UNITED STATES OF AMERICA

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

UNITED STATES COAST GUARD

Complainant

vs.

GARY E. BAYLESS

Respondent.

Docket Number: CG S&R 04-0354
CG Case No. 2124771

DECISION AND ORDER

Issued: October 24, 2005

Issued by: Thomas E. McElligott, Administrative Law Judge

Appearances:

For Complainant
Lt. Robert L. Helton
U.S. Coast Guard
12512 Fort Smith Boulevard, Suite 4
Fort Smith, Arkansas 72923

Mr. Neil Shoemaker
U.S. Coast Guard
200 Jefferson Avenue, Suite 1301
Memphis, Tennessee 38103

For Respondent
Mr. Gary E. Bayless, pro se

PRELIMINARY STATEMENT

In discharge of its duty to promote the safety of lives and properties at sea, the United States Coast Guard ("Coast Guard") or Investigating Officers ("IOs") initiated this administrative action seeking a trial-type hearing before and by a U.S. Administrative Law Judge and revocation of the Coast Guard License issued to Respondent Gary E. Bayless. This action was brought pursuant to the legal authority contained in 46 U.S. Code ("U.S.C.") 7704, and the proceedings were conducted in accordance with the procedural requirements of 5 U.S.C. 551-559, 46 Code of Federal Regulations ("CFR") Part 5, and 33 CFR Part 20. On July 13, 2004, the Coast Guard filed and served a Complaint against Respondent's Coast Guard issued license alleging Respondent was a user of dangerous drugs as evidenced by random drug tests that resulted in a positive result for marijuana use. Respondent filed his Answer to this Complaint on July 15, 2004 admitting the jurisdictional and the factual allegations and asserting that he unknowingly consumed marijuana-laced banana-nut bread. Respondent's Answer also stated that he was not interested in settlement discussions.

A trial-type hearing before this undersigned U.S. Administrative Law Judge was first conducted on November 17, 2004.[1] At the hearing, the Coast Guard IOs called three (3) witnesses who testified under oath and offered eight (8) exhibits which were admitted into evidence by the Administrative Law Judge. One witness, Respondent's son, and Respondent testified on Respondent's behalf and three (3) Respondent's exhibits were admitted into evidence by this Judge. Following the conclusion of the hearing, the Coast Guard IOs filed their Proposed Findings of Fact and Conclusions of Law on or about December 6, 2004.

[1] In this decision, the transcript from this hearing is cited as (Tr. 1 at __).

On April 7, 2005, I issued an order to reconvene the hearing to take additional testimony from the claimed former girlfriend of Respondent's son (reported he called Crystal Taylor or Dawn Taylor) and also from the Medical Review Officer, the MRO. On May 25, 2005, the Coast Guard IOs informed the Judge's office that both parties had been unable to locate and subpoena her testimony under oath of the former "live-in girlfriend" of Respondent's son, and as a result of this I held a conference call with both parties on June 2, 2005 commencing at 10:00 a.m.[2] During the conference call, Respondent stated that his son's alleged former girlfriend was indigent and she had only stayed with his son at Respondent's home for a few days before Respondent threw her out of his home. Despite the asserted diligent efforts of both parties, they were unable to locate and subpoena the former girlfriend of Respondent's son. Since I did not see a need to reconvene the hearing without the former girlfriend of Respondent's son, I cancelled the order reconvening the hearing following the June 2, 2005 conference. In the initial hearing, Respondent and Respondent's son testified that it was this girlfriend of Respondent's son who lived with Respondent's son in Respondent's home who made the banana nut bread and put marijuana in it without Respondent's knowledge when Respondent found and ate it the evening before the drug test.

FINDINGS OF FACT

1. Respondent holds or held a Coast Guard issued U.S. Merchant Mariner's license (number 870705). (Tr. 1 at 12; IO Ex. 7).

2. At the time in question and prior, Respondent was employed by National Park Duck Tours Company as a captain of a duck passenger vessel (i.e. a boat with wheels that can be

[2] In this decision, the transcript from this conference call is cited as (Tr. 2 at __).

Deleted:

driven with passengers on both land and sea). (Tr. 1 at 13, 25). Respondent has worked in this capacity since about 1989. (Tr. 1 at 13).

3. On June 10, 2004, Respondent submitted a urine sample for a random drug test required by his employer. (Tr. 1 at 13; IO Ex. 5). Urine Specimen Collector, Sheryl Cheek of St. Joseph's Business Health collected and divided into two bottles a "double or split urine sample" from Respondent in accordance with U.S. Department of Transportation guidelines. (Tr. 1 at 37-38; IO Ex. 4). Respondent acknowledged the sample bottles and signed his name on the Federal Drug Test Custody and Control Form, and Respondent's urine sample was given a specimen identification number of 0355677195. (Tr. 1 at 38; IO Ex. 4; IO Ex. 5). On June 11, 2004, Respondent's two urine specimen bottles arrived at the tested and certified laboratory (LabCorp) with the seals intact. (IO Ex. 4).

4. LabCorp performed the required initial test and second or confirmation test on Respondent's urine sample, and both times after both tests Respondent's sample tested positive for marijuana. (IO Ex. 4). A gas chromatography / mass spectrometry confirmation test on Respondent's specimen resulted in 58ng/ml of THC. (IO Ex. 04). This is well above the minimum for a positive test.

5. A Medical Review Officer (MRO) reviewed LabCorp's analysis and results of Respondent's specimen. (Tr. 1 at 44-45; IO Ex. 5). After the MRO made several unsuccessful attempts to contact Respondent on June 17, 2004, the results of Respondent's certified laboratory two tests were released as a non-contact positive on June 21, 2004. (IO Ex. 5).

6. On June 23, 2004, Respondent called Choicepoint and was transferred to Dr. Lee (the MRO) who then interviewed Respondent and also advised him of his right to have his urine specimen tested by another or second certified laboratory. (Tr. 1 at 44-45; IO Ex. 5). The MRO

concluded there was not a medical excuse for the positive findings. (Tr. 1 at 44). Respondent did not request to have the split samples retested by a second certified laboratory. (Tr. 1 at 45).

7. On or about July 12, 2004, the Coast Guard IOs served a Complaint personally on Respondent, and the Complaint was explained to him. (Tr. 1 at 16).

8. Respondent claims he unknowingly consumed marijuana-laced banana-nut bread that was baked by his son's former live-in indigent girlfriend and left in Respondent's kitchen. (Tr. at 55-56).

9. Despite the reported diligent efforts of both Respondent and the Coast Guard IOs, neither party has been able to locate and subpoena the former girlfriend of Respondent's son who Respondent's son stated he knew for almost a year. (Tr. 1 at 67-68; Tr. 2 at 3-7).

DISCUSSION

The U.S. Administrative Procedure Act (APA), 5 U.S.C. 551-59, applies to Coast Guard suspension and revocation hearings before a U.S. Administrative Law Judge. 46 U.S.C. 7702(a). The APA only authorizes sanctions to be imposed if, upon consideration of the entire record as a whole, the allegations 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 [U.S.] Supreme Court." Appeal Decision 2477 (TOMBARI) (1988). The burden of showing something 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 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 rules and regulations, the Coast Guard IOs bear the burden of proving the allegations by a preponderance of the evidence. 33 CFR 20.701, 20.702(a). Therefore, the Coast Guard Investigating Officers (IOs) must prove with reliable and probative evidence that Respondent more likely than not committed the violation they alleged.

Section 7704(c) of Title 46 of the United States Code provides that a license, certificate of registry, or merchant mariner's document shall be revoked if it is shown that the license holder is a user of dangerous drugs, unless the holder provides satisfactory evidence of proof of cure. If an individual fails a test for dangerous drugs under 46 CFR Part 16, the individual will be presumed to be a user of dangerous drugs. 46 CFR 16.201(b). If the IO establishes a prima facie case of dangerous drug use, the burden to rebut the presumption shifts to the Respondent who must produce persuasive evidence. Appeal Decision 2632 (WHITE) (2002); Appeal Decision 2591 (WYNN) (1997); Appeal Decision 2560 (CLIFTON) (1995), *appeal dismissed sub. nom.* Robert E. Kramek v. Richard W. Clifton, NTSB Order No. EM-180 (1995). For example, Respondent may rebut the presumption by producing evidence that (1) calls into question any element of the prima facie case; (2) indicates an alternative medical explanation for the positive test result; or (3) indicates the use was not wrongful or not knowing. Appeal Decision 2560 (CLIFTON) (1995), *appeal dismissed sub. nom.* Robert E. Kramek v. Richard W. Clifton, NTSB Order No. EM-180 (1995). If Respondent does not produce evidence rebutting the presumption, the ALJ may find the allegations proved based solely on the presumption. Appeal Decision 2632 (WHITE) (2002); Appeal Decision 2603 (HACKSTAFF) (1998). As the parties in this case have not disputed the drug test procedures or the results of the drug test, I find the test in question was conducted properly under 46 CFR Part 16 in accordance 49 CFR Part 40.

The ultimate question to be decided is whether Respondent has rebutted the presumption of drug use.

In rebuttal, Respondent testified that he unknowingly ate some banana-nut bread laced with marijuana by his son's girlfriend living with Respondent's son in Respondent's home at the time. To support his allegation, Respondent offers testimony that his son's girlfriend told his son that the banana-nut bread was laced with marijuana after Respondent informed his son that he had tested positive for marijuana. (Tr. 1 at 18-20, 54-56). However, the Coast Guard IOs cite Appeal Decision 2529 (WILLIAMS) (1991) and Appeal Decision 2527 (GEORGE) (1990) in support of their argument that Respondent failed to rebut the presumption of dangerous drug use. The Coast Guard IOs argue the evidence offered by Respondent is weak, uncorroborated hearsay and that this case is similar to Appeal Decision 2529 (WILLIAMS) (1991), in which the Commandant affirmed an ALJ's determination that appellant's evidence of inadvertent ingestion of marijuana was not credible and insufficient. (*Gov't Brief*). In WILLIAMS, the Commandant held that appellant's evidence rebutting the presumption of drug use was hearsay, and the ALJ had discretion to give the statement little weight or discount it entirely.

"Determining the weight of evidence and making credibility determinations is within the sole purview of the ALJ." (Administrative Law Judge) Appeal Decision 2642 (RIZZO) (2003). The burden of establishing a defense of unknowing ingestion of a controlled substance is a heavy one. See generally Appeal Decision 2596 (HUFFORD) (1998) (An allegation of inadvertent ingestion of marijuana in food supported by a letter to a drug counselor from Respondent was held insufficient to rebut the presumption of use of dangerous drugs); Appeal Decision 2527 (GEORGE) (1991) (Respondent's allegation of inadvertent ingestion of cocaine was insufficient to rebut the presumption of drug use where said evidence was based on supposition and

speculation). To rebut the presumption of use of dangerous drugs, a Respondent must establish the affirmative defense by a preponderance of the evidence. See 33 C.F.R. 20.701 and 20.702(a); see also Appeal Decision 2637 (TURBEVILLE) (2003). Although hearsay evidence is admissible under 33 CFR 20.803, it is well established that a judge cannot base a finding on hearsay alone. See Appeal Decision 2450 (FREDERICKS) (1987) (citing Appeal Decision 2183 (FAIRALL) (1980), *sub. nom*. Commandant v. Fairall, NTSB Order EM-89 (1981)); Appeal Decision 2404 (MCALLISTER) (1985). Nor may a judge base a finding on hearsay corroborated by a mere scintilla of evidence. Appeal Decision 467 (HALE) (1950).

The evidence that Respondent tested positive for marijuana because he unknowingly ate banana-nut bread laced with marijuana is hearsay. In this case, I find the hearsay evidence that the former girlfriend of Respondent's son laced the banana nut bread with marijuana is not credible. Respondent's son testified he knew the girlfriend for about a year and despite the reported diligent efforts of both Respondent and the Coast Guard IOs, neither party has been able to locate the former "live-in" girlfriend of Respondent's son to subpoena her as a witness. (Tr. 1 at 67-68; Tr. 2 at 3-7). Nor did Respondent or Respondent's son produce this "live-in" girlfriend at the first scheduled hearing before this Judge. In an attempt to locate the former girlfriend of Respondent's son, the Coast Guard IOs ran her name through a database used by law enforcement to locate persons of interest, and none of the hits from the database turned out to be the former girlfriend of Respondent's son. (Tr. 2 at 4). The fact that Respondent's son stated he knew this girl for about a year and neither Respondent nor the Coast Guard have been able to locate her tends to make the hearsay evidence by Respondent and Respondent's son not credible and not reliable. Since Respondent's defense was supported solely by this hearsay evidence, there is no evidence that Respondent unknowingly ate banana-nut bread laced with marijuana.

Therefore, Respondent has failed to rebut the presumption of dangerous drug use after failing the two required drug tests by the tested and certified laboratory and affirmed by the Medical Review Officer (MRO).

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a holder of a Coast Guard issued Merchant Mariner's License.
2. The Coast Guard has proved by a preponderance of reliable, probative, substantial and credible evidence that Respondent is a user of a dangerous drug.
3. Respondent has failed to rebut the Coast Guard IOs' case of drug use.
4. Respondent has not offered any evidence of cure of drug use at the hearing or since.

SANCTION

If a Respondent is shown to be a user of dangerous drugs, the Respondent's Coast Guard issued merchant mariner's license or merchant mariner's document must be revoked unless the Respondent shows cure of drug use. Appeal Decision 2583 (WRIGHT) (1997). Since at the time of hearing sufficient time to show cure may not have elapsed to allow a Respondent to show cure, the ALJ may stay revocation of Respondent's merchant mariner's credentials if Respondent has demonstrated substantial involvement in the drug cure process by proof of enrollment in an accepted drug rehabilitation program. Appeal Decision 2638 (PASQUARELLA) (2003); Appeal Decision 2535 (SWEENEY) (1992), *rev'd on other grounds sub nom.* Commandant v. Sweeney, NTSB Order No. EM-152 (1992); *definition of cure aff'd*. Appeal Decision 2546 (SWEENEY) (1992). While the proceeding is so stayed, the Coast Guard IOs continue to hold the Respondent's Coast Guard issued merchant mariner credentials. Appeal Decision 2638

(PASQUARELLA) (2003). However, a stay is not appropriate if the Respondent only promises or gives assurances that he/she will begin later the cure process. Appeal Decision 2535 (SWEENEY) (1992), *rev'd on other grounds sub nom.* Commandant v. Sweeney, NTSB Order No. EM-152 (1992); *definition of cure aff'd.* Appeal Decision 2546 (SWEENEY) (1992).

In order to show cure from dangerous drug use, Respondent must have (1) successfully completed a bonafide drug abuse or use rehabilitation program designed to eliminate physical and psychological dependence; (2) successfully demonstrated complete non-association with drugs for a minimum period of one year following successful completion of the drug rehabilitation program, which includes participation in a drug abuse monitoring program that incorporates random drug tests. Appeal Decision 2535 (SWEENEY) (1992), *rev'd on other grounds sub nom.* Commandant v. Sweeney, NTSB Order No. EM-152 (1992); *definition of cure aff'd* Appeal Decision 2546 (SWEENEY) (1992). Additionally, 46 CFR 16.201(f) requires a Medical Review Officer to verify that the Respondent is drug free and the risk of subsequent dangerous drug use is sufficiently low to justify his return to work aboard vessels. Appeal Decision 2638 (PASQUARELLA) (2003).

Since Respondent has not shown substantial involvement in attempted drug use cure, revocation is the only appropriate sanction available to the Judge by law in such a case.

ORDER

IT IS HEREBY ORDERED that the allegations in the above captioned administrative proceeding are found proved and Respondent's Coast Guard issued license is revoked. Respondent is further ordered to immediately deliver his license to the Coast Guard Investigating Officers, now stationed at the Marine Safety Office, or MST, in person or by mail, FedEx or DHL.

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 October 24, 2005.
Houston, Texas

THOMAS E. P. McELLIGOTT
U.S. 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. Mr. Gary E. Bayless, Respondent

2. Ms. Roberta Lee Swain, Team Leader and Supervisor of Urine Collectors, St. Joseph's Mercy Health Center

3. Dr. Stephen Shvartsblat, M.D. and Medical Review Officer, ChoicePoint Medical Review Services

RESPONDENT'S WITNESSES

4. Mr. Russell Eugene Bayless, Respondent's son

EXHIBIT LIST

COMPLAINANT'S EXHIBITS ADMITTED INTO EVIDENCE BY THE JUDGE

IO Ex. 1	ChoicePoint Medical Review Services Controlled Substance Test Report dated 06/10/2004.
IO Ex. 2	Complaint
IO Ex. 3	Answer
IO Ex. 4	LabCorp synopsis of Drug SVT Procedures and Results
IO Ex. 5	Letter from ChoicePoint to Lt. Helton
IO Ex. 6	MRO certificates for Dr. Stuart B. Hoffman, M.D. and Dr. Stephen Shvartsblat, M.D., M.P.H.
IO Ex. 7	Copy of Respondent's Coast Guard issued license
IO Ex. 11	Criminal History for Russell Eugene Bayless

RESPONDENT'S EXHIBITS ADMITTED ITO EVIDENCE BY THE JUDGE

Resp't Ex. A	ChoicePoint Medical Review Services Controlled Substance Test Report dated 06/10/2004.
Resp't Ex. B	ChoicePoint Medical Review Services Controlled Substance Test Report dated 06/24/2004.
Resp't Ex. C	ChoicePoint Medical Review Services Controlled Substance Test Report dated 04/16/2004.

ATTACHMENT C

RULINGS ON PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMPLAINANT'S PROPOSED FINDINGS

1. On January 10, 2004, Mr. Gary Bayless was serving as a Master of DUWK amphibious vehicles as an employee of the National Park Duck Tours submitted to a random drug screen required of his employer. During this time period, Mr. Bayless was the holder of and serving under the authority of his Coast Guard issued License (No. 870705).

   ACCEPTED AND INCORPORATED.

2. The urine sample was collected by Ms. Sheryl Cheeks a collector for St. Jopseph Business Health in Hot Springs, Arkansas. For tracking purposes, the urine sample was given a Specimen ID number of (35567719530).

   REJECTED. The Specimen ID number of Respondent's sample is 0355677195.

3. The specimen was sent to LabCorp for processing and was received on June 11, 2004. The specimen was analyzed and determined to be positive for the presence of marijuana metabolite by Mr. Christopher P. Cox, Supervisor of the GC/MS Department. Results were reported to Choicepoint MRO Services.

   REJECTED. Evidence is inconclusive whether Mr. Christopher Cox alone analyzed Respondent's sample, or whether he was aided by others at their tested and certified laboratory.

4. Choicepoint made numerous attempts to contact Mr. Bayless on June 17, 2004. Choicepoint waited until June 21, 2004 and after not being contacted by Mr. Bayless, results were released as positive.

   ACCEPTED AND INCORPORATED.

5. On June 23, 2004, Mr. Bayless contacted Choicepoint and was put in contact with Dr. Bertram Lee for medical review. Based on this discussion, it was determined that the drug test of Mr. Bayless was positive for the presence of marijuana and could only have come from illicit use.

   ACCEPTED AND INCORPORATED.

6. On June 23, 2004, Dr. Bertram Lee informed Mr. Bayless of his right to have the split specimen tested at an alternate lab. Mr. Bayless did not request this option.

ACCEPTED AND INCORPORATED.

7. On 12 July 2004, personnel from MST Fort Smith, to include IO, traveled to Hot Springs, Arkansas to discuss the options available to Mr. Bayless in regards to his positive drug screen. These included the option of a Settlement Agreement. Respondent declined Settlement Agreement and advised IO that he wished to be heard on the matter.

REJECTED. Testimony only indicates the Coast Guard served a Complaint on Respondent in Hot Springs. There is no evidence of anyone traveling from Fort Smith to Hot Springs, Arkansas.

8. On 12 July 2004, IO provided Mr. Bayless with Complaint. Complaint was acknowledged by Respondent's signature in presence of IO and MST Fort Smith Coast Guard personnel.

REJECTED. Although the Complaint's certificate of service indicates the IO personally served the Complaint on Respondent and Respondent signed the Complaint, there is no evidence that the Complaint was acknowledged in the presence of MST Fort Smith personnel.

9. On 12 July 2004 Respondent was provided a personal copy of the signed Complaint to include page 3. – entitled Respondent's instructions. These rights were explained to Mr. Bayless. He was asked by the IO if he any questions regarding his rights and he indicated verbally that he did not.

ACCEPTED AND INCORPORATED.

10. On 13, July 2004, Mr. Bayless submitted his Answer to the complaint. In this Answer, Mr. Bayless admitted to all "Jurisdictional" and "Factual" allegations. Mr. Bayless also indicated on this answer form that he was not interested in settlement discussions.

ACCEPTED AND INCORPORATED.

11. The subject matter of this hearing and Respondents are properly within the Jurisdiction vested in the United States Coast Guard by 46 USC 7704.

ACCEPTED AND INCORPORATED.

12. The Jurisdictional and Factual Allegations of Use of or addiction to the Use of a Dangerous Drugs against Mr. Bayless are found proved.

ACCEPTED AND INCORPORATED.