

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

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UNITED STATES COAST GUARD

Complainant

vs.

WAYNE A. SAVOIE

Respondent.

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Docket Number: CG S&R 05-0008

Case No. 2238983

**DECISION AND ORDER**

**Issued: June 10, 2005**

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

**Appearances:**

**For Complainant**

ENS Timothy Tilghman  
LCDR Ronnie Patrick  
U.S. Coast Guard  
MSO Morgan City  
800 David Drive  
Morgan City, La 70380

**For Respondent**

Kevin Broussard, Attorney

## **PRELIMINARY STATEMENT**

On January 7, 2005, the United States Coast Guard (“USCG” herein) initiated an administrative proceeding against credentials issued to Wayne A. Savoie by the USCG. Specifically, it was alleged that, while a holder of Coast Guard issued credentials, specifically on August 30, 2004, the Respondent entered a plea of guilty and was subsequently convicted of the offense of Possession of Cocaine in the 16<sup>th</sup> Judicial District Court in the State of Louisiana.

On January 10, 2005, Respondent’s Answer was received by the Docketing Center. In his Answer Respondent admitted the jurisdictional allegations, but denied the factual allegations and requested to be heard on the proposed order.

A hearing was duly scheduled and convened in Houma, Louisiana on April 14, 2005. The USCG did not call any witnesses. Their case in chief consisted solely of the introduction of a Judgment of Conviction, reflecting Respondent’s conviction for the offense of Possession of Cocaine on August 30, 2004.<sup>1</sup> The Respondent testified on his own behalf, and multiple exhibits were entered into evidence through his testimony.

At the end of the testimony, the evidentiary record was closed. Both sides waived the filing of written proposed findings of fact and conclusions of law, and the filing of post-hearing briefs.

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<sup>1</sup> Technically, the document was titled an “Extract of Minutes.” It detailed the Respondent’s appearance in court that day as well as the entry of a plea and the sentence imposed by the Court.

## FINDINGS OF FACT

1. On and about August 30, 2004, the Respondent was a holder of a Coast Guard License and a Merchant Mariners Document.
2. On and about August 30, 2004, the Respondent appeared as a Defendant in the 16<sup>th</sup> Judicial District Court of the State of Louisiana and entered a plea of “no contest” to the charge of Possession of Cocaine.<sup>2</sup>
3. On and about August 30, 2004, the presiding judge of the 16<sup>th</sup> Judicial District Court accepted Respondent’s plea and sentenced him to three years of imprisonment, suspended for a period of three years probation. Other conditions of probation were imposed as well.

## DISCUSSION

The Administrative Procedure Act (APA), 5 U.S.C. §551, et seq, governs Coast Guard suspension and revocation hearings. 46 U.S.C. 7702(a). The APA only authorizes sanctions to be imposed if, upon consideration of the record as a whole, the charges are supported by reliable, probative, and substantial evidence. 5 U.S.C. 556(d). “The term substantial evidence is synonymous with preponderance of the evidence as defined by the Supreme Court.” **Appeal Decision 2477 (TOMBARI)** (1998). The burden of proving a claim by a preponderance of the evidence “simply requires the trier of fact ‘to believe that the existence of a fact is more probable than its nonexistence before [he] may find in

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<sup>2</sup> The Complaint alleges that the Respondent entered a plea of “guilty” to the charge, because there is a conflict within Exhibit IO-01. In this case, a plea of “no contest” has the legal equivalency of a plea of “guilty”, so I find this variance between the complaint and evidence in the case to be of no consequence.

favor of the party who has the burden to persuade the [judge] of the fact's existence.”

Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 622 (1993)(citing In re Winship, 397 U.S. 358, 371-72 (1970)(Harlan, J., concurring)(brackets in original)). Under Coast Guard procedural regulations, the Coast Guard bears the burden of proving the charges by a preponderance of the evidence. 33 CFR 20.701, 20.702(a). Therefore, the Coast Guard must prove with reliable and probative evidence that Respondent more likely than not committed the violations charged.

Prior to the passage of the 2004 Coast Guard Authorization Bill, Title 46 U.S.C. §7704(b) provided as follows:

If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or merchant mariner's document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document *shall be revoked*. [emphasis added]

A “dangerous drug” is defined as “a narcotic drug, controlled substance, or a controlled substance analog (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970).” 46 U.S.C. 2101(8a).

If it is shown that a holder of a license, etc, has been a user of, or addicted to, a dangerous drug, the USCG issued credentials held by the person shall be revoked unless said person provides satisfactory proof that he or she is cured. See 46 U.S. Code § 7704(c). See also APPEAL DECISION 2535 (SWEENEY).

With the passage of the 2004 Coast Guard Authorization Bill (effective in or about August 2004), the language of 46 USC §7704(b) was amended to provide for the

revocation *or suspension* of USCG issued credentials upon proof of a conviction of a dangerous drug law.<sup>3</sup>

The evidence presented in this proceeding clearly indicates that on August 30, 2004, the Respondent entered a plea of “no contest” to the charge of Possession of Cocaine in a Louisiana District Court, and was placed on three years probation for that offense. Thus, the factual allegations of the Complaint are proven.

Through the testimony of the Respondent, the record also clearly indicated that at the time of Respondent’s arrest for this offense, and at the time of his conviction in August 2004, he was not a user of a controlled substance. In fact, the evidence supports a finding that, at no time relevant to this proceeding, the Respondent was a user of a controlled substance.

Through the Respondent’s testimony, the evidence showed that he has a previous conviction for Possession of Cocaine (in 1996—at which time he was using both crack cocaine and powder cocaine) and that this conviction resulted in a previous revocation of his USCG issued credentials (in 2001). At or about the time of this revocation, the Respondent took “the cure” (beginning with a twenty-six day residential treatment stay in January 2001) and, as a result of Administrative Clemency proceedings, had his credentials restored.

Respondent testified that he was arrested for this offense in May 2004. At the time, an acquaintance offered him \$200 cash for a ride from Morgan City to Houma, and Respondent’s acquisition of a rock of crack cocaine for his—the acquaintance’s—use.

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<sup>3</sup> As of the date of this Decision, the USCG has not acted to amend underlying regulatory provisions so that they are consistent with the amended provisions of §7704(b). However, the undersigned is statutorily authorized to consider suspension (in lieu of revocation) as an appropriate sanction in this proceeding.

Respondent said he agreed to these requests because he wanted/needed the money to buy his wife a present.

After his arrest, chemical test results indicated he was positive for cocaine. According to the Respondent, this was a result of his trying to swallow all of the crack cocaine as he was being stopped by the police (immediately after making the buy).<sup>4</sup> Respondent testified that this was his only “dirty” test in four years. Documentary evidence admitted into the record confirmed this testimony.

Further documents introduced into evidence during the Respondent’s testimony reveal that his co-workers and supervisors think very highly of the Respondent’s work ethic and level of competency as a seaman. Additionally, these persons report no evidence of a controlled substance problem during the time they have known and worked with the Respondent.

#### **ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. On and about August 30, 2004, the Respondent was a holder of a Coast Guard issued License and a Merchant Mariners Document.
2. On and about August 30, 2004, the Respondent appeared as a Defendant in the 16<sup>th</sup> Judicial District Court of the State of Louisiana and entered a plea of “no contest” to the charge of Possession of Cocaine.<sup>5</sup>
3. On and about August 30, 2004, the presiding judge of the 16<sup>th</sup> Judicial District Court accepted Respondent’s plea and sentenced him to three years of

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<sup>4</sup> A small corner of the rock fell to the floorboard, and this was the basis of the possession charge.

<sup>5</sup> See Footnote 2, *supra*.

- imprisonment, suspended for a period of three-years probation. Other conditions of probation were imposed as well.
4. The Respondent was addicted to cocaine in 1996, and did not take the necessary steps to treat his addiction until January of 2001.
  5. In 2002, Respondent initiated Administrative Clemency proceedings, and, as a result, his USCG issued credentials were returned to him.
  6. There is no evidence that the Respondent has been a “user of” or “addicted to” a controlled substance since he entered a residential treatment facility in January 2001.
  7. The cocaine the Respondent purchased in May 2004 was not purchased for his (Respondent’s) personal use.
  8. The Respondent’s testimony was credible.
  9. The factual allegations of the complaint were proven b y a preponderance of the evidence.

### **SANCTION**

Under the provisions of 46 USC §7704(b), as amended by the 2004 Coast Guard Authorization Bill, the undersigned has the discretion to enter an Order of revocation or an Order of suspension. Based on the background material reviewed by the undersigned relevant to the amendment of §7704(b), it appears that this amendment was possibly motivated by the desire for the USCG and certain respondents to be able to enter into settlement agreements for a sanction less than revocation in those cases where the Respondent had provided proof of a “cure” for his or her addiction.

Under the facts of this case, it is likely that the USCG was unwilling to enter into a settlement agreement with the Respondent because of the prior Administrative Clemency proceedings. While this is understandable, the USCG's unwillingness to consider suspension as a sanction in this proceeding in no way prohibits the undersigned from considering suspension as an appropriate sanction.

Under the facts of this proceeding, the undersigned has considered whether or not the conduct engaged in by the Respondent is a threat to marine safety. Clearly, there is no longer a question of addiction to or use of controlled substances by the Respondent. Accordingly, the Respondent does not pose a threat to marine safety in that regard. If he is a threat to marine safety at all, it is because he exercised extremely poor judgment when he agreed to perform an illegal act on behalf of an acquaintance. The fact that he was motivated by his desire to obtain spending money for a present for his wife provides an explanation for his conduct but does little to mitigate or excuse the level of irresponsibility exhibited by his decision to commit a criminal act for the benefit of his acquaintance.

This evidence of extremely poor judgment must be balanced, however, with the evidence provided by way of the letters and evaluations provided by his co-workers and at least one supervisor. This evidence supports a finding that the Respondent's judgment, as related to his duties at sea, is adequate and does not pose a threat to marine safety.

Accordingly, based on the entire record before me, the evidence supports a sanction of something less than revocation in this proceeding. The regulations governing these proceedings include a table of suggested sanctions for various "offenses" that may be the subject of a suspension and revocation proceeding. This table, found at 46 CFR



§5.569 is advisory in nature, and should be used in conjunction with mitigating or aggravating factors present in a particular proceeding.

Contained in this table is a suggested range of suspension for the offense of “Failure to comply with U.S. law or regulations,” which is one to three months. I find this stated “offense” to be the most analogous to the facts of this proceeding. Further consideration of the facts of this proceeding, especially the seriousness of the offense committed by the Respondent (purchasing drugs on behalf of another person) leads me to conclude that an order of suspension for a period greater than that suggested in this table is appropriate.

Based on the entire record before me, and taking into consideration all matters discussed herein, I find a suspension of the Respondent’s USCG issued credentials for a period of four months appropriate.

### **ORDER**

**IT IS HEREBY ORDERED** that all credentials issued to the Respondent by the United States Coast Guard are hereby **SUSPENDED FOR A PERIOD OF FOUR MONTHS EFFECTIVE AS OF JULY 11, 2005. You must surrender all documents in your possession to the Coast Guard on or before that date. If you knowingly continue to use your documents during the period of suspension, you may be subject to criminal prosecution.**

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 June 10, 2005.  
New Orleans, Louisiana

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**JEFFIE J. MASSEY**  
**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**

None

**RESPONDENT'S WITNESSES**

Wayne Savoie

**EXHIBIT LIST**

**COMPLAINANT'S EXHIBITS**

- IO Ex. 1 Judgment of Conviction
- IO Ex. 2 Administrative Clemency Package (Offered, then Withdrawn; USCG did not have a copy for the record)

**RESPONDENT'S EXHIBITS**

- Ex 1 Log of Attendance Pages (seven pages)
- Ex 2 Chemical Test Results (twenty-four pages)
- Ex 3 Letter and two evaluations from Captain Finnley
- Ex 4 Letter from Gibson
- Ex 5 Letter from Ramsey
- Ex 6 Letter from Moore
- Ex 7 Letter from Conheeneey

**JUDGE'S EXHIBITS**

None

**ATTACHMENT C**

**RULINGS ON PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF  
LAW**

**COMPLAINANT'S PROPOSED FINDINGS**

Waived

**RESPONDENT'S PROPOSED FINDINGS**

Waived

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded the attached document by the manner indicated below to the following persons:

ENS Timothy Tilghman  
U S Coast Guard  
Morgan City MSO  
800 David Drive Room 232  
Morgan City, LA 70380  
(via First Class Mail)

Kevin E. Broussard, Attorney at Law  
209 West Main Street, Suite 300  
New Iberia, Louisiana 70560  
(via First Class Mail)

ALJ Docketing Center  
U.S. Custom House, Room 412  
40 S. Gay Street  
Baltimore, MD 21202  
(via FedEx delivery)

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Livia Torres, Paralegal Specialist to  
Jeffie J. Massey  
Administrative Law Judge

Done and Dated on June 10, 2005 at  
New Orleans, Louisiana