

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

---

UNITED STATES COAST GUARD

Complainant

vs.

JOHN M. SCHMANSKI,

Respondent.

---

Docket Number: CG S&R 05-0071  
CG Case No. 2258050

**ORDER GRANTING**  
**COAST GUARD'S MOTION FOR**  
**SUMMARY DECISION**

**Issued: October 13, 2005**

**Issued by: Peter A. Fitzpatrick, Administrative Law Judge**

On September 15, 2005 the Coast Guard filed a Motion for Summary Decision in this case seeking the revocation of Mr. Schmanski's Coast Guard issued license and Merchant Mariner's Document. No response has been received from Respondent's counsel. For the reasons set out in the attached Summary Decision the motion is **GRANTED**.

**PETER A. FITZPATRICK**  
**Administrative Law Judge**  
**United States Coast Guard**

Done and Dated on October 13, 2005 at  
Norfolk, Virginia

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

---

UNITED STATES COAST GUARD

Complainant

vs.

JOHN M. SCHMANSKI,

Respondent.

---

Docket Number: CG S&R 05-0071  
CG Case No. 2258050

**SUMMARY DECISION**

**I.**

**Procedural Background**

1. This case began on January 31, 2005, when the Coast Guard filed a Complaint against John Mark Schmanski seeking revocation of his Coast Guard license and Merchant Mariner's Document. That Complaint alleged that he was convicted of dangerous drug violations in two criminal cases in Florida. Also, it alleged that Schmanski committed Misconduct because he submitted a fraudulent application to the Coast Guard for replacement credentials on October 25, 2004 while acting under the authority of his license and Merchant Mariner's Document. This Complaint reads, in pertinent part, as follows:

**JURISDICTIONAL ALLEGATIONS**

The Coast Guard alleges that:

1. Respondent's address is as follows: **REDACTED.**

2. Respondent holds the following Coast Guard-issued credential(s): License Number 991472 and MMD Number **REDACTED**.

**FACTUAL ALLEGATIONS – Conviction for a Dangerous Drug Law Violation**

The Coast Guard alleges that:

1. within the last 10 years, the Respondent was convicted of violating a dangerous drug law of the United States. To-wit, convicted of possession of cocaine (adjudication withheld) in Broward County, FL on 08-08-2001.
2. within the last 10 years, the Respondent was convicted of violating a dangerous drug law of the United States. To-wit, convicted of possession of cocaine (adjudication withheld) in Broward County, FL on 07-14-2004.

**FACTUAL ALLEGATIONS – MISCONDUCT**

The Coast Guard alleges that:

1. Respondent, while acting under the Authority of CG-issued License and MMD, submitted a fraudulent application for replacement credentials on October 25, 2004.

The Coast Guard proposes revocation in accordance with 46 USC 7704(b).

2. The Respondent's Answer dated February 10, 2005 in which he admitted all Jurisdictional Allegations. He denied paragraph numbers "one and two" of the Factual Allegations and admitted all others.<sup>1</sup>

3. On February 15, 2005, the case was assigned to this Judge and it was set for hearing on May 4, 2005 at Sault Saint Marie, MI. See Orders of March 30 and April 19, 2005.

---

<sup>1</sup> This original Complaint set out two Factual Allegations (Conviction for a Dangerous Drug Law Violation and Misconduct). The former is subdivided into two numbered paragraphs while the latter contains one numbered paragraph. For purposes of the Answer it is assumed that the Respondent denied both Factual Allegations and all the numbered paragraphs contained therein.

4. On April 25, 2005, the Coast Guard filed its Summary of Testimony, Witness List and Exhibit Admitted List. The Motion for Discovery stated that no discovery was sought. The Witness List indicated that no witnesses were to be called and the Exhibit Admitted List described five exhibits which were submitted.

5. On April 25, 2005, Mr. Schmanski's attorney moved to continue the case and also for a change of venue to the South Florida area, either Fort Lauderdale or Miami. Counsel also submitted a witness list which included the Respondent as the only witness. Finally, counsel moved for a telephonic status conference to resolve the case without formal hearing.

6. A pre-hearing conference by telephone was conducted on April 28, 2005 and the Coast Guard Investigating Officer and Respondent's counsel participated. At that conference counsel's motions were granted and the case was scheduled for Miami, FL on June 8, 2005. See Order of April 28, 2005. Later, the specific location of the hearing room was announced by Order issued on May 16, 2005.

7. On May 24, 2005, another pre-hearing conference was held between the Coast Guard Investigating Officer at Miami and Respondent's counsel's paralegal associate, Mr. Troy Walker. Mr. Walker indicated that Respondent was incarcerated and that he would not be able to attend the hearing on June 8, 2005. Accordingly, the hearing was continued until June 21, 2005. See Order of May 24, 2005.

8. The Coast Guard filed a Motion to Amend Complaint on May 27, 2005. The new Complaint contains four counts and reads, in pertinent part, as follows:

#### **JURISDICTIONAL ALLEGATIONS**

The Coast Guard alleges that:

1. Respondent's address is as follows: **REDACTED.**

2. Respondent holds the following Coast Guard-issued credentials: License Number 991472 and Merchant Mariners Credentials Number **REDACTED**.

3. Respondent acted under the authority of that license and document on October 25, 2004 by: Engaging in official matters by requesting a duplicate of his license and document.

**1<sup>st</sup> Count  
FACTUAL ALLEGATIONS**

The Coast Guard alleges that:

1. Within the last 10 years, the Respondent was convicted of violating a dangerous drug law of the State of Florida. To-wit, convicted of possession of cocaine on July 14, 2004.
2. The Respondent was given probation for 24 months.

**PROPOSED ORDER**

The Coast Guard proposes revocation in accordance with 46 USC 7704.

**2<sup>nd</sup> Count  
FACTUAL ALLEGATIONS**

The Coast Guard alleges that:

1. Within the last 10 years, the Respondent was convicted of violating a dangerous drug law of the State of Florida. To-wit, convicted of possession of cocaine on November 21, 2001.
2. The Respondent was given probation for 2 years.

**PROPOSED ORDER**

The Coast Guard proposes revocation in accordance with 46 USC 7704.

**3<sup>rd</sup> Count  
FACTUAL ALLEGATIONS**

The Coast Guard alleges that:

1. Within the last 10 years, the Respondent was convicted of violating a dangerous drug law of the State of Florida. To-wit, convicted of possession of cocaine on March 13, 2000.
2. The Respondent was assessed a fine.

### **PROPOSED ORDER**

The Coast Guard proposes revocation in accordance with 46 USC 7704.

#### **4th Count FACTUAL ALLEGATIONS**

The Coast Guard alleges that on 25 October 2004 at Regional Exam Center Toledo, OH the Respondent:

1. Had 3 previous drug convictions as defined in section III of form CG719B, Application for License as an Officer, Staff Officer, or Operator and for Merchant Mariner's Document.
2. Failed to disclose previous drug convictions as defined in section III of form CG719B submitted and signed by him.
3. Committed an act of misconduct by submitting fraudulent application, violation of 18 USC 1001 as defined by section VI of Form CG719B submitted and signed by him.

### **PROPOSED ORDER**

The Coast Guard proposes revocation in accordance with 46 USC 7703.

9. On June 16, 2005, the Coast Guard filed a Motion for Telephonic Testimony seeking to have the Chief of the Coast Guard Regional Examination Center at Toledo testify by telephone. That motion was not opposed by Respondent's counsel but he stated in his responsive pleading that the Respondent remained in the Broward County jail in Fort Lauderdale and that the hearing in the criminal case was set for the same day as the hearing in this case. Another continuance was requested. The Investigating Officer's request for telephonic testimony and

Respondent's counsel's motion for a continuance were granted. Subsequently, the case was set for hearing on November 2, 2005. See Order dated July 15, 2005.

10. On June 6, 2005, Respondent's counsel and the Coast Guard submitted a joint Motion for Approval of Settlement Agreement and Entry of Consent Order with an attached Settlement Agreement. That motion and agreement however, were disavowed by the Respondent and withdrawn by counsel. See Order dated June 7, 2005.

11. Respondent has not filed an Answer to the Amended Complaint or a response to the Motion for Summary Decision.

## **II.** **Undisputed Material Facts**

1. John Mark Schmanski was issued U.S. Coast Guard License No. 991472 authorizing him to serve as Master of steam or motor vessels of not more than 1600 gross registered tons (domestic tonnage), 3000 gross tons (ITC tonnage) upon oceans; Chief Mate of steam or motor vessels of any gross tons upon oceans; First Class Pilot of vessels of any gross tons upon the Great Lakes between Duluth, Gary, Buffalo, and between Port Colborne and Cape Vincent; also, Radar Observer. That license was issued on October 22, 2001 and expires October 22, 2006.<sup>2</sup>

Mr. Schmanski also holds a Merchant Mariner's Document which authorizes him to serve aboard vessels as a wiper and other ratings. (Exhibit 4)

2. On March 13, 2000, Mr. Schmanski pled "Nolo" to the charge "Possession of Cocaine." He was fined \$200 by the Circuit Court, Broward County, Florida. (Adjudication Withheld). (Exhibit 1 to Motion).

---

<sup>2</sup> Copies of the license and Merchant Mariner's Document are attached to the memorandum from M. W. Skolnicki, SIP, CG MSO Toledo to SIO, CG MSO Miami, dated June 3, 2005. Those documents were supplied with the Motion for Summary Decision in Exhibit 4. They are copies of Coast Guard issued credentials and are admissible at a hearing. See 33 CFR 20.802.

3. Mr. Schmanski pled No Contest to the charges (1) Possession of Cocaine; (2) Poss/Drug Paraphernalia; and (3) Prowling/Loitering, on November 21, 2001 before Judge May, Circuit Court, Broward County, Florida. (Exhibit 2). Schmanski was sentenced to two years probation for Count 1 and 60 days probation for Counts 2 and 3. (Adjudication Withheld). (Exhibit 2).

4. Mr. Schmanski pled No Contest to the Charge - Possession of Cocaine - before Judge Beach, Circuit Court, Broward County, Florida on July 11, 2004. He was sentenced to 24 months probation. (Adjudication Withheld). (Exhibit 3).

5. On October 25, 2004 Mr. Schmanski submitted an Application (Form CG719B) for a duplicate copy of his Coast Guard license, Merchant Mariner's Document, and STCW certificate.<sup>3</sup> In response to the following series of questions he responded "No."

Have you ever been convicted of violating a dangerous drug law of the United States, District of Columbia or any state, or territory of the United States? (This includes marijuana).

Have you ever been a user of/or addicted to a dangerous drug, including marijuana?

Have you ever been convicted by any court – including military court – for an offense other than a minor traffic violation?

Have you ever been convicted of a traffic violation arising in connection with a fatal traffic accident, reckless driving or racing on the highway or operating a motor vehicle while under the influence of or impaired by, alcohol or a controlled substance?

Have you ever had your driver's license revoked or suspended for refusing to submit to an alcohol or drug test?

Have you ever been given a Coast Guard Letter of Warning or been assessed a civil penalty for violation of maritime or environmental regulations?

---

<sup>3</sup> STCW is an abbreviation for the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers.



Have you ever had any Coast Guard license or document held by you revoked, suspended or voluntarily surrendered?

6. Previously, on August 3, 2002, Mr. Schmanski filed an earlier application (Form CG 719B) before the Coast Guard seeking a raise in grade and an endorsement to his Merchant Mariner's Document. He answered "No" to the same seven questions in the application that are set out above.

**III.**  
**Discussion**  
**General**

1. The Rules of Practice, Procedure and Evidence for Formal Administrative Proceedings of the Coast Guard are codified at 33 CFR Part 20. In construing those rules it is required that they be applied to secure a just, speedy and inexpensive determination of the case involved. 33 CFR 20.103.

2. The rule governing summary decisions is found at 33 CFR 20.901. That provision authorizes, in pertinent part, parties to suspension and revocation proceedings conducted under 46 USC Chapter 77, as in this case, to seek summary decision in all or any part of the proceeding on the grounds that there is no genuine issue of material fact and that the moving party is entitled to summary decision as a matter of law. Id. at 901(a). As relevant here, the Judge is authorized to grant the motion if the filed documents show that the motion meets the two criteria above. The rule continues that the evidence submitted with the motion must be such that it would be admitted if the case went to hearing. The rule further states:

Once a party has moved for summary decision and supported his or her motion as provided in this section, no party opposing the motion may rest upon the mere allegations or denials of facts contained in his or her own pleadings. The response to the motion, by affidavit or as otherwise provided in this section, must provide a

specific basis to show that there is a genuine issue of material fact for the hearing.

In this case Respondent has not submitted a response to the motion for summary decision. The motion was filed on September 15, 2005. Rule 901(a) provides that the party opposing the motion for summary decision must file affidavits or other materials 10 days after service of the motion. Nearly one month has expired since the filing of the motion and no response from the Respondent or his counsel has been received. Accordingly, the motion will be decided based upon the Coast Guard's motion and the materials submitted with it.

3. The Supreme Court has held that the party moving for summary judgment under Rule 56 of the Federal Rules of Civil Procedure (F.R.C.P.) has the initial burden of showing that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.<sup>4</sup> See Celotex Corp. v. Catrett, 477 US 317, 323 (1986). Once the moving party has met its burden, the remaining party must present evidence that creates a genuine issue of material fact making it necessary to resolve the difference at trial. Id. at 324. The Court, in deciding a motion for summary judgment, must view the evidence in the light most favorable to the non-moving party. See Matsushita Electric Industrial Co. v. Zenith Radio Corporation, 475 US 574, 587 (1986). Rule 56, by its terms, creates a standard that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. The requirement is that there be no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 US 242, 247-48 (1986). Material facts are only those facts that might affect the outcome of the action under governing law. Id. at 248. The role of the court at the summary judgment stage is not to weigh the evidence but to determine whether there is a genuine issue for trial. Id. at 249. The Supreme Court in Anderson continued:

---

<sup>4</sup> Rule 901 of the Coast Guard procedural rules is founded on Rule 56 of the F.R.C.P. Much of the language in Rule 901 with adaptations to these hearings under the Administrative Procedure Act (5 USC 551 *et seq*) is similar.

[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted.

Id. at 249-50 (citation omitted).<sup>5</sup>

The Supreme Court has emphasized that “. . . one of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses. . . .” Celotex, 477 US at 323. The Supreme Court continued that summary judgment is not a “disfavored procedural shortcut,” but rather an integral part of the Federal Rules which are designed to secure the just, speedy and inexpensive determination of every action. Id. at 327.

Those same considerations apply to the Coast Guard rules of practice. Indeed, the identical language pointed out by the Supreme Court in the Federal Rules is also included in the rules here as discussed above. See 33 CFR 20.103.

Finally, and importantly, when reviewing pleadings, affidavits and other evidence, the court must draw all reasonable, factual inferences in favor of the nonmoving party. In short, summary judgment is appropriate if the evidence is such that no reasonable fact finder could return a verdict for the nonmoving party. See Lewis v. Oklahoma ex rel. Bd. of Regents for Tulsa Community College, 2002 WL 1316810 (2002); see also, Miccosukee Tribe of Indians of Florida v. South Florida Water Management Dist., 280 F.3d 1364, 1367 (2002).

### **Counts 1, 2 and 3**

1. Turning now to the case at hand, it is worthy to note that the Respondent has not filed an Answer to the Amended Complaint filed May 27, 2005. Since Mr. Schmanski did deny the

---

<sup>5</sup> See also, Stillufsen v. Evans, Civil Action No. 03-02355 (MLC), (D. NJ) (Slip Opinion filed September 6, 2005) reviewing the decision of the undersigned in Martin Stillufsen, Docket No. NE000189FM/V, ALJ Initial Decision and ALJ Supplement to Initial Decision.

factual allegations of the original Complaint, an inference will be made in the non-moving party's favor that he means to deny those expanded allegations in the Amended Complaint.

Count Numbers 1, 2 and 3 are filed under the statutory authority of 46 USC 7704(b) and the regulatory authority of 46 CFR 5.35. The statute reads, in pertinent part, that if it is shown at a hearing that the holder of a license or Merchant Mariner's Document within 10 years from the beginning of the proceeding, has been convicted of violating a dangerous drug law of the United States or of a state, the license or document shall be suspended or revoked.

The Coast Guard regulation relied upon in the Amended Complaint is 46 CFR 5.35 and that rule requires in part, that where the proceeding is based exclusively on 46 USC 7704, as in Counts 1-3 here, the Complaint will allege "conviction for a dangerous drug law violation." Jurisdiction is to be established by alleging the elements required by 46 USC 7704 and the approximate time and place of the offense.

After reviewing the statute involved, the first consideration in this analysis is to determine if the Respondent was the holder of a Coast Guard credential at the time of the conviction. That is the jurisdictional predicate which must be met before going further.<sup>6</sup> The First Count alleges that the Respondent was convicted of violating a dangerous drug law of the State of Florida on July 14, 2004. Also, that he was sentenced to 24 months probation. (Adjudication Withheld). Exhibit 4 includes copies of Mr. Schmanski's Merchant Mariner's Document but no issue date is included on that credential. Mr. Schmanski's Coast Guard License No. 991472 is also attached and it reveals that the license was issued on October 22,

---

<sup>6</sup> Under the Jurisdictional Allegations of the Amended Complaint the Coast Guard alleges that "Respondent acted under the authority of that license and document on October 25, 2004 by: Engaging in official matters by requesting a duplicate of his license and document." That jurisdictional allegation applies only to the 4<sup>th</sup> Count but does not confer any jurisdiction over Counts 1-3. On its face, the Complaint recites that Counts 1-3 are founded on a different statute (46 USC 7704). The Complaint is not clear as it should be in this regard. However, the Factual Allegations specifically point out the relevant statute and regulation relied upon for each count.

2001. It is to expire on October 22, 2006. Thus, Schmanski was the holder of a Coast Guard license on July 14, 2004 when allegedly he was “convicted” of a dangerous drug law violation. (Adjudication Withheld). The Coast Guard does have jurisdiction over this alleged offense.

The Second Count alleges in nearly identical language that the Respondent was convicted of possession of cocaine on November 2, 2001 by the State of Florida. There again, Respondent was sentenced by the Circuit Court in Broward County, Florida to probation for two years. This offense occurred after Mr. Schmanski was issued his Coast Guard license a few weeks before on October 22, 2001. Therefore, as with Count 1, he was the holder of a Coast Guard license at the time of the “conviction.” (Adjudication Withheld). Again, the Coast Guard has jurisdiction over this alleged offense.

The Third Count recites that Schmanski was convicted of violating a dangerous drug law of the State of Florida, to wit, a conviction for possession of cocaine, on March 13, 2000. In this regard the evidence submitted by the Investigating Officer does not include any evidence that Mr. Schmanski was the holder of any Coast Guard license or document at that time. The Coast Guard license referred to in the discussion above regarding Counts 1 and 2 was issued on October 22, 2001 or over 18 months after the alleged conviction in this Court.<sup>7</sup> Accordingly, the Coast Guard does not have jurisdiction over the offense since on this record it does not appear that Mr. Schmanski was the holder of any Coast Guard credential on March 13, 2000. Therefore it has not been proved that the Coast Guard is entitled to summary decision as a matter of law on this Count.

---

<sup>7</sup> At an earlier stage in this proceeding before the original complaint was amended, the Coast Guard submitted an Exhibit Admitted List for the hearing scheduled in May at Sault Saint Marie, MI. One of those documents proffered is entitled Marine Safety Network Party Selector and purports to show that Mr. Schmanski was issued a Master’s license on March 3, 2003. That document was not included in the Coast Guard’s submission in support of the Motion for Summary Decision. Additionally, there is no evidence of how that document was prepared and the degree to which it accurately reflects the mariner’s licenses and merchant mariner’s documents. Finally, the copy is nearly illegible. It is not admissible as evidence at this stage in this case.

2. The second requirement of proof under 46 USC 7704(b) is that it be shown that the mariner involved was convicted of violating a dangerous drug law of the United States or a State within 10 years before the beginning of the proceedings. In connection with Count 1, the Coast Guard has submitted legible copies of the Circuit Court Disposition Order In and For Broward County, Florida, dated November 21, “01” showing that Mr. John Mark Schmanski was charged with Possession of Cocaine, Possession of Drug Paraphernalia and Prowling/Loitering. (Exhibit 2). That document reveals that Judge May received the Defendant’s plea of No Contest and that Mr. Schmanski was sentenced to 2 years probation for the possession of cocaine charge. (Adjudication Withheld). He received 60 days probation for possessing drug paraphernalia and loitering. The two page document is signed by the Judge and the Deputy Clerk of Courts. That document is admissible under the Coast Guard rules governing a hearing. Indeed, CFR 20.807(b) reads that the judge “. . . will deem admitted the authenticity of each exhibit submitted before the hearing unless a party either files written objection and serves it on all parties or shows good cause for failure to do both.”

Moreover, the fact that the Respondent entered a Nolo Contendere or No Contest plea in this criminal case and Adjudication was withheld under Florida law does not affect the status of that “conviction” under the Coast Guard regulations. The regulations codified at 33 CFR 20.1307 make it clear that if the Respondent participates in a scheme of a State for the expungement of convictions and if the mariner pleads No Contest or submits in any manner of probation or supervision the Coast Guard regards him or her for purposes of 46 USC 7704 as having received a conviction. See also Appeal Decision No. 2629 (RAPOZA).

Coast Guard regulations define the word “conviction” in 46 CFR 10.130. (Subchapter B – Merchant Marine Officers and Seaman) in pertinent part as follows:

If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court's conviction, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not negate a conviction unless it is proved to the OCMI that the expungement is based upon a showing that the court's earlier conviction was in error.

It is clear therefore that the Order of the Broward County Circuit Court of July 14, 2004 sentencing Mr. Schmanski to 24 months of probation for the offense "Possession of Cocaine" even though it is marked "Adj. Withheld" is a conviction under the Coast Guard regulations governing this proceeding.

A three page police report relating to Mr. Schmanski's arrest was also submitted in Exhibit 2. That document too was obtained from the court records of the case and was attested by the Deputy Clerk of Court. That evidence is admissible at a Coast Guard hearing. See 33 CFR 20.802(a) and 807(b).

3. Count 2 is supported by Exhibit No. 3 which includes the Circuit Court Disposition Order In and For Broward County, Florida dated July 11, 2004. That Order shows that Judge Beach accepted John Mark Schmanski's No Contest plea and sentenced him to 24 months probation on the charge Possession of Cocaine. (Adjudication Withheld). The order is signed by the Judge and the Deputy Clerk of Court. The Coast Guard also submitted a six page police report from the court case file which is signed by the arresting officer and attested to by the Deputy Clerk of Court. (Exhibit 3). Those documents are admissible at a Coast Guard hearing as discussed above and in accord with 33 CFR 20.802(a) and 807(b). This is a conviction for purposes of this case.

4. After reviewing this evidence, it is the undersigned's opinion that the Coast Guard has met the burden of showing that there is no genuine issue of material fact on this record in connection with Counts 1 and 2. The court documents submitted clearly establish that Mr. Schmanski was convicted by the Circuit Court for Broward County of dangerous drug law violations on two separate occasions within 10 years of the scheduled hearing (November 2, 2005). Also, the evidence supports the conclusion that Schmanski was the holder of a Coast Guard license on each occasion. Mr. Schmanski has entered a denial to those allegations in the original Complaint but now that the Coast Guard has met its burden in support of this motion, that general denial is not enough. The regulations clearly state that the non-moving party may not rest on mere allegations or denials of facts contained in his or her own pleadings. See 33 CFR 20.901(c). Rather, now the Respondent here must provide a specific basis to show that there is a genuine issue of material fact for the hearing.

In this case Respondent's counsel has not replied to the Motion for Summary Decision and the time for that filing has now passed. Therefore, Respondent has not submitted any evidence to dispute the Coast Guard's showing that no genuine issue of material fact exists. Accordingly, the Coast Guard is entitled to Summary Decision on Counts 1 and 2 as a matter of law.

#### **Count 4**

In view of the order of revocation issued in connection with the First and Second Counts, it is not necessary to discuss whether the Coast Guard has met its burden under Count Four.

#### **Order**

46 USC 7704(b), as recently amended August 9, 2004, Coast Guard and Maritime Transportation Act of 2004. Pub. L. No. 108-293, § 402, 118 Stat. 1043 (2004), requires that a



mariner's Coast Guard credentials be suspended or revoked upon proof that he or she has been convicted of violating a dangerous drug law of the United States or a State. The Coast Guard regulations at 46 CFR 5.59(b) make it mandatory for the Administrative Law Judge to revoke a mariner's Coast Guard credentials where he has been convicted for a dangerous drug law as here. That provision however pre-dates the amendment to 46 USC 7704(b) which affords the Judge greater discretion to suspend as well as revoke Coast Guard issued credentials. In view of that recent Congressional mandate, absent any recent interpretation in its regulations by the Coast Guard, suspension and revocation must be considered.

Mr. Schmanski holds a Coast Guard license which authorizes him to serve as the officer in command of a vessel of 1600 gross tons (domestic tonnage) and 3000 gross tons (ITC tonnage) on oceans. His license also authorizes him to serve a Chief Mate on vessels of any tonnage upon the ocean. Further, he can serve as a First Class Pilot on any vessel moving on the Great Lakes between Duluth, Gary, Buffalo, and between Port Colborne and Cape Vincent. Thus Mr. Schmanski is authorized to hold some very important and responsible positions on both the oceans and Great Lakes on commercial vessels of all kinds. In the position of Master he is the one who has command of the vessel. See 46 CFR 10.103. As Master, the lives of the crew and the safety of the vessel are his direct and ultimate responsibility. Yet Schmanski has been convicted of possession of cocaine on two separate occasions (July 14, 2004 and November 21, 2001) while he held his license. In addition, he was convicted of that same offense on March 13, 2000. (Exhibit 1). Also, in connection with his arrest for possession of crack cocaine on December 22, 1999, the police officer involved reported that Schmanski admitted that he had "a crack cocaine addiction." (Exhibit 1). Also, the police report filed in connection with his arrest

on March 31, 2004, which led to his July 14, 2004 conviction, describes Schmanski as being in possession of crack cocaine.

It is my opinion that these repeated dangerous drug law violations indicate that Mr. Schmanski is a frequent drug user. Indeed, he admitted to one of the arresting officers that he was addicted to crack cocaine. As such, this licensed Master cannot be entrusted with the safety of a vessel and its crew at sea. Indeed, this record supports the conclusion that Schmanski represents a danger to life and property at sea and should not be permitted to serve aboard, much less command, any U.S. vessel.

Finally, Coast Guard rules state, an “order is directed against all licenses, certificates or documents, except that in cases of negligence or professional incompetence, the order is made applicable to specific licenses, certificates or documents.” 46 CFR 5.567.

Accordingly, **IT IS ORDERED THAT** Coast Guard License No. 991472 and all Merchant Mariner’s Documents and all duplicates and renewals of those credentials are **HEREBY REVOKED**. You must immediately surrender your **credentials** to the U.S. Coast Guard Sector Miami. If you knowingly continue to use your **credentials**, you may be **subject to criminal prosecution**.

**PETER A. FITZPATRICK**  
**Administrative Law Judge**  
**United States Coast Guard**

Done and Dated on October 13, 2005 at  
Norfolk, Virginia

## Certificate of Service

I hereby certify that I have this day served the foregoing document(s) upon the following parties and limited participants (or designated representatives) in this proceeding at the address indicated by Facsimile:

LT Michael Capelli  
Marine Safety Office Miami  
100 Macarthur Causeway  
Miami Beach, FL 33139-6940  
Fax: 305-535-8731

David Joffe, Esq.  
Southtrust Bank Building  
One East Broward Blvd., Suite 700  
Ft. Lauderdale, FL 33301  
Fax: 954-723-0033

Lucinda H. Shinault, CP  
Certified Paralegal to the Administrative Law Judge

Done and Dated on October     , 2005 at  
Norfolk, VA

33 C.F.R. PART 20  
SUBPART J  
APPEALS

**§ 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.

**§ 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.

**§ 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.

**§ 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.