

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

UNITED STATES COAST GUARD

Complainant

vs.

PATRICK BEAU SHEA

Respondent.

Docket Number: CG S&R 04-0292
CG Case No. 2026523

DECISION AND ORDER

Issued: January 25, 2005

Issued by: Walter J. Brudzinski, Administrative Law Judge

Appearances:

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PRELIMINARY STATEMENT

In discharge of its duty to promote the safety of life and property at sea, the United States Coast Guard at Honolulu, Hawaii (“Coast Guard” or “Agency”) initiated this administrative action on June 3, 2004 against Respondent Patrick Beau Shea seeking to revoke his Merchant Mariners license and document. In its Complaint, the Coast Guard charged Respondent with one count of Misconduct and one count of Incompetence arising out of incidents occurring on December 18, 2003 while serving as Second Assistant Engineer onboard the SS EWA while underway from Long Beach, California to Honolulu, Hawaii.

Specifically, the Complaint, as amended at the hearing and by the undersigned for clarity and to conform to the testimony that the vessel involved is a steamship that was transiting from Long Beach, California to Honolulu, Hawaii, reads as follows:

Misconduct

- “1. The Coast Guard alleges that on or about December 18, 2003, Respondent was employed as Second Assistant Engineer on the SS EWA.
2. The Respondent did abandon his watch in the engine room, and was observed crawling on his hands and knees on the bridge wing, while the vessel was underway.
3. Respondent was relieved of his duties for failure to maintain his watch.”

Incompetence

- “1. The Coast Guard alleges that on or about December 18, 2003, the Respondent had to be relieved of his duties, placed in restraints, and confined to quarters after displaying irrational behavior.
2. The Respondent had packed bags with survival equipment and made it known that he intended to leave the ship, while it was underway between Long Beach, CA and Honolulu, HI.

3. The Respondent was admitted to Queen’s Medical Center upon arrival in Honolulu on or about December 22, 2003 for a psychiatric evaluation.

4. On a letter dated March 22, 2004, Dr. Barry Carlton, MD diagnosed the Respondent with having Bipolar disorder – manic.

5. The Respondent had also been diagnosed with Schizophreniform disorder, incipient and Bipolar mood disorder, mixed mood state with catatonic features, after he was admitted to Lions Gate Hospital on March 3, 2003.”

The purpose of Coast Guard suspension and revocation proceedings is to ensure the safety of life and property at sea.¹ There is strong public policy embodied in Coast Guard law and regulations to remove incompetent mariners from serving aboard vessels.² The regulations authorize the Coast Guard to investigate and issue a complaint if reasonable grounds exist to believe that the holder of a license may have committed an act of incompetence, misconduct, or negligence while acting the authority of his license or document.³ The regulations also authorize a mariner to voluntarily deposit a license or document with the Coast Guard when there is evidence of mental or physical incompetence.⁴

The hearing was held on October 6, 2004 at Honolulu, Hawaii. The parties were given 30 days after receipt of the hearing transcript to file post-hearing briefs and proposed findings. The undersigned received the Coast Guard’s proposed findings of fact and conclusions of law on November 20, 2004 and the Respondent’s post hearing brief and proposed findings of fact and conclusions of law on November 29th and December 2, 2004 respectively. This matter is now ripe for decision.

¹ 46 U.S.C. 7701(a).

² 46 U.S.C. 7703(1)(B) authorizing proceedings against a license or document if the holder commits an act of incompetence, misconduct, or negligence.

³ 46 CFR 5.101(a), 5.105(a).

⁴ 46 CFR 5.201.

FINDINGS OF FACT

1. That at all times relevant, Patrick Beau Shea (also referred to as “Respondent”) has been the holder of U.S. Coast Guard license number 979580 and a Merchant Mariner’s Document bearing his Social Security Number. (Tr. at 12).
2. That Respondent graduated from the United States Merchant Marine Academy in 1994 with a class standing of 22 out of 222. (Tr. at 150).
3. That on December 18, 2003, Patrick Beau Shea was employed as Second Assistant Engineer on board the Steamship (“SS”) EWA in charge of the 0400 to 0800 engine room watch during the EWA’s voyage from Long Beach, California to Honolulu, Hawaii. (Tr. at 2, 46, 51, 52).
4. Respondent’s working environment requires him to work around heavy machinery and temperatures in excess of a one hundred twenty degrees Fahrenheit. (I/O Ex. A; Tr. at 52-54, 172-175).
5. That while on watch in the engine room at or around 0630 on December 18, 2003 and acting under the authority of his license and document, Respondent left his watch station with no relief and was observed crawling on his hands and knees on the bridge wing while the vessel was underway. (I/O Ex. 1; Tr. at 20, 32, 33, 177-178).
6. That after the Chief Officer asked him to come into the wheelhouse so someone could be called to resume his engine room watch, Respondent immediately ran down the outside ladder from the bridge wing deck, grabbed a life ring with a strobe light attached to it, threw it over his shoulder, and then continued down the next ladder. Shortly afterwards, the Chief Officer saw two strobe lights flashing in the water off the port quarter of the ship. The Chief Officer ultimately had the 3rd Assistant Engineer assume Respondent’s watch. (Tr. at 35; Ex 1, p. 1).

7. That Respondent had to be relieved of his duties, placed in restraints, and under a 24-hour suicide watch for the remaining three days of the 4 ½ day voyage from Long Beach, California to Honolulu, Hawaii because he had filled a couple of large trash bags with his clothing and personal items, along with food, water, and reading material, all of which was found attached to the life raft that he admitted to dragging and assembling for the purpose of leaving the ship. (Tr. at 36, 37, 38, 42, 46, 51, 70; I/O Ex. 1, p. 1, 2; Ex 3).
8. That in the discharge of his duty to ensure the safety of the vessel, cargo, and crew, Captain Thomas M. Stapleton, Master of the SS EWA, interviewed Respondent in Respondent's stateroom. (Tr. at 64, 69, 78).
9. That Respondent told Captain Stapleton he was concerned about some of the mechanical problems in the engine room and that the weather was not going to be very favorable en route to Hawaii. As a result of these concerns, Respondent told Captain Stapleton that he wanted to get off the vessel. (Tr. at 64, 65, 71, 73, 74).
10. That in further response to Captain Stapleton's questions, Respondent voluntarily handed over a folder containing his medical records (discharge summaries) for treatment received at Lions Gate Hospital in North Vancouver, British Columbia, Canada March 3rd through the 19th and April 3rd through April 22nd of 2003 saying, "Here, you could hold onto these" or words to that effect. (Tr. at 65, 68, 69; I/O Ex 1, p. 1, I/O Ex. 2).
11. That Captain Stapleton learned shortly after reading the discharge summaries from Lions Gate Hospital that Respondent suffered from mental illness. (Tr. at 77).
12. That Respondent told Captain Stapleton he had taken the life raft out of its cradle and dragged it 50 to 60 feet aft and left it in the position where it was found when Captain Stapleton photographed it. (Ex. 3; Tr. at 74).

13. That Respondent became very hostile and belligerent towards Captain Stapleton, demanding to have his packed bags and survival suit returned immediately. He then threatened Captain Stapleton whereupon Captain Stapleton handcuffed Respondent to his bunk rail. Respondent continued his rants and threats, locking himself to the toilet railing. (Ex. 1, p. 3).
14. That after Captain Stapleton briefed the company's contract doctor at Health Force Medical concerning Respondent's condition, the contract doctor advised that Respondent be administered Diazepam (Valium) (10 mgs) every 6 hours for its calming effect. (Ex. 1, p. 2; Tr. at 77, 78, 83).
15. That Captain Stapleton maintained contact with the company's contract doctor who ordered adjustments to Respondent's medications. The Matson (owner) representative in Honolulu told Captain Stapleton to forward Respondent's discharge summary medical records to the attending physician upon arrival Honolulu. (Ex. 1, pp. 3, 4).
16. That prior to these incidents, Respondent had been a very alert and responsible officer. (Tr. at 81).
17. That Dr. Barry S. Carlton, MD was Respondent's attending psychiatrist upon his admission to Queen's Hospital in Honolulu on or about December 22, 2003 until his discharge on January 6, 2004 and has remained his treating psychiatrist on an out-patient basis through the date of this hearing. (Tr. at 89-91; IO Ex. 5 at 2).
18. That Dr. Carlton received the discharge summaries from Respondent's two hospitalizations at Lions Gate Hospital in Canada in March and April of 2003. (Tr. at 95).
19. That upon admission to Queen's Medical Center on or about December 21, 2003, Dr. Barry S. Carlton, MD diagnosed Respondent with Bipolar Disorder, current episode

manic, based on the information that was provided both from the emergency department's review of records from the hospitalizations in Canada (I/O Ex. 2) as well as from information provided by the ship's master (Captain Stapleton). (Tr. at 94).

20. That Dr. Carlton prescribed Olanzapine (generic name for Zyprexa) for treatment of acute mania as well as for the prevention of manic or a prophylaxis (prevention) of bipolar disorder symptoms. He also prescribed Lorazepam, (Ativan), an anti-anxiety agent, and briefly, Fluoxetine (Prozac), an antidepressant. Respondent was discharged on Zyprexa. Upon discharge, and on February 13, 2004, Dr. Carlton declared that Respondent was fit for duty because his illness was in remission. (Tr. at 98-100; I/O Ex. 5; I/O Ex 6).

21. That Dr. Carlton saw Mr. Shea at various intervals from twice each week to bi-weekly except when Respondent was out of town or at sea. In September 2004, Dr. Carlton saw Respondent twice and found no signs of mood disturbance or thought disorder. (Tr. at 102).

22. That Dr. Carlton opined there is no literature to suggest how long medication management should be but he anticipates at least a two (2) year, if not a five (5) year period of medication management and at least five (5) years of asymptomatic condition before he would recommend discontinuing the medication. (Tr. at 105, 106).

23. That Dr. Carlton opined Zyprexa has been approved by the Federal Drug Administration for treatment of acute mania as well as long-term management with prophylaxis and that the medication at this point is used to prevent the onset of future episodes of illness. (Tr. at 106, 107).

24. That Dr. Carlton further opined “[t]here are patients who go on to maintain remission; that is, absence of symptoms for many years. And then there are also those who, despite medication, do have breakthrough symptoms. There is no science to suggest what the prognosis will be, or whether I could predict a remission....” (Tr. at 107).
25. That Dr. Carlton opined, “[t]he medicines are helpful. They prevent breakthroughs, but you can’t guarantee it...there is always an ongoing risk... there is no evidence at this point from Mr. Shea’s either (sic) presentation or current clinical status that he...has...frequent episodes of illness...he is on 15 milligrams of Zyprexa ...(has) good mood stability, good thought stability, and absence of daytime sedation. At one point he was on a higher dose...and the side effect would be daytime sedation. He does have sufficient insight...that should there be breakthrough symptoms, he would...increase the medicine.” (Tr. at 108, 109).
26. That Dr. Carlton opined Respondent will more or less remain in remission and not ever be “cured” because “...bipolar disorder is a chronic illness that requires long-term management. And so I could not say...with certainty that he would not have a breakthrough episode.” (Tr. at 109).
27. That Dr. Carlton opined a patient taking Zyprexa and symptom free for five years remains at greater risk for breakdown episodes than one who does not have the illness. (Tr. at 112).
28. That Dr. Carlton opined Respondent has more insight and control of these symptoms since he has been taking Zyprexa because it stabilizes his mood. (Tr. at 115-116).
29. That Dr. Carlton opined Respondent would be more of a threat to himself rather than to others in the event of a relapse. (Tr. at 117).

30. That Dr. Carlton opined Zyprexa is a psychotropic medication. (Tr. at 118).
31. That the Physician's Desk Reference (PDR) states "Somnolence was a commonly reported adverse event associated with Olanzapine (Zyprexa), occurring at an incidence of 26 per cent in Olanzapine patients compared to 15 per cent in placebo. This adverse event was also "dose related" and somnolence led to continuation in 0.4 percent of patients. Since Olanzapine (Zyprexa) has the potential to impair judgment, thinking, or motor skills, patients should be cautioned about operating hazardous machinery, including automobiles, until they were reasonably certain that Olanzapine therapy does not affect them adversely." (Tr. at 120).
32. That in his March 3-19, 2003 discharge summary at Lions Gate Hospital in North Vancouver, Canada, Dr. Christian H. Schenk, MD diagnosed Respondent with Schizophreniform disorder, incipient, and Bipolar mood disorder, mixed mood state with catatonic features. On his April 4-22, 2003 discharge summary at Lions Gate, Dr. Schenk diagnosed Respondent with Bipolar mood disorder, rule out Schizophreniform psychosis. (Ex. 2, p. 6 and p. 9).
33. Dr. Carlton ruled out Schizophrenia. "[H]is total absence of the symptoms, return of mood stability... his very good social functioning, (and) interpersonal skills, would make the diagnosis a Bipolar disorder rather than Schizophrenia." (Tr. at 128, 129).
34. That Dr. Carlton opined Respondent is able to understand the symptoms and what to do about them and that "there is no reason to expect that he would have an exacerbation of illness...he also has to use common sense...assure the proper sleep, no drugs or alcohol, and to monitor for symptoms." (Tr. at 130-131).

35. That Dr. Carlton opined to a reasonable degree of medical certainty, Respondent is fit for duty at the present time to perform his job as described by the Matson (owner) job description in Respondent's Exhibit "A." Dr. Carlton previously found Respondent fit for duty on February 13, 2004. (Tr. at 133, 134, 135; IO Ex. 5; Respondent's Ex. "A").
36. That Dr. Carlton opined it is not certain that Respondent will remain symptom free, even if he takes his medication because the course of the illness is highly variable; however, one can expect a sustained remission. (Tr. at 134, 135).
37. That Dr. Carlton opined a side effect (of Zyprexa) is sedation, which Respondent currently does not have and weight gain, which he manages well. Further, there is no evidence of cognitive impairment. (Tr. at 141, 142).
38. That Dr. Carlton opined heat (in the engine room) should not be a problem assuming that Respondent hydrates properly. However, rotating shifts could be a problem because he needs stability of shifts to maintain a normal sleep pattern. (Tr. at 142-144).
39. Since being under the care of Dr. Carlton, and returning to work on June 3, 2004, Respondent has taken only those jobs that would allow his sleeping patterns to remain normal. (Tr. at 158, 159, 161).
40. That Respondent believes he is capable of performing the duties as a second assistant engineer for Matson. (Tr. at 164).
41. The position and work that the Respondent performs on board a vessel requires him to be able to perform during unexpected emergency situations that can occur at any time, day or night on any merchant vessel. These unexpected emergency situations inherently carry a certain level of stress and can affect the level of sleep that the Respondent is able to get when having to address any emergency situation. (Tr. at 173, 174).

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That Respondent, Patrick Beau Shea and the subject matter of this hearing are within the jurisdiction vested in the Coast Guard under 46 U.S.C. 7703.
2. The Coast Guard is not precluded from issuing a complaint following a period of voluntary deposit of license or document and its return.
3. That Exhibit 2, hospitalization discharge summaries and laboratory reports from Respondent's hospitalization at Lions Gate March 3 – 19, 2003 and April 4 - 22, 2003 are admissible as part of Respondent's medical history.
4. That Respondent's argument that he should not have his license and document revoked for alleged misconduct that was the result of an illness, and not willful or negligent, or even an error in judgment, is rejected. "[W]illfulness is not a necessary element of each and every allegation of 'misconduct,' and no special willfulness was an element of the offense charged here." Appeal Decision 2136 (DILLON) (1978). Therefore, the undersigned cannot find as a conclusion of law that the Respondent's illness either diminished his capacity to form specific intent or rendered him not legally responsible for his acts that gave rise to the Misconduct charge. Appeal Decision 1677 (CANJAR) (1968).
5. That the Coast Guard did not violate Chapter 2, Section C, Paragraph 9 of the Marine Safety Manual. The above-referenced Marine Safety Manual section deals with procedures in lieu of a hearing that are to be followed only if the Coast Guard chooses not to initiate suspension and revocation proceedings. That section of the Marine Safety is not applicable to suspension and revocation hearings.

6. That Respondent was operating under the authority of his license and document at the time of these charges.
7. That by the preponderance of reliable, probative, and substantial evidence, the Misconduct charge is found proved in that at or about 0630 on December 18, 2003, Respondent left his watch station in the engine room of the SS EWA while underway transiting from Long Beach, California to Honolulu, Hawaii without a relief and was seen crawling on his hands and knees on the bridge wing. Respondent had to be relieved of his duties for failure to maintain his watch. (IO Ex. 1; Tr. at 20, 32, 33, 177-178).
8. That by the preponderance of reliable, probative, and substantial evidence, the Incompetence charge is found proved in that Respondent had to be relieved of his duties, placed in restraints, and confined to his quarters after displaying irrational behavior by packing bags with survival equipment and making it known that he intended to leave the ship while the ship was underway. Having been previously diagnosed with Schizophreniform disorder, incipient, and Bipolar mood disorder, mixed mood state with catatonic features, Respondent was diagnosed with Bipolar Disorder, current episode manic, upon admission to Queens Medical Center on or about December 22, 2003. Therefore, he was incompetent at the time of the incident on December 18, 2003. Currently taking Zyprexa, a psychotropic medication, his treating psychiatrist found him found fit for duty on February 13, 2004 and at the time of the hearing because his bipolar disorder was in remission. However, he is still a greater risk than the general population for breakdown symptoms. Therefore, Respondent is presently suffering from a mental impairment of sufficient disabling

character to support a finding that he is not competent to perform safely his duties aboard a merchant vessel.

9. That Respondent is not competent and fit for duty. Although Dr. Carlton opined that Mr. Shea's is competent and fit for duty because, among other things, his mental illness is in remission, that opinion is based on Respondent continuing his psychotropic medication for at least 5 years, maintaining normal sleep patterns, controlling his weight, continuing regular contact with a psychiatrist, avoiding drug and alcohol abuse, using common sense, and monitoring for symptoms. Further, Respondent is not cured. These factors, plus the fact that Respondent still remains at greater risk than the general population, comprise sufficient evidence of incompetence subsequent to his fit for duty declaration.

DISCUSSION

“*Incompetence* is the inability on the part of a person to perform required duties, whether due to professional deficiencies, physical disability, mental incapacity, or any combination thereof.”⁵ “No one who is suffering from a psychiatric disability should be permitted to serve aboard any vessel...in a capacity in which he could cause serious harm to himself, to others, or the vessel itself.”⁶ Dr. Carlton opined that Respondent would be more of a threat to himself than to others in the event of a relapse. However, judging from Respondent's acts aboard EWA on December 18, 2003, his acts of attempting to abandon ship and disturbing the ship's safety gear also present potential danger to the vessel and its crew.

⁵ 46 CFR 5.31.

⁶ Appeal Decision 2417 (YOUNG) (1985) citing Appeal Decision 2181 (BURKE) (1980), modified sub nom. Commandant v. Burke, 2 NTSB 2784 (Order EM-83, (1980).

The regulations authorize the Coast Guard to investigate and issue a complaint if reasonable grounds exist to believe that the holder of a license may have committed an act of incompetence while acting under the authority of the holder's license or document.⁷ At a hearing, a finding of mental incompetence must rest upon substantial evidence of a reliable and probative nature that the person charged suffers from a mental impairment of sufficient disabling character which renders the person unable to safely perform his duties aboard a merchant vessel.⁸ At a revocation hearing, "ordinarily, any allegation of incompetence must be based on sufficient evidence subsequent to any fit for duty declaration by the USPHS (U.S. Public Health Service) or it should not be proved."⁹ "The only proper order for a charge of incompetence if found proved (by the preponderance of the evidence) is **revocation**."¹⁰

Decision

By the preponderance of reliable, probative, and substantial evidence I find that the Incompetence and Misconduct charges are proved. It is clear from the evidence in this case that the Respondent, Patrick Beau Shea, currently suffers from a psychiatric condition that would affect adversely his ability to serve at sea. Subsequent to the incidents that gave rise to the incompetence charge, Mr. Shea was hospitalized and diagnosed with Bi-polar Disorder – current episode manic.

He has been taking Zyprexa, a psychotropic drug, and according to Dr. Carlton his illness is currently in remission. As such, Dr. Carlton opines that Respondent is now competent and fit for duty. However, Dr. Carlton also states that bipolar disorder is a chronic illness that requires long-term management and could not say with certainty that Mr. Shea would not have

⁷ 46 CFR 5.101(a)(1) and 5.105(a).

⁸ Appeal Decision 2417 (YOUNG) (1985).

⁹ Appeal Decision 2417 (YOUNG) (1985) citing Appeal Decision 2280 (ARNOLD) (1982).

¹⁰ 46 CFR 5.569(d); 46 CFR 5.61(a)(9); 33 CFR 20.701).

breakthrough episodes because it is difficult to judge the illness' course. Dr. Carlton expects a sustained remission but, even so, one who is in remission still has a greater risk of breakthrough episodes than someone who does not have bipolar disorder. Moreover, it is not certain that Respondent will remain symptom free even if he is compliant and takes his medication because the course of the illness is highly variable. In accordance with 46 CFR 5.569(d), 5.61(a)(9) and 33 CFR 20.701, the only proper order for a charge of incompetence if found proved (by the preponderance of the evidence) is revocation.

The credible testimony of the SS EWA's Chief Officer Jeff Hood and the Master, Captain Thomas M. Stapleton, together with his log,¹¹ comprises the preponderance of reliable, probative, and substantial evidence to prove the factual incidents of the Misconduct and Incompetence charges. Also, the credible testimony of Dr. Barry S. Carlton, MD, plus the exhibits, comprise the preponderance of medical evidence to prove that Respondent currently suffers from a mental impairment of sufficient disabling character that renders him unable to perform his duties safely aboard a merchant vessel. Moreover, Dr. Carlton's prognosis that Respondent still poses a greater risk for breakthrough episodes than the general population comprises sufficient evidence of incompetence subsequent to his finding Mr. Shea fit for duty.

Because Respondent remains at greater risk than the general population for having breakthrough episodes even if fully compliant, I cannot accept Dr. Carlton's opinion that Respondent is competent and fit for duty. "[T]he administrative law judge is not bound by the recommendations of the psychiatrist or even the medical findings and opinion...the ultimate finding as to fitness of the person is a function of the Administrative Law Judge."¹²

¹¹ (I/O Ex. 1).

¹² Appeal Decision (2191) BOYKIN (1980).

Dr. Carlton's opinion that Respondent is fit for duty opinion is not unqualified. It carries many caveats or warnings: Dr. Carlton anticipates at least five years of asymptomatic condition before he would even consider recommending discontinuing the medication.¹³ The course of Respondent's remission and the chances that he will have breakthrough episodes cannot be predicted and it cannot be said with certainty that he will not have a breakthrough episode.¹⁴ The medicines are helpful in preventing breakthroughs but it (absence of breakthrough episodes) cannot be guaranteed. There is always an ongoing risk.¹⁵ Respondent will not be cured but will remain in remission because Bipolar disorder is chronic that requires long-term management.¹⁶ The National Institutes of Mental Health recommend medication maintenance and ongoing regular psychotherapeutic contact. In addition, he must avoid substance and alcohol abuse and focus on wellness (exercise and weight control), plus he must use common sense stress management.¹⁷ Maintenance of normal sleep patterns is also important in symptom management.¹⁸ Even if Respondent remains in remission; that is, symptom free, for five years and continues to take Zyprexa for that period of time, he still remains at greater risk than the (general) population for an exacerbation of illness. The inference from Dr. Carlton's caveats is that no matter how compliant Respondent is with his regimen of medication and lifestyle practices, at best, his illness still puts him at greater risk than the general population for breakthrough episodes.

Dr. Carlton testified that there are patients who maintain remission for many years¹⁹ and, to that extent, there is no evidence from Mr. Shea of rapid cycling or frequent episodes of illness.

¹³ Tr. at 105.

¹⁴ Tr. at 107, 109.

¹⁵ Tr. at 108.

¹⁶ Tr. at 109.

¹⁷ Tr. at 110.

¹⁸ Tr. at 113.

¹⁹ Tr. at 107.

Dr. Carlton says Mr. Shea has good mood stability, good thought stability, and absence of daytime sedation (sleepiness). There is no evidence of abnormal thinking, either logic or odd ideas, and no evidence of abnormal mood stability, elevation, or depression that cause problems with behavior. Further, Dr. Carlton says that with Mr. Shea's insight and medication management, Mr. Shea can increase the medicine himself if he has breakthrough symptoms.²⁰ His opinion on Respondent's insight is based on when Mr. Shea was initially discharged from Queen's Medical Center, he was able to report symptoms and he sought advice as to how to manage them. Respondent believes he has the ability to self medicate if necessary. Further, he must keep track to make sure that he doesn't have any odd ideas or odd behaviors that would signal the beginning of another illness episode, plus he must manage his weight since weight gain is one of the side effects of Zyprexa.²¹

In reviewing Respondent's course of treatment starting with the discharge summaries from Lions Gate Hospital in March and April of 2003 through his inpatient treatment at Queen's Medical Center from on or about December 22, 2003 through January 6, 2004 and the present outpatient treatment, there is no question that Dr. Carlton's treatment is responsible for Mr. Shea's favorable prognosis and it appears that Respondent may very well continue to remain symptom free as long as he is compliant with his medication and properly manages lifestyle issues, including weight control and normal sleep patterns. Or, he may not. The only thing that is known for sure is that despite his insight and efforts in lifestyle management and sleep patterns, he still remains at greater risk for breakthrough symptoms than the general population. Adding to this uncertainty is the reasonably foreseeable likelihood of emergency situations arising aboard ship creating stress and unpredictable sleep patterns. Moreover, the greater

²⁰ Tr. at 108, 109.

²¹ Tr. at 113-115, 162 .

likelihood of other circumstances such as having to stand additional watches for another engineer, as when the Third Assistant Engineer had to take over Respondent's watches, inadvertently may place Respondent at greater risk for breakdown episodes despite his insight and perceived ability to adjust his medication. It is no reflection on this Respondent, but all other qualifications being equal, his illness leaves him less than fully qualified compared to his peers who do not have Bipolar disorder.

I find Dr. Carlton a very credible witness and accord great weight to his opinions except for his opinion that Respondent is competent and fit for duty. Less weight is accorded that opinion because it is based on the premise that Respondent will control his symptoms by being compliant with his medications and properly manage lifestyle issues and sleep patterns because he has sufficient insight to identify symptoms and take appropriate and timely action. Although Dr. Carlton's fit for duty opinion is based on a review of Matson's Second Assistant Engineer job description,²² it is reasonable to infer that prolonged exposure to heat,²³ rotating shifts that disrupt sleep patterns,²⁴ and emergency situations,²⁵ are unpredictable and would tend to impact adversely on Respondent's ability to manage lifestyle issues. This greater risk for breakthrough episodes is sufficient evidence subsequent to his treating psychiatrist finding him fit for duty to find the Incompetence charge proved. As noted above, the only sanction for a proved finding of Incompetence is revocation.

"Misconduct is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general

²² Respondent's Ex. "A"

²³ Tr. at 142

²⁴ Tr. at 143, 158, 159.

²⁵ Tr. at 172-174.

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.”²⁶

Abandoning his watch station in the engine room at 0630 without a relief on December 18, 2003, being observed crawling on his hands and knees on the bridge wing of the SS EWA while it was underway, and having to be relieved of his duties for failure to maintain his watch comprises the preponderance of reliable, probative, and substantial evidence to find the Misconduct charge proved. Respondent's inability to resume his watch created a situation on EWA in which the Third Assistant Engineer took over Mr. Shea's duties, in addition to his own, thereby reducing the number of qualified personnel available for other shipboard duties as well as reducing the ship's ability to adequately respond to emergencies.

Affirming a hearing examiner's (now ALJ) finding of guilt on three counts of Misconduct involving failure to stand watch and Unauthorized Absence, the Commandant held that “[w]hen an able bodied seaman wrongfully fails or is unable to perform his duties there is ‘harm done.’ The ship's organization and operations are affected. Someone else must be used to perform his duties. In the event that the master is forced to use a less qualified person, or an equally qualified person who is overtired, the additional, potential danger is great.”²⁷ With the exception of Misconduct for wrongful possession, use, sale, or association with dangerous drugs, revocation is not a mandatory sanction if Misconduct is found proved. “When the finding (of Misconduct) is proved, the Administrative Law Judge may order an *admonition*, *suspension* with or without probation, or *revocation*.”²⁸

²⁶ 46 CFR 5.27.

²⁷ Appeal Decision 1731 MILLS (1968).

²⁸ 46 CFR 5.567

Pre-Hearing Brief

On September 30, 2004 counsel for Respondent filed a pre-hearing brief. Since there was not sufficient time for the Coast Guard to respond in writing and for the undersigned to issue a written Order prior to convening the October 6th hearing, the issues raised in counsel's pre-hearing brief, except item "C", were argued and ruled on at the beginning of the hearing. Item "C" could not be ruled on pre-hearing because testimony from Respondent's treating psychiatrist had not yet been heard. In item "C", Respondent argues that if there is sufficient evidence subsequent to the "fit for duty" declaration that the mariner is competent and can safely perform his duties aboard a merchant vessel; the mariner should retain his license and document.

Post-Hearing Brief

In his post hearing brief, Respondent made the following arguments: that he was competent when his voluntarily deposited documents were returned to him by the Coast Guard; that he was competent subsequent to the fit for duty declaration; that the Misconduct charge should be dismissed; that there is lack of authentication and/or certification (on the discharge summaries from Lions Gate Hospital); and that admitting only a portion of the unauthenticated discharge summary records from Lions Gate Hospital is prejudicial.

The item "C" argument in Respondent's pre-hearing brief in which he argues that if there is sufficient evidence subsequent to the "fit for duty" declaration that the mariner is competent and can safely perform his duties aboard a merchant vessel, the mariner should retain his license and document, will be discussed together with the post-hearing brief argument that he was competent when his voluntarily deposited documents were returned to him and that he was competent subsequent to the fit for duty declaration.

Incompetence Subsequent to the Fit for Duty Declaration

“[A] finding of incompetence due to mental incapacity must rest upon substantial evidence of a reliable and probative character showing that the person charged suffers from a mental impairment of sufficient disabling character to support a finding that he is not competent to perform safely his duties aboard a merchant vessel.”²⁹ “[O]rdinarily, any allegation of incompetence must be based on sufficient evidence subsequent to any fit for duty declaration by the USPHS (United State Public Health Service) or it should be found not proved.³⁰ Respondent argues that if subsequent to the fit for duty declaration there is sufficient evidence that the mariner is competent and can safely perform his duties aboard a merchant vessel, the mariner should retain his license and document. Respondent also argues that since being declared fit for duty, he has ably and safely performed his duties aboard the vessels to which he has been assigned. In addition, he has taken his medications as ordered and has not suffered a relapse. Clearly, Respondent adds, when the I/O returned his documents he must have reasonably believed that Shea was fit for duty; otherwise returning his license and document was irresponsible and a dereliction of duty. Respondent urges that when a seaman has shown that he is fit for sea duty at the time of the hearing, he should be allowed to resume his duties.

Respondent’s argument that when the I/O returned his license and document he must have believed Shea was fit for duty; otherwise returning them was irresponsible and a dereliction sounds compelling but it is misplaced. When the I/O returned Mr. Shea’s license and document, that act did not constitute a belief that the Coast Guard agreed with Dr. Carlton’s opinion that Respondent was fit for duty because Respondent was simultaneously served with the instant Complaint. After a Complaint is served and the Respondent requests a hearing, the decision on

²⁹ Appeal Decision 2417 (YOUNG) (1985) citing 46 CFR 5.31; Appeal Decision 2181 (BURKE) (1980).

³⁰ Appeal Decision 2417 (YOUNG) (1985) citing Appeal Decision 2280 (ARNOLD) (1982).

fitness to hold a license rests with the administrative law judge and until Respondent is accorded his full due process rights, his license and document cannot be involuntarily taken away from him.

Respondent's argument that if subsequent to the fit for duty declaration there is sufficient evidence that the mariner is competent and can safely perform his duties aboard a merchant vessel, the mariner should retain his license and document is also misplaced. The legal standard, as set forth in Appeal Decision 2417 (YOUNG) (1985) citing Appeal Decision 2280 (ARNOLD) (1982) is that "ordinarily, any allegation of incompetence must be based on sufficient evidence subsequent to any fit for duty declaration by the USPHS or it should be found not proved." The standard in YOUNG and ARNOLD is different from what Respondent is arguing. Respondent seems to be saying that all he needs to show is that he has been compliant with his medication management and has not had any breakdown symptoms; therefore, it must be inferred that he is competent and can safely perform his duties aboard a merchant vessel. As stated in ARNOLD and YOUNG, the standard is that there must be sufficient evidence (of incompetence) subsequent to any fit for duty declaration. If Respondent's argument were the legal standard, evidence of a seaman's mental illness in remission could never prevail over a showing that there have not yet have been any breakdown symptoms since the incident because one who is in remission experiences an absence of symptoms. As a result, any mental illness for which one is taking psychotropic medication to maintain remission would not be disqualifying unless and until the seaman has breakdown symptoms.

While Respondent is free to "prove" that since the fit for duty declaration he has been compliant and has not had any breakthrough symptoms, "any allegation of incompetence must be

based on sufficient evidence subsequent to any fit for duty declaration”³¹ In response to counsel’s question, “[i]f he continues to take his medication, to a reasonable degree of medical certainty, will he remain symptom free?” Dr. Carlton replied, “I could not say with certainty.”³² As stated, I find Dr. Carlton’s opinion expressing qualifiers and caveats on his fit for duty declaration to comprise “sufficient evidence” of incompetence at the time of the hearing.

Dismissal of the Misconduct Charge

The undersigned rejected Respondent’s argument made at the beginning of the hearing and in part “B” of his pre-hearing brief that he should not have his license and document revoked for alleged misconduct that was the result of an illness, and not willful or negligent, or even an error in judgment. The same argument is made in part B of his post hearing brief. As cited and argued by the I/O, Appeal Decision 1677 (CANJAR) (1968) stands for the proposition that a misconduct charge need not be dismissed merely because the examiner finds that at the time of the act’s omission, the party was not mentally competent to hold the seaman’s license or document. In CANJAR the Commandant stated, “[t]hat a condition of mental incompetence, such as to disqualify a person from holding a seaman’s license or document, is not ‘equatable’ to a state of legal insanity, which is to constitute a defense against a criminal charge incident. The tests are entirely different...that I so wish to make it clear that there is no compulsion on an examiner to dismiss a charge of misconduct merely because he finds that at the time of commission of the act the party was not mentally competent to hold the seaman’s license or document.”³³ After acknowledging the holding in CANJAR concerning legal insanity and

³¹ Appeal Decision 2280 (ARNOLD) (1982).

³² Tr. at 134, 135.

³³ Tr. at 15, 16 quoting CANJAR.

further stating that these are not specific intent type crimes, (wherein a defense of diminished capacity could be used to negate intent), I denied the motion to dismiss the Misconduct charge.³⁴

In Appeal Decision 1466 (SMITH) (1964), the Coast Guard charged Respondent with Misconduct and Incompetence for killing another member of the ship's crew while in Africa. A Congolese court had previously found that the homicide was proved but that it was excusable by reason of insanity. The Examiner found both the misconduct and the incompetence charges proved but on appeal, the Commandant opined that the findings of Examiner were inconsistent and the misconduct charge must yield to the incompetence charge because the Examiner specifically found that the homicide was committed during the period of mental insanity. In the instant case, there was no evidence presented that Respondent was insane. In SMITH, the Commandant recognized "that in proceedings looking to the preservation of safety at sea the test of incompetence is not such as is required to establish a defense to a criminal charge. In many instances one act may be an act of misconduct for which the party is responsible and may also demonstrate a degree of incompetence for sea service." Applying SMITH and CANJAR to the instant case, absent a finding by a court of competent jurisdiction that Respondent was insane at the time of the incidents and remained so at the time of the hearing, there is no legal basis to dismiss an otherwise proved misconduct charge.

Respondent also argues that like his mental illness, diabetes is a chronic, incurable disease but symptoms can be ameliorated by proper therapy, medication, and diet. He cites Appeal Decision (2547) (PICCIOLO) (1992) in which the Commandant remanded the ALJ's decision directing the ALJ to permit evidence of the mariner's recent medical condition, prognosis, and impact that any medical monitoring program will have on his ability to perform his job. Implicit in this argument is that some sort of accommodation should be made for the

³⁴ Tr. at 18.

mariner to minimize the effects of diabetes. While this might be true for physical illness, the Commandant has made it clear that “no one who is suffering from a psychiatric disability should be permitted to serve aboard any vessel...in a capacity in which he could cause serious harm to himself, to others, or the vessel itself.”³⁵ Dr. Carlton has opined that even with proper medication management and adherence to lifestyle issues, Respondent is still vulnerable to breakdown symptoms more so than the general population.

Lack of Authentication on the Discharge Summaries

In considering whether the photocopies of the Lions Gate medical records were authentic, I used the framework of Federal Rule of Evidence (FRE) 901 “Requirement of Authentication and Identification” which states in paragraph (a) “The requirement of authentication or identification as a condition to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Section (b)(1) of FRE 901 provides that by way of illustration only, and not by way of limitation, testimony of a witness with knowledge that the matter is what it is claimed to be is an example of authentication or identification conforming with the requirement of this rule. The records were in Respondent’s possession and were relied upon by Respondent in support of his claim to MEBA.³⁶ An examination of the discharge records reveals that they were dictated and accepted by Dr. Christian H. Schenk, MD, Respondent’s treating psychiatrist at Lions Gate. At the top of each page is the name, “Lions Gate – Health Record,” a machine made printing consistent with a facsimile machine stamp of origin. Additionally, the lab reports attached to the discharge records also carry the name, “Lions Gate Hospital.” Attached to the records is a cover letter with the letterhead reading, “C.H. Schenck, MD, PRCP(C) Psychiatry.” The subject line reads “Re:

³⁵ Appeal Decision 2417 (YOUNG) (1985) citing BURKE.

³⁶ I/O Ex. 2 at 4.

Patrick Shea.” It also contains a signature block reading, “Dr. Chris Schenck, MD” and a signature that clearly reads, “C Schenck.” The letter is addressed “Dear Colleague” and summarizes Respondent’s course of treatment. The summary in the letter is consistent with the contents of the attached discharge records. Attached to the cover letter is a letter from MEBA Medical & Benefits Plan stating additional information is required to process Respondent’s claim for medical care payment for treatment provided from March 3, 2003 to April 16, 2004 (the start and end dates of Respondent’s medical care received at Lions Gate Hospital). The letter asks four questions and contains a notation in the above right hand corner that reads, “Called Nancy @ 10:35 AM 8/19/03 Gave Requirements 1-4.” Respondent also handed these discharge summaries to Captain Stapleton on December 18, 2003 as an explanation of his conduct. Additionally, Captain Stapleton, the company’s doctor, and Respondent’s current treating psychiatrist, relied upon these documents.

In his post-hearing brief, Respondent cites Appeal Decision 903 MAHOOD (1956) that the records must be certified or authenticated as true and accurate copies before being introduced into evidence. In MAHOOD, the Respondent was charged with Misconduct based on assault and battery with a knife. Failing to appear for his hearing, Mahood was tried in absentia and the charges were found proved based largely on entries made in the master’s logbook. On appeal, Mahood argued, among other things, that the logbook evidence submitted was entirely hearsay and therefore not sufficient to support the findings. The Commandant found that the log entry was made in the regular course of business and is admissible as an exception to the hearsay rule on the principle of necessity and in accordance with the Official Records Statute (28 U.S.C. 1733) as an official document since it is an entry required by law. The Commandant went on to say that, “[i]t has been the consistent position of the Commandant that copies of such documents,

when certified in proper form by Coast Guard officers performing investigating duties under the delegated authority of the Commandant, meet the requirements of authentication for the admission of copies in evidence in these administrative proceedings where the technical rules of evidence are not strictly applied.” Unlike the records in MAHOOD, the discharge records in question came into possession of the government through Respondent. He used these them in his request to MEBA that the hospital bill be paid and he also tendered them to Captain Stapleton as his implicit explanation for his conduct during the incidents that gave rise to these charges. Captain Stapleton did not question the authenticity of these medical records in his conversations with the company doctor. Finally, neither the emergency room personnel nor Respondent’s treating psychiatrist questioned the records’ authenticity in the course of providing medical care to Respondent. These records were an integral part of Respondent’s medical history and were relied upon by him and others in the course of his illness. In MAHOOD, the log entries comprised the only direct evidence used in finding the charge proved. In this case, the Lions Gate discharge summaries help form an integral part in the longitudinal history of Respondent’s illness and are not relied upon solely as the basis for proving the charges, as was the case in MAHOOD.

Respondent also cites Appeal Decision 1579 (HARRISON) (1966) that evidence received in lieu of witness testimony, which cannot be authenticated by a witness as records kept in the regular course of business, cannot provide the sole basis for findings of fact. As in MAHOOD above, Harrison failed to appear and the hearing proceeded with Respondent in absentia. Also, as in MAHOOD, all of the evidence was documentary. On appeal, the Commandant found that “[t]he evidence which was received by the Examiner in lieu of testimony of witnesses, documents which are not part of the official Log Book and which, while not identified in any

way by any competent witness, do not purport to be records kept in the regular course of business, is pure hearsay. As such it cannot be the sole predicate for findings of fact.” Unlike MAHOOD and HARRISON, the records in the instant case do not comprise the sole predicate for findings of fact. Everyone having anything to with Respondent’s treatment since the incidents on December 18, 2003, has referred to or relied upon these records. They form the necessary background and starting point for Respondent’s medical history and do not constitute the sole, dispositive evidence on the charges as in MAHOOD and HARRISON, above.

Prejudicial Effect

Respondent argues that the discharge summaries are incomplete and that there must be relevant records still extant that should accompany those introduced. Further, he urges that the missing records would help explain the conclusions and assertions made in the discharge summaries. In addition, he cites FRE 106 as authority. FRE 106 states “[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.” Respondent states that FRE 106 was drafted because of concern that the court not be misled because portions of a statement are taken out of context thereby creating prejudice.

I reject these arguments.³⁹ I found no evidence to question to accuracy, authenticity, or completeness of the discharge summaries. They are clear and unambiguous on their face. There is no evidence that any of medical personnel involved in Respondent’s treatment who referred to these records requested the underlying treatment notes. In addition, Respondent never

³⁹ To meet the FRE 106 standard, the other writings must be relevant to the issues and must be necessary to (1) explain the admitted portion, (2) place the admitted portion in context, (3) avoid misleading the trier of fact, or (4) insure a fair and impartial understanding. United States v. Soures, 736 F.2d 87, 91 (3rd Cir, 1984), cert. denied, 469 U.S. 1161, 105 S. Ct. 914, 83 L.Ed, 2d 927 (1985). Accord, United States v. Glover, 101 F.3d 1183, 1190 (7th Cir.

questioned these records. The addition of the underlying treatment notes absent a compelling reason to question the discharge summaries' accuracy amounts to a needless presentation of cumulative evidence.⁴⁰

SANCTION

There is no evidence that Respondent has any previous disciplinary actions. The Master of the SS EWA testified that that prior to these incidents, Respondent had been a very alert and responsible officer. (Tr. at 81). Regardless of Respondent's prior history, however, the only proper order for a proved charge of Incompetence is Revocation. 46 CFR 5.569(d), 5.61(a)(9) and 33 CFR 20.701.

1996); United States v. Branch, 91 F.3rd 699, 727-29 (5th Cir. 1996), cert. denied, 520 U.S. 1185, 117 S.Ct. 1467, 137 L.Ed.2d 681 (1997).

⁴⁰ 33 CFR 20.802(b).

ORDER

IT IS HEREBY ORDERED that the license and document issued to Respondent, Patrick Beau Shea, be and hereby is, REVOKED. Respondent is to turn over his license and document to the Investigating Officer at Coast Guard Sector Honolulu, Hawaii immediately.

PLEASE TAKE NOTICE that service of this Decision on the parties and/or parties' representative(s) serves as notice of appeal rights set forth in 33 CFR 20.1001 – 20.1004. (Attachment A).

Done and dated January 25, 2005
New York, New York

**WALTER J. BRUDZINSKI
ADMINISTRATIVE LAW JUDGE
U.S. COAST GUARD**

ATTACHMENT A

NOTICE OF ADMINISTRATIVE APPEAL RIGHTS

33 CFR 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

33 CFR 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
 - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
 - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 CFR 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
 - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --

- (i) Basis for the appeal;
 - (ii) Reasons supporting the appeal; and
 - (iii) Relief requested in the appeal.
- (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
- (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
- (c) No party may file more than one appellate brief or reply brief, unless --
- (1) The party has petitioned the Commandant in writing; and
 - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
- (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

33 CFR 20.1004 Decisions on appeal.

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.

ATTACHMENT B

WITNESS AND EXHIBIT LISTS

WITNESS LIST

COMPLAINANT’S WITNESSES

1. Jeff Hood, Chief Officer, SS EWA. (Tr. 28-50).
2. Captain Thomas M. Stapleton, Master, SS EWA. (Tr. 51-89).
3. Dr. Barry S. Carlton, MD, Respondent’s treating psychiatrist. (Tr. 89 – 148).

RESPONDENT’S WITNESSES

1. Dr. Barry S. Carlton, MD, Respondent’s treating psychiatrist (Tr. 89 – 148).
(Judicial economy and convenience of the witness necessitated Respondent examining Dr. Carlton during I/O’s case in chief).
2. Patrick Beau Shea, Respondent (Tr. at 148 – 180).

EXHIBIT LIST

COMPLAINANT’S EXHIBITS

- I/O Ex. 1 Statement of Captain Thomas M. Stapleton, Master, SS EWA. 4 pages. (Tr. at 61)
- I/O Ex. 2 Discharge Summaries from Lions Gate Hospital, North Vancouver, British Columbia, Canada handed to Captain Stapleton by Respondent. 21 pages. (Tr. at 68).
- I/O Ex. 3 Photograph of a life raft and two bags dragged aft by Respondent. Photo taken by Captain Stapleton. 1 page. (Tr. at 75).
- I/O Ex. 4 Resume/CV of Dr. Barry S. Carlton, MD. 6 pages. (Tr. at 93).
- I/O Ex. 5 Counsel for Respondent’s letterhead and handwritten “fit for duty” letter from Dr. Carlton. 2 pages. (Tr. at 100).
- I/O Ex. 6 Counsel for Respondent’s letterhead and “diagnosis” and prognosis by Dr. Carlton. 2 pages. (Tr. at 104).

RESPONDENT’S EXHIBITS

Respondent Ex. “A” Second Engineer Job Description from Respondent’s employer – Matson.

JUDGE’S EXHIBITS

None. However, official notice was taken of the following:

Appeal Decision (1677) CANJAR (1968) during the hearing. (Tr. at 16).

Chapter 2, Section C, Paragraph 9 of the Marine Safety Manual. (Tr. at 17).

The Physician’s Desk Reference – used by the I/O when questioning Dr. Barry S. Carlton, MD. (Tr. at 119).

The undersigned took official notice of all the cases cited by the parties, in addition to the regulations found at 33 CFR Part 20 as well as 46 CFR Part 5.

ATTACHMENT C

RULINGS ON PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMPLAINANT'S PROPOSED FINDINGS

1. On December 18, 2003, Patrick Beau Shea was employed on board the Steamship EWA as the Second Assistant Engineer. (Tr. at 31). (Accepted and incorporated).
2. The Respondent did leave his station in the engine room, and was observed crawling on his hands and knees on the bridge wing, while the vessel was underway (I.O. Exhibit 1, Statement by Captain Tom Stapleton, Master of the SS EWA; Statement by Mr. Hood). (Accepted and incorporated).
3. Respondent was relieved of duty and confined to quarters during the remainder of the vessel's voyage. (I.O. Exhibit 1, Statement by Captain Tom Stapleton and Chief Mate Hood). (Accepted and incorporated).
4. The Respondent had packed bags with survival equipment and made it known that he intended to leave the ship while it was underway between Los Angeles, CA and Honolulu, HI (I.O. Exhibit 1, Statement of Captain Stapleton; I.O. Exhibit 3 Picture of life raft and bags of survival equipment found; Mr. Hood's statement). (Accepted and incorporated).
5. During the time that the Respondent was first confined to quarters, he gave Captain Stapleton, Master of the SS EWA, a copy of discharge summaries from Lion's Gate Hospital, Vancouver, Canada. These discharge summaries showed that the Respondent had been admitted in March and again in April of 2003. During which

- time he had been diagnosed with bipolar mood disorder (I.O. Exhibit 1, Statement of Captain Stapleton; I.O. Exhibit 2, Discharge summaries from Lion's Gate Hospital; (Captain Stapleton's testimony). (Accepted and incorporated).
6. After the SS EWA docked in Honolulu, HI, the Respondent was admitted to Queen's Medical Center from December 21, 2003 and was discharged on January 6, 2004. While at Queen's Medical Center, Barry S. Carlton, M.D. evaluated the Respondent and diagnosed him with bipolar disorder – manic (Exhibit 4, Curriculum Vitae of Barry Stuart Carlton, M.D.; I.O. Exhibit 5 Handwritten letter from Dr. Carlton; I.O. Exhibit 6 Letter from Mr. O'Kane with notes from Dr. Carlton; Dr Barry S. Carlton's testimony). (Accepted and incorporated).
 7. The respondent's bipolar disorder is a chronic disorder that requires long-term management. Dr. Carlton couldn't be certain that the Respondent wouldn't have a breakthrough episode. (Dr. Carlton's testimony). (Accepted and incorporated).
 8. Dr. Carlton prescribed the Respondent Zyprexa, a psychotropic drug, with no indication as to if or when it would be discontinued. He also anticipated a five-year medication management and follow-up evaluation. This will aid in keeping the Respondent's disorder in remission but there is no cure for this disorder. It is also difficult to judge the course of the illness. "There are patients who go on to maintain remission; that is, absence of symptoms for many years. And then there are also those who, despite medication, do have breakthrough symptoms." (Dr. Barry S. Carlton's testimony). (Accepted and incorporated).
 9. The Respondent is also required to self-monitor and maintain a life style that requires exercise, stress management and a normal sleep pattern. Dr. Carlton should monitor

- the Respondent on a regular basis to ensure that there is no relapse. During times when Dr. Carlton cannot monitor the Respondent, the Respondent will have to rely on self-monitoring to try and identify any possible relapse symptoms. (Dr. Carlton's testimony; Patrick Shea's testimony). (Accepted and incorporated).
10. The position and work that the Respondent performs on board a vessel requires him to be able to perform during unexpected emergency situations that can occur at any time, day or night on any merchant vessel. These unexpected emergency situations inherently carry a certain level of stress and can effect the level of sleep that the Respondent is able to get when having to address any emergency situation. (Patrick Shea's testimony). (Accepted and incorporated).
 11. There are certain side effects associated with Zyprexa, such as the potential to impair judgment, thinking, or motor skills. Patients are cautioned about operating hazardous machinery. Patients taking this medication are also advised about exposure to extreme heat and being exposed to dehydration. (Physicians Desk Reference; Dr. Carlton's testimony). (Accepted but not incorporated. Dr. Carlton opined that Respondent has taken Zyprexa for a sufficient period of time that those side effects would have manifested by now; however, Dr. Carlton opined that extreme heat is managed with proper hydration and that was incorporated).
 12. The Respondent's working environment requires him to work around heavy machinery and temperatures in excess of a one hundred twenty degrees Fahrenheit. (Captain Stapleton's testimony; Patrick Shea's testimony). (Accepted and incorporated).

13. Should Respondent remain symptom free and continue to take Zyprexa for five years, he remains at a greater risk than the population for an exacerbation of illness. (Dr. Carlton's testimony). (Accepted and incorporated).
14. Psychiatric illness has a pattern of behavior, making it possible to anticipate that the Respondent would display the same type of thinking and behavior during a relapse. (Dr. Carlton's testimony). (Accepted to the extent that Dr. Carlton opined that Respondent has had this pattern – odd ideas about religiosity and about being anointed. He would now recognize these behaviors).

Ultimate Findings

1. Patrick Beau Shea, being the holder of U.S. Coast Guard license number 879580 and merchant mariner's document number [REDACTED], on December 18, 2003, was working on board the SS EWA as the Second Assistant Engineer. While on board Mr. Shea abandoned his post in the engine room and was witnessed crawling on his hands and knees around the vessel's bridge. Concern for Mr. Shea's behavior and crew safety that day caused him to be restrained by the crew and confined to quarters for the remainder of the vessel's voyage. (Accepted and incorporated).
2. After the SS EWA docked in Honolulu, Hawaii, Mr. Shea was removed from the vessel and admitted to Queen's Medical Center in Honolulu, Hawaii. Mr. Shea was psychiatrically evaluated by Dr. Barry S. Carlton, M.D. Dr. Carlton diagnosed Mr. Shea with Bipolar disorder, and subsequently prescribed Zyprexa, a psychotropic drug, with continued psychiatric monitoring and life-long maintenance. (Accepted and incorporated).

Conclusions of Law

1. The United States Department of Transportation (DOT) and the Coast Guard is charged with enforcing the United States Law or regulations intended to promote marine safety or to protect navigable waters against the holder of a license or merchant mariner's document, if the holder is found to have "committed an act of incompetence." (46 U.S.C. 7703). (Accepted and incorporated to the extent that the Coast Guard is now under the Department of Homeland Security).
2. The Coast Guard met its burden of proof by reliable, probative and substantial evidence as required under 33 CFR 20.702, that the Respondent is incompetent to hold any Coast Guard issued Merchant Mariner's Credentials (i.e. Coast Guard issued License and Coast Guard issued merchant mariner's Document). (Accepted and incorporated by the preponderance or reliable, probative, and substantial evidence).
3. An order of revocation was affirmed in Commandant's Decision on Appeal (CDOA) BURKE 2182, when it was "established that the Appellant has suffered what apparently were "psychotic breaks," severe enough to require hospitalization on two occasions and to require his relief from duty aboard a vessel..." Also it was determined that, "the diagnosis of current remission is said to mean "that the psychotic state is inactive at the present time, but the psychotic episodes have a tendency to recur in this patient. [Appellant's] risk of a future psychotic break cannot be stated in percentage form but it can be said to be greater than that of a person who has no history of mental illness." (Accepted and incorporated).
4. The Commandant affirmed an order of revocation for incompetence in CDOA BOYKIN 2191, whereby the Administrative Law Judge (ALJ), "concluded that

Appellant was mentally incompetent at the time of the assault. He additionally concluded that Appellant was not fit for duty because he was required to remain on medication.” It was also noted that, “appellant’s psychiatrist opined that while Appellant was mentally incompetent during the alleged assault, he is fit for duty as a merchant seaman.” With (sic) the Commandant acknowledged that ALJ, “concluded that Appellant was not fit for duty” and that the ALJ, “is not bound by the recommendations of the psychiatrist or even by the medical findings and opinion.” (Accepted and incorporated).

5. Commandant noted in CDOA WILLIAMS 1502 the following, “I am convinced that Appellant’s failure to do his job properly was due to his mental illness which cannot be blamed on other conditions on the ship. Appellant’s fears, suspicions and other signs of his emotionally disturbed state of mind were symptoms of this mental illness.” The Commandant concludes, “...in the absence of any showing his condition has been cured, Appellant is mentally incompetent to perform duties on a vessel at sea.” (Accepted and incorporated to the extent that in the absence of any showing that Mr. Shea’s condition has been cured, he is mentally incompetent to perform duties on a vessel at sea).
6. The Coast Guard is seeking revocation of the Respondent’s U.S. Coast Guard license number 879580 and merchant mariner’s document number 394869310, the only available sanction for incompetence under 46 CFR 5.569. (Accepted and incorporated).

RESPONDENT'S PROPOSED FINDINGS

1. Shea is the holder of U.S. Coast Guard (“USCG”) license number 879580 and Merchant Mariner’s Document number (Redacted). (Accepted and incorporated).
2. On December 18, 2003, Shea was working as Second Assistant Engineer aboard the SS EWA. (Tr. at 31, 51-52). (Accepted and incorporated).
3. While on duty, Shea suffered the onset of a debilitating illness that caused him to abandon his post in the engine room. (Tr. at 32, 33, and 178). (Rejected).
4. Prior to the incident aboard the M/V EWA, Shea received advice from a naturopathic physician that he could treat his illness through naturopathic therapy. (Tr. at 133-34, 153-56). (Accepted but not incorporated as irrelevant on the issue of competency).
5. The initial results were encouraging. Consequently, Shea believed his illness was under control. (Tr. at 133-34, 153-56). (Accepted but not incorporated).
6. Around 0630, Shea was seen crawling on his hands and knees near the vessel’s bridge. (Tr. at 32-33, and 178). (Accepted and incorporated).
7. Later, it was discovered Shea had packed bags with survival equipment and was preparing to abandon ship because he believed the vessel was in danger. (Ex. 1, 3; Tr. at 71, 75, 76, and 178). (Accepted and incorporated).
8. Because of his behavior, Shea was put under restraints and confined to his quarters for the remainder of the voyage. (Ex. 1 Tr. at 46, 70). (Accepted and incorporated).

9. On December 22, 2003, after the EWA docked in Honolulu, Hawaii, Shea was taken to Queens Medical Center where he was examined by Barry S. Carlton, M.D. (Tr. at 91). (Accepted and incorporated).
10. Dr. Carlton diagnosed Shea as having bi-polar disorder, and treated Shea through psychotherapy and medication. (Tr. at 94). (Accepted and incorporated but with the addition of the term “Manic.”)
11. Bi-polar disorder is a chronic illness that requires long-term management. (Tr. at 109). (Accepted and incorporated).
12. Naturopathic medicines cannot treat bipolar disorder. (Tr. at 133-34, 153-56). (Accepted but not incorporated as irrelevant on the issue of competency).
13. On December 22, 2003, the day he was admitted to Queen’s Medical Center, Shea voluntarily surrendered his merchant mariner’s documents and license to the USCG investigating officers. (Tr. at 101). (Accepted with the exception that Respondent actually voluntarily deposited his license and document in accordance with 46 CFR 5.201. A voluntary surrender under 46 CFR 5.203 is made in preference to appearing at a hearing. Unlike a voluntary deposit, a voluntary surrender permanently relinquishes all rights to the license, certificate or document).
14. Dr. Carlton was Shea’s physician while he was inpatient in Queen’s Medical Center, and after his discharge on or around January 6, 2004, continued to see Shea on an outpatient basis. (Tr. at 91). (Accepted and incorporated).

15. At the current time, Shea is taking Zyprexa, a medication approved by the FDA for treatments of bi-polar disorder and as a prophylaxis to prevent future episodes. (Tr. at 99). (Accepted and incorporated).
16. Sedation is a side effect of Zyprexa. Shea, as an outpatient, initially reported some sedation at the 20 milligram dose, but at this current dosage of 15 milligrams, he has not reported sedation. (Tr. at 212). (Accepted and incorporated).
17. Shea has been on Zyprexa long enough that the side effects should be predictable. Shea's initial difficulty with sedation has not been a recent problem and he as managed the larger side effect of weight gain quite well. (Tr. at 139-40). (Accepted and incorporated).
18. Dr. Carlton has not seen any clinical evidence of cognitive impairment or excessive sedation resulting from the medication. (Tr. at 141). (Accepted and incorporated).
19. In Dr. Carlton's medical opinion, the heat of the engine room should not be a problem if Shea hydrates properly. (Tr. at 142-43). (Accepted and incorporated).
20. Although Zyprexa acts as a prophylaxis to prevent future episodes, Shea could suffer a relapse, even while taking his medication. (Tr. at 106-07). (Accepted and incorporated).
21. However, provided proper medical medication management, Shea has sufficient insight to increase his medication as needed should there be breakthrough symptoms. (Tr. at 109). (Accepted only to the extent that it is Dr. Carlton's opinion. To accept Dr. Carlton's opinion as an ultimate fact is to conclude that Respondent possesses the ability to control any future breakdown symptoms).

22. There is a medical officer on board the vessels trained to a level slightly higher than that of an emergency medical technician. (Tr. at 84). (Accepted only to the extent that it applies to the SS EWA and that the medical officer, who is not a trained physician, may distribute non-controlled medications. There is no evidence that there are medical officers on board other vessels on which Respondent might serve or that said medical officers actually have received training greater than emergency medical technicians).
23. The medical officer could administer Shea's medication and help monitor his condition. (Tr. at 86). (Accepted, to the extent that there is a process aboard the Matson vessels where the medical office or some person, maybe the master, could control (the medication) and ensure that it (the dosage) was followed, but not incorporated).
24. If Shea remains asymptomatic for a period of five years, he could possibly discontinue medication. (Tr. at 105). (Accepted to the extent that Dr. Carlton would anticipate at least five years of asymptomatic condition before he would even consider recommending discontinuing the medication).
25. Early treatment, good return to function, continued insight would help predict that Shea would have a good outcome. (Tr. at 108). (Accepted as Dr. Carlton's opinion).
26. Dr. Carlton has stated that given Shea's course of illness you would expect a sustained remission. (Tr. at 135). (Accepted as Dr. Carlton's opinion).
27. On February 13, 2004, based on his examination and treatment of Shea, and after reviewing a job description of the Second Assistant Engineer's position provided

by Matson navigation, Shea's employer, Dr. Carlton declared Shea "fit-for-duty."
(No reference provided but this evidence is found in I.O. Exhibit 5 and the transcript at 133). (Accepted as Dr. Carlton's opinion).

28. On June 3, 2004, the USCG met with Dr. Carlton and Patrick Shea, questioned them extensively, and returned Shea's documents without restrictions. (Tr. at 13, 158). (Accepted and incorporated).
29. Since being declared fit for duty, Shea has taken his medications as ordered and has not suffered a relapse. Shea has returned to work as a ship's engineer and has ably and competently performed his duties aboard the vessels to which he has been assigned. (Tr. at 161). (Accepted to the extent that Respondent testified that had has had no problems at al with his illness since he returned to work June 3, 2003).
30. At the October 6, 2004 hearing, Dr. Carlton reaffirmed his belief Shea is fit for duty and stated that to a reasonable degree of medical certainty, Shea is able to perform the job of ship's engineer without difficulty. (Tr. at 133). (Accepted only as Dr. Carlton's opinion).

Conclusions of Law

1. Ordinarily, an allegation of incompetence must be based on sufficient evidence subsequent to any fit for duty declaration or it should be found not proved. Appeal Decision 2417 (YOUNG) (1985) citing Appeal Decision 2280 (ARNOLD) (1982). Since being placed under the care of Dr. Carlton and declared fit for duty, Shea has taken his medications as ordered, has not suffered a relapse, and has safely and competently performed his duties aboard the vessels to which he has been assigned. At the October 6,

2004 hearing, Dr. Carlton confirmed that Shea is fit for duty. There is not sufficient evidence subsequent to either fit for duty declaration to find Shea incompetent. (Rejected as per discussion above. The sufficient evidence is that Respondent Bipolar disorder – manic is currently in remission and is therefore subject to breakdown symptoms).

2. Although “[a] n Administrative Law Judge is not bound by the recommendations of the psychiatrist or even by the medical findings and opinion[,]” he or she should carefully consider the expert’s medical opinion. Appeal decision 2191 (BOYKIN) (citing Appeal Decision 2021 (BURKE) (1975). Dr. Carlton is an expert in the field of psychiatry, and has repeatedly examined Shea and declared him competent. (Accepted to the extent that Dr. Carlton’s opinion has been given thoughtful consideration; however, as noted above, the Administrative Law Judge is not bound by medical findings and opinions. The ultimate finding as to fitness is his alone. Appeal Decision 2547 (PICCIOLO) (1992) citing Appeal Decisions 2191 (BOYKIN) (1980), 1720 (HOWELL) (1968) (aff’d 1 NTSB 2165); 1466 (SMITH) (1964)).
3. In Appeal Decision 2191 (BOYKIN) (1980), the seaman was diagnosed with acute paranoia. Shea suffers from bipolar disorder, one of the most treatable of psychic disorders and has demonstrated his ability to self-monitor his illness and competently handled the responsibilities of the ship’s engineers since his license and documents were returned. (Rejected. There is no evidence that bipolar disorder is the most treatable of psychic disorders. Dr. Carton has opined, “[I]t is difficult to judge the course of the illness. There are patients who remain in remission, that is, absence of symptoms for many years. And then there are also those who, despite medication, do have breakthrough symptoms. “(Tr. at 107). It is not a fact that Respondent will always remain in remission).

4. Appeal Decision 2021 (BURKE) (1975) was modified by 2 NTSB 2784 (1976) and remanded to the Administrative Law Judge (“ALJ”) for a re-hearing. Appeal Decision 2181 (BURKE) (1980) is the Commandant’s decision on the appeal filed after the ALJ’s decision on remand. (Accepted. On February 11, 1980 the remanded 2181 (BURKE) Decision on Appeal was issued. That decision held that,

“[T]he record contains evidence sufficient to establish that Appellant currently suffers from what is diagnosed as ‘paranoid schizophrenia, in remission.’ It is further established that Appellant has suffered what apparently were ‘psychotic breaks,’ severe enough to require hospitalization on two occasions and to require his relief from duty aboard a vessel on a third occasion. Lastly, the diagnosis of current remission is said to mean ‘that the psychotic state is inactive at the present time, but the psychotic episodes have a tendency to recur in this patient. [Appellant’s] risk of a future psychotic break cannot be stated in percentage form but it can be said to be greater than that of a person who has no history of mental illness.”).

5. In Appeal Decision 2181 (BURKE) (1980) the psychiatrist’s opinion was that the seaman “was not fit for service at sea.” Unlike the seaman in Appeal Decision 2181, Shea has been declared fit for duty. Moreover, the seaman in Appeal Decision 2181 (BURKE) (1980) was diagnosed with paranoid schizophrenia, a far more serious illness than Shea’s bipolar disorder. (Accepted to the extent that it was Appeal Decision 2021 (BURKE) (1975) that references the psychiatrist letter declaring Respondent Burke unfit. The assertion that paranoid schizophrenia is a far more serious illness than Shea’s bipolar disorder is rejected because Dr. Carlton did not discuss the differences between the two illnesses in his testimony. The possibilities that Respondent can have another breakdown are greater than those of the general population. Therefore, I am not prepared to find as a fact that the conduct displayed by Respondent is less a threat to maritime safety than conduct that might obtain from a schizophrenic breakdown).

6. In Appeal Decision 1502 (WILLIAMS) (1965), the Commandant ordered “[t]he suspension of all licenses and other documents issued to the Appellant by the United States Coast Guard shall remain in effect until such time as Appellant produces a certificate issued by the United States Public Health Service stating that Appellant’s past medical history has been studied and that he is mentally fit to (sic) sea duty, but the final determination as to whether or not Appellant is considered to be cured and fit for sea duty shall rest with the Commandant.” Unlike the mariner in Appeal Decision 1502 (WILLIAMS) (1965), Shea has been declared fit for duty and there has been no evidence of incompetence since Dr. Carlton declared him fit for duty on February 13, 2004. (Rejected because it would require the trier of fact to give controlling weight to the opinion of Respondent’s treating psychiatrist on the ultimate issue – incompetence when the issue of competence is for the administrative law judge to make).
7. In Appeal Decision 2417 (YOUNG) (1985), the Commandant found the charges were not supported by the evidence because there was no diagnosis of the Appellant’s mental condition at the time of the hearing, and remanded the case to the ALJ to order a psychiatric evaluation of the mariner. Shea was evaluated by Dr. Carlton on September 30, 2004, six days before the hearing, and at the October 6, 2004 hearing, he was declared competent. (Rejected. To accept Dr. Carlton’s opinion that Respondent is competent is contrary to Commandant policy as stated in the Appeal Decisions 1502 WILLIAMS (1965) and 2547 (PICCIOLO) (1992) line of cases that a mariner’s fitness is determined by the Commandant as delegated to the administrative law judge).
8. The ultimate issue is whether the mariner can perform the functions expected of him. Appeal Decision 2547 (PICCIOLO) (1992). Shea has proven that he can. (Rejected. The

ultimate issue is whether Respondent suffers from an impairment of sufficiently disabling character to support a finding that he is not competent to perform safely duties aboard a merchant vessel of the United States. If the answer to this question is “yes,” then revocation of all licenses and documents is the only proper sanction. (Appeal Decision 2118 (BURKE) (1980)).

9. The USCG has not met its burden of proof as required under 33 CFR 20.702. Therefore, Patrick Beau Shea is competent to hold his Merchant Mariner’s Credentials and continue his career as a ship’s engineer. (Rejected. The burden is not to rebut or to disprove a treating psychiatrist’s opinion that a mariner is fit for duty, as fitness is the final decision of the Commandant. The burden of proof is to establish that Respondent suffers from an impairment of sufficiently disabling character to support a finding that he is not competent to perform safely duties aboard a merchant vessel of the United States. If the answer to this question is “yes,” then revocation of all licenses and documents is the only proper sanction. (Appeal Decision 2181 (BURKE) (1980)).
10. 46 CFR 5.27 (2004) states that “[m]isconduct is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, 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 an act which is required.” (Accepted and incorporated).
11. Although 46 CFR 5.27 (2004) does not require willful intent to violate a duly established rule, or reckless disregard of or even knowledge of a rule, courts have interpreted similar statutes to require willful or negligent acts or omissions. See e.g. *Rechany v. Rowland*, 235 F. Supp. 79, 84 (S.D.N.Y. 1964) (defining misconduct under 46 CFR 137.05-

20(a)(1), the statute replaced by 46 CFR 5.27, as a willful or negligent act or omission, an act or omission beyond a mere error during judgment). (Rejected for the reasons discussed above. The standard for finding a seaman not competent to hold a merchant mariners license is not the same as finding a criminal defendant not legally responsible for the crime. The evidence shows that Respondent intended to leave his watch. He acknowledged as much when he told the Chief Officer that it was “stuffy down there” or words to that effect).

12. “[P]roof of the ‘mental incompetence’ charge...[d]oes not automatically necessitate dismissal of the misconduct charge,” however, an ALJ may dismiss a misconduct charge because of the particular circumstances of a case. Appeal Decision 1677 (CANJAR) (1968). An ALJ should consider the events surrounding the misconduct charge and make a decision based on whether a preponderance of the evidence shows the respondent’s incompetence caused an isolated incident of misconduct for which he was not legally responsible. In this case, Shea sought treatment to correct his illness and unfortunately chose the wrong therapeutic remedies. Although Shea left his workstation as alleged, his actions were not willful or negligent, or even an error in judgment. Shea did not knowingly neglect his duty to the vessel, its Master or his fellow crewmembers. He should not be penalized for an incorrect assessment of the nature of his illness and for the resulting actions that eventually led to his receiving the care and help he needed. The misconduct charge is dismissed. (Rejected for the reasons discussed above).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Decision and Order was sent to the following parties and limited participants by Federal Express:

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