appears that an allegation of Misconduct based on the August 2000 application are barred as a matter of law by the provisions of §5.55(a)(3), it would be appropriate for the undersigned to dismiss the Complaint in this case, because of the way the USCG chose to plead its case.

Before entering an Order of Dismissal of the Complaint in this case, the undersigned is Ordering the USCG to Show Cause why the Complaint in this proceeding should not be dismissed. Specifically, if the USCG has a reason under the law why the Misconduct allegation—so far as it is based on the August 2000 application is not barred as a matter of law, then the USCG should file a brief containing that reason no later than close of business on December 10, 2004.

Should the USCG wish to abandon its allegation of Misconduct, so far as it is based on statements made in the August 2000 application, it would be possible for this proceeding to survive if a properly worded Amended Complaint was filed. That would depend, of course, on whether or not the USCG has, in its possession, (1) proof that the Respondent was actually *convicted* (as opposed to being charged) with the offense of DUI prior to his December 2001 application; and (2) proof that the May 2001 conviction for Breach of Peace or Disorderly Conduct was something other than a minor traffic violation. If such proof does not exist, the undersigned respectfully suggests that the USCG re-evaluate the appropriateness of the Complaint against the Respondent.

**ORDER**

IT IS HEREBY ORDERED that the USCG's Motion for Summary Disposition is hereby **DENIED**. Further, IT IS HEREBY **ORDERED** that the USCG file, on or before December 10, 2004, a brief explaining the grounds that exist, if any, upon which the allegations in this case can proceed against the Respondent, under a properly plead Complaint.

Done and dated November 30, 2004.  
New Orleans, Louisiana

  
JEFFERY J. MASSEY  
ADMINISTRATIVE LAW JUDGE  
U.S. COAST GUARD

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