UNITED STATES OF AMERICA

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

UNITED STATES COAST GUARD
Complainant

vs.

RANDY MELTON,
Respondent

Docket Number: 05-0647
CG Case No. 2550376

DECISION AND ORDER

Issued: January 11, 2007

Issued by: Judge Thomas E. P. McElligott, Administrative Law Judge

Appearance:

For the Coast Guard
Robert W. Foster, Senior Investigating Officer
BM1 Carl Jehle, Investigating Officer
United States Coast Guard
Sector Mobile
Investigations Department
Building 101, Brookley Complex
South Broad Street
Mobile, Alabama 36615-1390

For the Respondent
Ronnie G. Penton, Esq.
Law Offices of Ronnie G. Penton
209 Hoppen Place
Bogalusa, LA 70427

I. PRELIMINARY STATEMENT

The United States Coast Guard ("Coast Guard" or "Agency") initiated this administrative action seeking revocation of License Number 1016145 issued to Randy Melton ("Respondent"). This administrative action was brought pursuant to the legal authority contained in 46 U.S.C. § 7703 and its underlying regulations codified at 46 C.F.R. Part 5.

On or about December 12, 2005, the Coast Guard issued and served a Complaint charging Respondent Melton with Misconduct, resulting from a failure to appear for a drug test. In support of the Complaint, the Coast Guard alleged that on November 30, 2005, Respondent wrongfully refused to submit to a required random drug test as ordered to do so by Gulf Coast Maritime Consortium.

On January 2, 2006, Respondent and/or his attorney filed an Answer to the Coast Guard's Complaint and requested a hearing before an Administrative Law Judge ("ALJ"). More specifically, Respondent denied jurisdictional allegation number three, which stated he acted under the authority of his license at the time of the events in question. Respondent and Respondent's attorney also denied the factual allegations and asserted six (6) affirmative defenses as follows: 1) lack of notice; 2) violation of due process, substantive and procedural; 3) Respondent was not acting under authority of his license, certification or any document at the time of the alleged misconduct; 4) Respondent did not commit any act of misconduct; 5) Respondent had not violated any law or regulation intended to promote maritime safety or to protect the navigable waters; and 6) Commander's complaint was error or arbitrary and should be dismissed.

On January 4, 2006, this case was assigned to the undersigned judge for a trial type hearing and adjudication. The hearing in this matter was convened on August 3, 2006 at the U.S.

District Court in Mobile, Alabama before the Thomas E. P. McElligott, Administrative Law Judge of the United States Coast Guard.

The hearing was conducted in accordance with the U.S. Administrative Procedure Act as amended and codified at 5 U.S.C. §§ 551-559 and the Coast Guard procedural regulations located at 33 C.F.R. Part 20. Senior Investigating Officer, Robert Foster, and Bosun Mate and First Class Petty Officer, Carl Jehl represented the United States Coast Guard at the hearing. Respondent Melton also appeared at the hearing defended by Respondent's attorney, Mr. Ronnie Penton, of the Law Offices of Ronnie G. Penton.

The Coast Guard introduced nine (9) exhibits that were admitted into evidence and presented testimony from only one witness. While Respondent chose not to introduce any original exhibits, he selected to join in offering into evidence the exhibits offered by the Agency. The witness and exhibits are listed in Appendix A.

After careful review of the entire record in this matter, I find the Investigating Officer failed to establish or prove by a preponderance of reliable and credible evidence that Respondent Melton was properly notified and committed misconduct on November 30, 2005 when he did not appear for a drug test.

II. FINDINGS OF FACT

The Findings of Fact are based on a thorough and careful analysis of all the documentary evidence, the testimony of witnesses, and the entire record considered as a whole.

1. On November 30, 2005, Respondent Randy Melton did not appear to give a urine sample for a urinalysis after this one witness randomly selected him to take a drug test within 24 hours of receiving notice. *(Entire Record).*

2. At all relevant times mentioned herein and specifically on or about November 30, 2005, Respondent Melton was the holder of U.S. Coast Guard License No. 1016145. *(Agency Exhibit 1 and 2).*

3. In November, 2005, Respondent Melton was a member of the Gulf Coast Maritime Consortium ("GCMC" or "Consortium"), which randomly selects mariners for chemical testing of dangerous drugs. *(Transcript ("Tr.") 26-28, 39-40, 58).*

4. To become a member of the Consortium, a mariner must fill out an application and take a pre-enrollment drug test. If the result of the test is negative for drugs, the mariner is able to join the Consortium. *(Tr. 25).*

5. At the time of these events, only one person, Ms. Rachael Woodruff owned and operated GCMC. *(Tr. 21-22).* Ms. Woodruff neither formed nor purchased the Consortium. Rather, the business was given to her from her father, Dr. Larry Woodruff, who initially operated the Consortium from his main source of business, his chiropractic clinic called the Gulf Coast Spinal Center. *(Tr. 22, 38, 42, 69-70).*

6. Although the Consortium and the chiropractic clinic were separate businesses at the time of these events, they shared the same location and address. *(Tr. 41).*

7. Similarly, GCMC is affiliated with another company known as Gulf Coast Diagnostics. *(Tr. 40).* Initially, GCMC was part of Gulf Coast Diagnostics and located at the same address. *(Tr. 18-19).* Subsequently, GCMC changed its name and became Gulf Coast Diagnostics while retaining its location and business address. *(Tr. 18-19, 39).* At all relevant times, both company names are used interchangeably to describe the same chiropractic clinic and consortium. *(Entire Record).*

8. As the sole owner or employee at GCMC, Ms. Woodruff's responsibilities included overseeing the random selection program, properly notifying mariners who are selected to take a drug test, urine collection, and bookkeeping. *(Tr. 43, 56-57).*

9. GCMC uses a computer system known as DrugPak to randomly select which mariners should appear for drug testing. *(Tr. 25-26, 90).* After the mariners' names are entered into the computer's database, DrugPak randomly selects individuals from a pool. *(Tr. 25-26, 28).*

10. Once a name is selected, Ms. Woodruff is supposed to notify the person by certified mail. However, as her own chosen alternative means of notification, she occasionally decides to just or merely telephones the individual mariner. *(Tr. 28).*

11. On October 19, 2005, the DrugPak program randomly selected Respondent Melton for a drug screen. *(Tr. 7-8, 70).* On November 8, 2005, Ms. Woodruff sent notification to Respondent by certified mail, return receipt. *(Tr. 70; Agency Exhibit 5).* The letter informed Respondent that he had been randomly selected and needed to report for drug testing within twenty-four hours of receiving the letter. *(Tr. 7, 70).*

12. The letter was returned, marked "undeliverable as forwarding address order expired." *(Tr. 8, 70; Agency Exhibit 5).*

13. Members of the Consortium are required to notify the GCMC when their addresses and/or phone numbers change. *(Tr. 28).*

14. Respondent previously filed his renewal application with GCMC on March 10, 2005, in which he included his change of address and contact information. *(Tr. 26-27, 58-59; Agency Exhibit 7).* However, Ms. Woodruff had completely failed to enter Respondent's current information into the Consortium's database and records. *(Tr. 29, 60-61).*

15. When the certified letter was returned not delivered to Respondent, Ms. Woodruff retrieved Respondent's telephone number from her records. The number provided on Respondent's renewal application was for his cellular telephone. *(Tr. 29-31).*

16. On November 29, 2005, Ms. Woodruff telephoned Respondent at approximately 12:30 p.m., Central Standard Time. The conversation lasted one minute and thirty-five seconds. *(Tr. 30-32, 77; Agency Exhibit 3).*

17. During the conversation, Ms. Woodruff explained she was calling from GCMC and asked Respondent to verify his current address. *(Tr. 77).*

18. Ms. Woodruff claims she fully informed Respondent he had been randomly selected to take a drug test at her office by 6:00 p.m. the next day. *(Tr. 33, 84).*

19. After Respondent verified his contact information, he said "ok" then hung up the phone. *(Tr. 78).*

20. Ms. Woodruff did not provide the address of where Respondent should take the drug test. She assumed Respondent knew the location of her office because he mailed his renewal form to the same address every year. *(Tr. 84, 93).*

21. On November, 30 2005, Respondent Melton failed to appear at Ms. Woodruff's office to take the drug test. *(Tr. 34).*

22. On December 2, 2005, Ms. Woodruff sent a facsimile to the U.S. Coast Guard, notifying the Agency of her claims of Respondent's failure to test. *(Tr. 34, 87; Agency Exhibit 4).*

23. Approximately one month later, on December 31, 2005, Ms. Woodruff decided and abandoned all work associated with the Consortium. According to Ms. Woodruff, running the Consortium was "just a pain in the butt." She further expressed that "it was a pain dealing with the federal regulations, nor was it financially worth it." *(Tr. 45-46, 56-57).*

24. As a result, Gulf Coast Diagnostics is no longer a legal entity. *(Tr. 39).*

III. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The subject matter of this hearing is properly within the jurisdiction of the United States Coast Guard and the Administrative Law Judge in accordance with 46 U.S.C. § 7703; 46 C.F.R. Part 5, and 33 C.F.R. Part 20.
2. At all relevant times, Respondent Melton was the holder of U.S. Coast Guard License No. 1016145.
3. Coast Guard failed to establish or prove by a preponderance of reliable and credible evidence that Respondent Melton acted under the authority of his license at the time of the alleged events.
4. Respondent Melton did not receive proper notice that he was randomly selected to take a drug test.
5. The Investigating Officer failed to establish or prove by a preponderance of reliable and credible evidence that Respondent Melton committed misconduct on November 30, 2005 when he failed to submit to a requested drug test.

IV. DISCUSSION

The purpose of a suspension and revocation proceeding is to protect lives and properties at sea against actual and potential danger. See 46 U.S.C. § 7701. If it is shown that a holder of a license has committed an act of misconduct while acting under the authority of that license, the license may be suspended or revoked. See 46 U.S.C. §§ 7701(a) and (b); 46 U.S.C. § 7703(1)(B); and 46 C.F.R. § 5.569.

In suspension and revocation proceedings, the burden of proof is on the Coast Guard to establish a prima facie case of misconduct or negligence by a preponderance of the evidence. See 5 U.S.C. § 556(d); 33 C.F.R. §§ 20.701-20.702; see also Appeal Decision 2485 (Yates). Misconduct is defined in 46 C.F.R. § 5.27 as "human behavior which violates some formal, duly established rule," such as those found in the common law, the general maritime law, a ship's regulation or order, or shipping articles. It is an act that is forbidden or a failure to do what is required. See 46 C.F.R. § 5.27. In the absence of such a rule, misconduct is the human behavior that a reasonable person would consider to constitute a failure to conform to the standard of conduct that is required in light of all the existing facts and circumstances. See Appeal Decision 2152 (MAGIE).

To meet its burden of proof, the Agency must show the act of misconduct occurred while Respondent was acting under the authority of his license. See 46 U.S.C. § 7703(1)(B). A person is considered to be acting under the authority of the license when he is employed in the service of a vessel or when holding the license is required by law, regulation, or by an employer as a condition for employment. See 46 C.F.R. §§ 5.57(a)(1) and (2). In the alternative, a person is considered to be acting under the authority of the license while engaged in official matters regarding the license. See 46 C.F.R. § 5.57(b). This includes, but is not limited to, such acts as applying for renewal of a license, taking examinations for upgrading or endorsements, or requesting replacement licenses. See 46 C.F.R. § 5.57(b).

If none of the above criteria is met, the Coast Guard has no jurisdiction over the offense for suspension and revocation proceedings. See Appeal Decision 2620 (COX). Moreover, jurisdiction must be affirmatively shown and will not be presumed. See Appeal Decision 2568 (SANCHEZ); see also Appeal Decision 2025 (ARMSTRONG). As stated in numerous

Commandant Decisions on Appeal, jurisdiction is critical to the validity of a proceeding and when jurisdiction, or proof thereof, is lacking, dismissal is required. See Appeal Decision 2656 (JORDAN); see also Appeal Decision 2104 (BENSON); Appeal Decision 2094 (MILLER); Appeal Decision 2090 (LONGINO).

In this case, the Coast Guard charged Respondent with misconduct for failing to report to take a random drug test on November, 30, 2005. However, a full review of the record reveals insufficient evidence to support a finding that Respondent was properly notified and acted under the authority of his license at the time the alleged act occurred.

In the majority of refusal to test cases, mariners were employed in the service of a vessel and their license was required either by law or by their employer as a condition for employment. In addition, the order to take a drug test came from their marine or maritime employer or a person of higher authority. See Appeal Decision 2617 (LAMOND)(Appellant was serving aboard a vessel as quartermaster when he refused a direct order by his vessel's captain to take a chemical test); Appeal Decision 2615 (DALE)(Appellant was assigned to sail aboard a vessel but refused to submit to a random urinalysis ordered by the vessel's captain); Appeal Decision 2625 (ROBERTSON)(Appellant served as operator of a towing vessel that was damaged and in danger of sinking. The vice president of the corporation employing Appellant ordered a reasonable cause drug test of the vessel's crew, and Appellant refused to test); Appeal Decision 2641 (JONES)(Appellant refused to take a random drug test ordered by the marine corporation that chartered all vessels owned and operated by his direct employer).

In at least one refusal to test case involving a consortium, a third party administrator was used in lieu of an employer to coordinate drug testing services for mariners not employed in the service of a vessel. See USCG v. Moore, 2003 USCG ALJ 5. In the Moore case, the Coast

Guard established the consortium was comprised of self-employed charter boat captains that joined together and were subject to U.S. Department of Transportation ("DOT") drug and alcohol testing. See Id. In turn, a third party entity, known as MDC, performed drug screens and random testing of the consortium members. See Id. Moreover, written notification explaining MDC's drug testing policies was provided to the members at meetings, by mail, and copies were available at MDC's office. In addition, pamphlets entitled "Random Drug Testing" and "Policy" were distributed by MDC to consortium members summarizing the federal rules and regulations governing random drug testing requirements. See Moore at 6.

Here, the Investigating Officer proved only that Respondent holds a license and that Respondent was a member of the Consortium GCMC when he was randomly selected to take a drug test.[1] The Agency needed to go further to show that because Respondent was a member of the Consortium he was, in turn, subject to random drug testing. In particular, no explanation was provided as to what is the purpose of the Consortium, how does it function, does it function similarly to an employer who coordinates drug testing services, what duties does it perform, who are the members that comprise the Consortium and why do they join. Similarly, the record was devoid of details pertaining to Respondent Melton's employment. For example, was he a self-employed mariner or an owner/operator of a vessel? Likewise, the record failed to establish whether the Consortium provided proper and adequate notification explaining its drug testing policy to its members, including the Respondent. Most notably, there is no indication of what Respondent expected or agreed to perform by becoming a member of the Consortium.

[1] The Agency did not enter into evidence a copy of Respondent Melton's license. However, Respondent admitted to holding a Coast Guard License in his Answer to the Agency Complaint, filed on January 2, 2006.

In the present case, the Agency provided testimony from only one witness, Ms. Rachael Woodruff, the claimed owner of the Consortium GCMC. Regarding the Consortium's membership, Ms. Woodruff explained that to become a member, a mariner simply needs to fill out an application and take a pre-enrollment drug test. If the test is negative for drugs, the mariner may join the Consortium. *(Tr. 25)*. In an unconnected statement, Ms. Woodruff explained that the Consortium uses a computer system known as DrugPak to randomly select mariners for drug testing. *(Tr. 25-26, 90)*. As it stands, these facts alone are insufficient to establish jurisdiction.

Even if the Coast Guard successfully proved jurisdiction, the record would not support a conclusion that Respondent committed an act of misconduct when he failed to appear for a drug test on November 30, 2005. Both the material facts and law were highly contested in this case. In particular, the following issue was raised and will be addressed in further detail.

I. Did Respondent Receive Proper Notification that He was Randomly Selected to Take a Drug Test.

For the reasons stated herein, Respondent is not liable for not appearing for a random drug test on November 30, 2005.

I. Respondent Melton Did Not Receive Proper Notice or Notification from Ms. Woodruff that He was Randomly Selected to Take a Drug Test.

The Agency alleges Respondent Melton failed to appear for a urine test after he was directed to do so by Ms. Woodruff and her Gulf Coast Maritime Consortium. In particular, the Agency contends that on November 29, 2005, Ms. Woodruff telephoned Respondent on his cellular phone and told him he had been randomly selected for a drug test. According to the Agency, Ms. Woodruff instructed Respondent to come into her office by 6:00 p.m. the next day. The Coast Guard argues that Respondent understood these instructions and agreed to take the

urinalysis. However, Respondent did not appear the following day to provide a urine sample and, thereby, failed to test.

In opposition, Respondent contends he never received proper notification. In his pre-hearing brief, Respondent confirms he spoke with Ms. Woodruff on November 29, 2005.[2] However, he claims the conversation was limited to a confirmation of his current address. According to Respondent, Ms. Woodruff neither informed him of the drug test selection, nor instructed him to appear for the test the next day. In turn, Respondent argues he did not refuse to test in violation of any federal regulation, statute, or rule.

Required chemical testing of merchant marine personnel for drug use is governed by 46 C.F.R. Part 16. The rules and regulations are preventative in nature for the purpose of reducing or eliminating the use of intoxicants at work and provide a drug-free, safe work environment for all mariners. See 46 C.F.R. § 16.101(a); see also Appeal Decision 2542 (DEFORGE). A mariner's refusal to submit to a chemical test for dangerous drugs raises serious doubt of the individual's ability to perform safely and competently in the future. See Appeal Decision 2624 (DOWNS).

Refusal to submit to a drug test is defined quite simply as, "you refused to take a drug test as set out in 49 C.F.R. § 40.191." See 46 C.F.R. § 16.105. In turn, examination of 49 C.F.R. § 40.191 provides that refusal to take a drug test occurs when an employee fails to appear for any test *after being properly directed to do so* by the employer. See 49 C.F.R. § 40.191 *(emphasis added)*. Moreover, this includes the failure of an employee (including an owner-operator) to

[2] In compliance with the judge's request to file opening statements, Respondent's attorney prescribed proposed facts and legal arguments in an opening statement, filed on July 30, 2006.

appear for a test when properly notified and called by a Consortium/Third-Party Administrator. See 49 C.F.R. § 40.191(a)(1).

As provided in the applicable rules or regulations, it must be proven that the employer provided proper and adequate notice to this mariner before a mariner is liable for failing to appear for a drug test. See 49 C.F.R. § 40.191(a)(1). However, as long as an employer's policy with respect to notification is in accord with the applicable DOT and Coast Guard regulations, the form and manner of notification may be left to the employer's discretion. See Appeal Decision 2652 (MOORE).

In this case, the only evidence of notification came from the testimony of Ms. Woodruff, the owner of the Consortium GCMC. In particular, Ms. Woodruff testified she initially telephoned Respondent Melton to verify his current address. Ms. Woodruff stated that after Respondent confirmed his contact information, she informed him that he had been randomly selected to take a drug test. *(Tr. 33, 70, 84)*. Ms. Woodruff additionally testified that she instructed Respondent to show up at her office by 6:00 p.m. the next day to provide a urine sample. *(Tr. 33, 84)*. According to Ms. Woodruff, Respondent replied, "ok" then hung up the telephone. *(Tr. 33, 78)*. Although the Coast Guard presented no further evidence detailing the conversation between Respondent and Ms. Woodruff, I am not persuaded by Ms. Woodruff's testimony. Her credibility leaves much to be desired.

It is well established that an Administrative Law Judge (ALJ) is the finder of facts; therefore, witness credibility and assessment of evidence is determined by the presiding ALJ. See Appeal Decision 2633 (MERRILL); see also Appeal Decision 2632 (WHITE); Appeal Decision 2116 (BAGGETT). There is longstanding precedence in these suspension and revocation proceedings that the ALJ's findings of fact are upheld unless they are shown or

proven to be arbitrary and capricious or clearly erroneous. See Appeal Decision 2227(MANDLY). The rational for this rule is that the fact-finder can be influenced as informed by the demeanor of the witnesses, their tone of voice, body language and other matters that are not captured within the pages of a cold hearing transcript or record. See Appeal Decision 2616 (BYNES). In short, the ALJ is free to accept or reject the testimony of any witness so long as his final decision is supported by substantial evidence. See Appeal Decision 1952 (AXEL); see also Appeal Decision 1958 (NORTON). Upon considering the totality of the evidence, including the credibility and demeanor of the witness and her testimony, I am not convinced Respondent Melton received proper notification that he was selected to take a drug test.

While either a letter or a telephone call from the Consortium is an acceptable form of notification, there must be adequate proof that notice was properly conveyed. For example, when the Consortium notifies a mariner by letter, the letter is typically sent by certified mail, return receipt. This method establishes whether or not the letter was successfully delivered and received. In turn, the return receipt signed and dated by the person who receives it serves as proof of notification.

In this case, however, Respondent never received the initial letter because Ms. Woodruff sent it to Respondent's wrong old address. *(Tr. 8, 29, 60-61, 70; Agency Exhibit 5).* Instead, the letter was returned, marked "undeliverable as forwarding address order expired." *(Tr. 8, 70; Agency Exhibit 5).* When Ms. Woodruff located Respondent's current address in her database, she telephoned him to verify the information was correct. However, once Ms. Woodruff obtained the correct information, she failed to resend the certified letter with its return receipt. Rather, Ms. Woodruff claims she simply informed Respondent over the telephone that he was

selected to take a drug test. *(Tr. 33, 84)*. Yet, there is no creditable and substantial evidence in the record of what information was actually conveyed to Respondent.

The only clear evidence in the record is that Ms. Woodruff telephoned Respondent's cellular phone on November 29, 2005 and that the conversation lasted one minute and thirty-five seconds. While Respondent may have verified his current address, this does not indicate whether additional information regarding a drug test was adequately conveyed. Similarly, even if I find that Respondent replied, "ok" at the end of the conversation, it is not evident as to what Respondent was referring. For example, was it an agreement to test or was it an acknowledgement that the conversation was over?

Moreover, it is not enough that Ms. Woodruff claims she clearly heard and understood Respondent on her end of the telephone. The reception experienced by a person at one end of a telephone line is not sufficient proof that communication was successfully conveyed to the other person on the other end. This is particularly true in light of the fact that two people engaged in a telephone conversation are in different locations and their individual reception may be effected differently by weather conditions, electrical interference, and/or even background noise.

Furthermore, the lack of details conveyed by Ms. Woodruff to Respondent regarding the exact location and name of the facility providing the drug test is questionable. More specifically, Ms. Woodruff admitted she did not provide a specific address or location. Rather, Ms. Woodruff simply told Respondent to "show up at her office by 6:00 p.m. the next day." *(Tr. 83-84, 94)*. According to Ms. Woodruff, "if Respondent had a question, then he needed to ask." *(Tr. 84)*. Ms. Woodruff's curt instructions are unsettling in light of the fact that the Consortium operated out of her father's chiropractic clinic and only recently changed its name from Gulf Coast Maritime Consortium to Gulf Coast Diagnostics. *(Tr. 18-19, 39, 40-41)*. In turn, Ms. Woodruff's

testimony that Respondent did not ask any questions when told to appear for a drug test is suspect.

Finally, it is important to note that the events in this case initiated with Ms. Woodruff's failure to send the certified letter with a return receipt to the Respondent's correct address. In fact, there are numerous examples of Ms. Woodruff's indifference to carefully and properly completing her duties as the Consortium's administrator with competence and accuracy. Of particular concern is Ms. Woodruff's negligence in updating her database with the Consortium members' current addresses. Although Respondent included a change of address on his renewal application form, Ms. Woodruff left the application in a stack of papers for over eight months. *(Tr. 26-27, 58-61; Agency Exhibit 7).* As a direct result, she mailed the certified letter to Respondent's old wrong address. Consequently, Respondent never received the initial written notification that he was randomly selected by her to take a drug test. Any follow-up effort by Ms. Woodruff to notify Respondent should have contained the equivalent level of proof such as a certified letter, return receipt. Such efforts might include recording and/or transcribing the telephone conversation or mailing a supplemental certified letter, with return receipt, to Respondent's current address.

Suffice-it-to-say, I find the credibility of this witness minimal. More importantly, Ms. Woodruff's testimony is inadequate to establish whether the necessary information and notice was conveyed to Respondent in the one minute, thirty-five second telephone conversation. Without proper notification, Respondent Melton did not unlawfully fail to take a random drug test.

V. CONCLUSION

Based on the record developed in this proceeding, the Agency failed to prove by a preponderance of reliable and credible evidence that Respondent wrongfully refused to submit to a required random drug test as improperly ordered to do by Ms. Woodruff of the Gulf Coast Maritime Consortium.

WHEREFORE,

VI. ORDER

IT IS HEREBY ORDERED that the Complaint against Respondent Randy Melton is DISMISSED with preclusion against renewal.

Please be advised that any party has the right to appeal, the procedure for which is set forth in 33 C.F.R. §§ 20.1001-20.1003. (Attachment A).

Thomas E. P. McElligott

THOMAS E. P. MCELLIGOTT
Administrative Law Judge
U.S. Coast Guard

Dated this 11th day of January, 2007
Houston, Texas

APPENDIX A

UNITED STATES COAST GUARD v. RANDY MELTON
DOCKET NUMBER: 05-0647
CASE NUMBER: 2548968

LIST OF WITNESSES AND EXHIBITS

INVESTIGATING OFFICER (IO) EXHIBITS

1. Complaint issued against Respondent Randy Melton (introduced and accepted as IO Exhibit 1)

2. Answer filed by Respondent Randy Melton (introduced and accepted as IO Exhibit 2)

3. Telephone records from Network Telephone (introduced and accepted as IO Exhibit 3)

4. Letter from Gulf Coast Maritime Consortium to Senior Investigating Officer, dated December 2, 2005 (introduced and accepted as IO Exhibit 4)

5. Letter from Gulf Coast Maritime Consortium to Randy Melton, dated November 8, 2005 (introduced and accepted as IO Exhibit 5)

6. Mailing envelope marked "undeliverable as addressed forwarding order expired" (introduced and accepted as IO Exhibit 5C)

7. Hand written note detailing conversation with Randy Melton (introduced and accepted as IO Exhibit 6)

8. 2005 Renewal form from Randy Melton (introduced and accepted as IO Exhibit 7)

9. Maritime Consortium Program Handbook (introduced and accepted as IO Exhibit 8)

INVESTIGATING OFFICER (IO) WITNESS LIST

1. Ms. Rachael Woodruff

ATTACHMENT A

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CODE OF FEDERAL REGULATIONS
PART 20 RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR FORMAL ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD
SUBPART J - APPEALS

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.