

UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY

UNITED STATES COAST GUARD

Complainant

vs.

SEADON EDGE WHITSETT,

Respondent.

Docket Number CG S&R 05-0247

CG Case No. 2336239

DECISION AND ORDER

Issued: December 6, 2005

Issued by: Peter A. Fitzpatrick, Administrative Law Judge

APPEARANCES

FOR THE COAST GUARD

CWO Bernard E. Tufts
CWO Terry G. Roberts
Marine Safety Office Savannah
100 Oglethorpe Ave. Suite 1017
Savannah, GA 31401

FOR THE RESPONDENT

Seadon Edge Whitsett, *Pro Se*

I.

PRELIMINARY STATEMENT

This case began on April 25, 2005 when the Coast Guard filed a Complaint against the Respondent, Seadon Edge Whitsett, under the statutory authority contained in 46 USC 7703 and the regulatory authority in 46 CFR 5.27.¹ On October 9, 2005, an Amended Complaint was served at the hearing and the Coast Guard moved to substitute that Complaint for the original. (Transcript (hereinafter Tr).12-16). That motion was unopposed and granted. (Tr. 15-16). The Amended Complaint involves one of the Respondent's applications for Coast Guard issued credentials referred to in the original Complaint as well as nine of the same Factual Allegations contained in that Complaint. (Tr. 13-16). Also, the Amended Complaint, as with the original Complaint, seeks the revocation of Mr. Whitsett's Merchant Mariner's Document based on the charge of Misconduct. The Amended Complaint, reads in pertinent as follows:

1. Indicated that he had no criminal convictions by checking NO next to the question "Have you ever been convicted by any court – including military court - for an offense other than a minor traffic violation?"
2. Indicated that he had no criminal convictions by checking NO next to the question "Have you ever been convicted of a traffic violation arising in conjunction 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?"
3. Indicated that he had no criminal convictions by checking NO next to the question "Have you ever been convicted of a dangerous drug law of the United States, District of Columbia, or any state, or territory of the United States? (This includes Marijuana.)"
4. On February 23, 1996, respondent was convicted in Chatham County, GA for Driving Under the influence (DUI) and

¹ The original Complaint is included here in attachment A

Habitual Violator.

5. On June 25, 1992, respondent was convicted in Chatham County, GA for driving with License Suspended or Revoked.
6. On December 18, 1990, respondent was convicted in Tybee, GA for Driving Under the Influence (DUI).
7. On November 17, 1988, respondent was convicted in Marietta, GA for Driving Under the Influence (DUI).
8. On February 28, 1985, respondent was convicted for Possession/ Manuf/ Dist etc.-Marijuana.
9. (FRAUD) Respondent wrongfully submitted a fraudulent application to the REC while seeking to upgrade MMD (**REDACTED**), by failing to provide full disclosure to his conviction record as required by 46 CFR 12.02-4(c).

The Respondent admitted all Jurisdictional Allegations of the original Complaint. Also, he admitted all Factual Allegations in that Complaint except Nos. 9 (Fraud) and 10 (“False Info”). That Answer is applied to the Amended Complaint which does not contain Jurisdictional Allegation No.10 (“False Info”). Thus the Respondent denies Jurisdictional Allegation No. 9 (Fraud) on the Amended Complaint.

On May 24, 2005 the case was assigned to this Judge and it was set for hearing on September 14, 2005 at Savannah, GA. On August 12, the Coast Guard sought a continuance of the hearing for approximately thirty days until October 12, 2005. That motion was not opposed and was granted by Order dated September 7, 2005.

The Coast Guard’s Motion for Summary Decision was filed on August 11, 2005 and asserted that the Respondent wrongfully failed to disclose all his prior convictions on the applications. The motion also pointed out that the Respondent admitted all the convictions identified on the Complaint and requested that Mr. Whitsett’s credentials be revoked without a hearing. The Coast Guard asserted that there are no material issues of fact in dispute.

On September 16, 2005 an order denying the Motion for Summary Decision was issued. In sum, that order held that the applicable law required that all reasonable factual inferences at the summary decision stage, which in this case preceded the hearing, must be made in favor of the non-moving party. Matsushita Electric Industrial Co. v. Zenith Radio Corporation, 475 US 574, 587 (1986). In view of the fact that the failure to disclose convictions on a Coast Guard application either could constitute the filing of a fraudulent application or alternatively, one that simply contained false information, which is a lesser included offense and one which may allow a lesser sanction than revocation, the motion was denied.

The hearing convened as scheduled and the Investigating Officer and the Respondent were present. The Coast Guard presented one witness - Ms. Debra Myers, Chief, U.S. Coast Guard Regional Examination Center, Charleston, SC. Additionally ten (10) exhibits were admitted. They are identified on Attachment B. The Respondent testified in his defense but he did not sponsor any other witness or offer any exhibits.

At the conclusion of the case I found that the Coast Guard made out a prima facie case in support of the allegations of the Complaint. See Order dated November 1, 2005. Due to the Respondent's extensive criminal record I concluded that he constituted a danger to life and property at sea and should not be allowed to operate a U.S. vessel under the authority of his Coast Guard credentials. Mr. Whitsett was ordered to surrender his credentials to the Coast Guard immediately.

II.

FINDINGS OF FACT

1. Seadon Edge Whitsett filed an application at the Coast Guard Regional Examination Center, Charleston, SC on May 3, 2002 to obtain an initial Merchant Mariner's Document

(Exhibit 1). A document including the ratings “OS, Wiper, Stew Dept (FL) was issued on July 18, 2002.²

2. About four months later on October 8, 2002 Mr. Whitsett submitted another application to the Coast Guard seeking a raise in grade for the rating “AB-Special.” (Exhibit.2).³ That upgrade was approved and the appropriate Merchant Mariner’s Document was issued on October 21, 2002.

3. Approximately 18 months later, on April 12, 2004 Mr. Whitsett filed an application for the Coast Guard license “Master of Towing 200 Captain 500 Mate Unlimited, Near Coastal.”

4. On all three applications Mr. Whitsett answered “NO” to the following three questions (Exhibits 1 and 2):

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?

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

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

5. On each application Mr. Whitsett signed an acknowledgement that the section of the application containing the three questions above was signed with full understanding that a false statement is grounds for denial of the applications as well as criminal prosecution.

6. On February 23, 1996 Mr. Whitsett was convicted for Driving Under the Influence (DUI) and of being a Habitual Offender by the Superior Court of Chatham County Georgia. (Exhibit 7). On June 25, 1992 Mr. Whitsett was convicted in Chatham County, Georgia for Driving with a Suspended or Revoked License. (Exhibit 4).

² OS=Ordinary Seaman; Stew Dept (FL)= Stewards’ Department (Food Handler)

7. On December 18, 1990 Mr. Whitsett was convicted in the Tybee Island Municipal Court, Georgia for Driving Under the Influence. (Exhibit 4).

8. On August 13, 1988 Mr. Whitsett was convicted by the Municipal Court of Marietta, Georgia of Driving Under the Influence (DUI).

9. On February 28, 1985 Mr. Whitsett was convicted of the offense of Possession /Manufacturer/Distribution/etc. of Marijuana. (Exhibit 4).

10. Mr. Whitsett was convicted on three (3) counts (Speeding, DUI, and Disorderly Conduct) on May 14, 2004 in the Municipal Court of Bloomingdale, Georgia.

III.

CONCLUSIONS OF LAW

1. On October 8, 2002 the Respondent was acting under the authority of his Coast Guard issued Merchant Mariner's Document when he filed an Application for License as an Officer, Staff Officer, or Operator and for Merchant Mariner's Document (CG 719B) for an upgrade of that credential, at the Coast Guard Regional Examination Center, Charleston, SC.

2. The Coast Guard has jurisdiction over the Respondent in the proceeding pursuant to 46 USC 7703 and 46 CFR 5.27.

3. The Respondent fraudulently failed to disclose his numerous criminal convictions on the October 8, 2002 application to the Coast Guard Regional Examination Center, Savannah, Georgia.

4. The Jurisdictional and Factual Allegations of the Amended Complaint are proved (in part) by the Respondent's Answer of Admission and in its entirety by the preponderance of the evidence.

³ AB= Able Bodied Seaman

5. The Respondent's Coast Guard license and document were obtained by a fraudulent application and they are **HEREBY REVOKED**.

IV.

DISCUSSION

1. The Amended Complaint asserts, in pertinent part, that on October 8, 2002 Mr. Whitsett submitted an application to the Coast Guard Regional Examination Center, Charleston, SC, for the purpose of upgrading his Merchant Mariners' Document. That act is alleged to be in violation of 46 USC 7703 and 46 CFR 5.27 because he allegedly wrongfully submitted a fraudulent application by failing to disclose his record of convictions in response to three questions on the application. As stated in the Order dated September 16, 2005, which denied the Coast Guards' Motion for Summary Decision, it is necessary for the Investigating Officer here to show under 46 USC 7703(1)(B), the authorizing statute, that Mr. Whitsett was acting under the authority of his Coast Guard credentials (either a Merchant Mariners Document or License) when the act of misconduct involved was committed. The Coast Guard regulations codified at 46 C.F.R. 5 are entitled "Marine Investigation Regulations-Personnel Action" and establishes policies for administrative actions against mariners' licenses, certificates and documents issued by the Coast Guard. One of those rules is entitled "Acting under authority of license, certificate or documents" and reads in pertinent part as follows (46 CFR 5.57):

(b) A person is considered to be acting under the authority of the license, certificate or document while engaged in official matters regarding the license, certificate or document. This includes, but is not limited to, such acts as applying for renewal of a license, taking examinations for upgrading or endorsements, requesting duplicate or replacement licenses, certificates or documents, or when appearing at a hearing under this part.

The Amended Complaint here asserts that Mr. Whitsett was acting under the authority of his Merchant Mariners' Document on October 8, 2002 when he filed that application to the Coast Guard. The evidence of record reveals that Mr. Whitsett was issued his original Merchant Mariners' Document on July 18, 2002. (Exhibit 1). When he filed the next application about four months later on October 8, 2002 seeking an upgrade of the document to Able Bodied Seaman-Special he already held a Merchant Mariner's Document. 46 CFR 5.57(b) makes it clear that a mariner is considered to be acting under the authority of his document when he or she files an application for an upgrade of that Coast Guard issued credential.

Clearly, this is the case here and Mr. Whitsett was acting under the original Merchant Mariner's Document on October 8, 2002. Thus, the Coast Guard has jurisdiction under 46 USC 7703.

2. Mr. Whitsett admitted in his Answer filed July 14, 2005 that he had the five convictions set out in the original Complaint. The Amended Complaint contained those same convictions. No change was made to the Respondent's original Answer. Additionally, in his Answer to the original Complaint, Mr. Whitsett admitted that he answered "NO" to the three questions on the Coast Guard application forms (CG 719B) including the one submitted October 8, 2002. Again, he did not change his Answer to those Allegations in the Amended Complaint at the hearing.

In any event the evidence submitted at the hearing shows that the Respondent was convicted as charged and did respond "NO" to the three questions on the application involved. Exhibit 4 is the Criminal History Response from Georgia for Seadon Edge Whitsett from the FBI National Crime Information Center. (Exhibit 4, Tr. 55-56). That document reveals that the Respondent has numerous criminal convictions over the period 1985-1996. Among the offenses

identified on that report are the offenses enumerated on the Amended Complaint in this case. Additionally Exhibit 5 here is the Grand Juror Bill of Indictment for the Superior Court of Chatham County, Georgia for Seadon Edge Whitsett charging the offense of Habitual Offender and for Driving Under the Influence. In that case Mr. Whitsett pled Guilty to both counts. He was sentenced for a felony conviction to five years in prison for the Habitual Offender offense, (Count 1) and twelve months in prison for the DUI count (Count 2). Actually, he was incarcerated for thirty days and sentenced to probation with conditions including participation in a substance abuse treatment program for the remainder of the sentence.

Another court document from the Municipal Court of Marietta, Georgia shows the Respondent was convicted of "DUI" on August 13, 1988. (Exhibit 6). There is no dispute on the record therefore that the Respondent was convicted of the offenses described in the Complaint. He admits those convictions and Exhibits 4, 5, and 6 support those factual allegations.

3. The application Mr. Whitsett filed with the Coast Guard Regional Examination Center at Charleston, SC on October 8, 2002 clearly shows that he answered "NO" to the three questions regarding his criminal convictions. Question No. 3 asked him if he had ever been convicted by any court for an offense other than a minor traffic violation. There is no doubt that he had been so convicted as identified on the numerous convictions for Driving Under the Influence set out in the NCIC Report at Exhibit 4.

He also answered "NO" when asked in Question No. 4 if he had ever been convicted of a traffic violation arising in connection with operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance. Exhibits 4, 5, and 6 clearly show he was so convicted on numerous occasions. Moreover, Mr. Whitsett was also convicted in 1988 of

possession of marijuana in Charleston, SC yet he answered “NO” to the question No. 1 which asked if he had ever been convicted of violating a dangerous drug law of a state.

Reviewing this evidence as a whole there is no doubt that the Respondent submitted a fraudulent application to the Coast Guard on October 8, 2002 when he sought an upgrade to his original Merchant Mariner’s Document. Indeed he submitted two other fraudulent applications when he: (1) sought his original Merchant Mariner’s Document May 3, 2002 (Exhibit 1); and (2) when he sought to obtain a Masters’ license on April 12, 2004 (Exhibit 7).

In his defense Mr. Whitsett testified at the hearing that he has been a merchant mariner for “well over twenty years” and that he has been a model employee. (Tr. 70-71). He also testified that for the past ten years he has “tried to pull my life together, work hard, and progress in my work and so, you know, I can have a home, a family and security.” (Tr. 71). Mr. Whitsett also testified, however that his latest DUI conviction was issued on May 5, 2004 or approximately eighteen months before this hearing. That misdemeanor conviction was entered by the Municipal Court of Bloomingdale, Georgia on three counts: Speeding, Driving Under the Influence, and Disorderly Conduct. (Exhibit 10).

The Respondent also claimed that he was told by Coast Guard Regional Examination Center officials at Charleston, SC only to identify those convictions on his driving record going back seven to ten years. (Tr. 31). He pointed out that one official sent him a letter advising him that “a positive hit” came back from the State of Georgia and instructing him to get a copy of his driving record for that period of time. (Tr 32, Exhibit 8). Thus he did not understand that he had to identify any conviction on the Coast Guard application beyond the 7-10 year period. (Tr. 28).

As pointed out at the hearing however, two of the applications involved here (May 3 and October 8, 2002) were filed approximately two years before the letter of June 28, 2004 referred

to by Mr. Whitsett. Apparently that letter was issued in connection with the Respondent's third application to the Regional Examination Center for a Masters' license on April 4, 2004. (Exhibit 7). The letter had nothing to do with the earlier applications and could not have been the basis for the Respondent's alleged misunderstanding of the questions included on the 2002 applications.

Indeed, the Respondent's reliance on the letter of June 28, 2004 is simply misplaced and does not provide any justification for failing to identify his numerous convictions as required on Coast Guard Form 719B. As explained above, those three questions on the application are not limited to a seven to ten year period but ask if the applicant has "ever" been convicted of a DUI offense, a dangerous drug law violation, or an offense other than a minor traffic violation (Exhibit 1).

V.

ORDER

The sanction in this case against Respondent's Coast Guard issued License and Merchant Mariner's Documents must be revocation. The Commandant has held that where it has been proved at a suspension and revocation proceeding that a license has been obtained through fraud, the only appropriate sanction is revocation. Appeal Decision 2613 (SLACK). See also, Appeal Decision 2570 (HARRIS); 2346 (WILLIAMS); 2205 (ROBLES); 2569 (TAYLOR). There can be no doubt here that the Respondent knew of the numerous court convictions where he himself was the defendant and that he knowingly failed to identify those convictions on the applications involved here including the one submitted on October 8, 2002.

In a similar case to that here, the Coast Guard Chief Judge stated in (United States Coast Guard v. Mark Glen Wain, Docket No. CG S&R 03-0586 May 4, 2004, p 15):

When an application is made for Coast Guard credentials, the Coast Guard must rely on the applicant to supply information that is both accurate and truthful in order to effectively evaluate the applicant's character to serve on board a vessel. The fact that Respondent's explanation to the questions in Section III did not include all of his convictions potentially deprived the Coast Guard of its ability to accurately evaluate Respondent's fitness to serve on board a vessel.

The Respondent's application here also deprived the Coast Guard of making an informed determination of his suitability to serve on board U.S. vessels. He wrongfully concealed his long record of criminal convictions for drunk driving and the use of dangerous drugs and obtained his Merchant Mariner's Document and his License through fraud.

Accordingly, **IT IS ORDERED THAT** all Coast Guard issued Licenses, Merchant Mariner's Documents and STCW Certificates issued to Seadon Edge Whitsett are **HEREBY REVOKED** and shall immediately be surrendered (if not already so) to CWO Bernard E. Tuffs or CWO Terry G. Roberts at the Coast Guard Marine Safety Office Savannah, Georgia.

PETER A. FITZPATRICK
Administrative Law Judge
United States Coast Guard

Done and Dated on December 6, 2005 at
Norfolk, Virginia

ATTACHMENT A - ORIGINAL COMPLAINT

ATTACHMENT B - EXHIBITS

Investigating Officers' Exhibits

- IO-1 Application for License as an Officer, Staff Officer or Operator and for Merchant Mariner's Document, dated May 3, 2002
- IO-2 Application for License as an Officer, Staff Officer, or Operator and for Merchant Mariner's Document, dated October 8, 2002
- IO-3 Criminal Convictions, Drug Use, DWIs, ETC
- IO-4 Criminal History Record Response From Georgia
- IO-5 Record of conviction in Superior Court of Chatham County, GA
- IO-6 Traffic Docket – Municipal Court of Marietta
- IO-7 Application for License as an Officer, Staff Officer, or Operator and for Merchant Mariner's Document, dated April 12, 2004
- IO-8 Notification Letter from REC Charleston, dated June 28, 2004
- IO-9 Official Notice – list of Commandant's decisions
- IO-10 Municipal Court of Bloomingdale, GA. Criminal Action No. 58870 , 58871 and 58872A, OFFENSE (s): Speeding, DWI, Disorderly Conduct dated, April 14, 2004

ATTACHMENT C - WITNESSES

Investigating Officers' Witnesses

Debra Myers

Respondent's Witnesses

Seadon Edge Whitsett

ATTACHMENT D

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.