

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

UNITED STATES COAST GUARD

Complainant

vs.

ROBERT MARTIN LARSON, JR.

Respondent.

Docket Number: CG S&R 05-0486
CG Case No. 2455787

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DECISION AND ORDER

Issued: July 16, 2007

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

Appearances:

Investigating Officers

LT John Luff and
CWO John Fayard
U.S. Coast Guard Marine Safety Unit
800 David Drive, Room 232
Morgan City, Louisiana 70380
For the Coast Guard

Larry P. Boudreaux, Esq.
409 Green Street
P.O. Box 650
Thibodaux, Louisiana 70301
For the Respondent

PRELIMINARY STATEMENT

In the discharge of its duty to promote the safety of lives and properties at sea, in ports and waterways, the United States Coast Guard Investigating Officers ("IOs") initiated this administrative action. They were requesting a trial-type hearing before and by a U.S. Administrative Law Judge and seeking Revocation of the Coast Guard issued Merchant Mariner's License and Merchant Mariner's Document ("MMD") issued to Robert Martin Larson, Jr., the Respondent herein ("Larson" or "Respondent"). This action was brought pursuant to the legal authority contained in 46 U.S. Code ("USC") 7703 and the proceedings were conducted in accordance with the procedural guidelines at the U.S. Administrative Procedure Act, 5 USC 551-559, 46 Code of Federal Regulations ("CFR") Part 5 and 33 CFR Part 20. The Investigating Officer's ("IO's") motion to amend the Complaint was granted.

The Coast Guard IOs filed and served personally on Respondent the original Complaint, via Certified Mail, Return Receipt, on or about August 24, 2005. The Complaint was against Respondent's Coast Guard issued License and Merchant Mariner's Document, alleging Respondent committed one count of Misconduct by being intoxicated in violation of his employer's, Kevin Gros Marine, Inc., safe work practices and also jumping the fence at the Louisiana Offshore Oil Port ("LOOP") after Respondent was refused admission by a guard due to his intoxication. The IOs originally requested a sanction of five (5) months outright suspension of Respondent's Coast Guard license and document for only those alleged violations at the LOOP.

Respondent's attorney, Larry P. Boudreaux, requested and was granted an additional thirty (30) days to file an Answer to the original Complaint. He did this on or about November 21, 2005. Respondent's attorney filed his Answer on or about January 9, 2006 to the original

Complaint, admitting the jurisdictional allegations but denying all of the factual allegations. On June 5, 2006, the hearing was scheduled by and before Thomas E. P. McElligott, a U.S. Administrative Law Judge (“ALJ”) deciding Coast Guard cases, to commence on September 26, 2006, in the trial-type hearing room at the Marine Safety Office, in Morgan City, Louisiana.

The Coast Guard served on Respondent and Respondent’s attorney and filed an Amended Complaint on or about June 13, 2006. The Amended Complaint, with the concurrence of the ALJ, superseded the original Complaint. The Amended Complaint contained a total of three (3) counts or charges; two (2) counts under 46 CFR 5.27, alleging Misconduct and a third count alleging conviction under the U.S. National Driver Register Act, 46 USC 7703(3).

Under the first Misconduct charge, the Coast Guard alleged in the Amended Complaint that on September 13, 2003, on Respondent’s license and MMD renewal application filed with the U.S. Coast Guard’s Regional Examination Center, completed and signed by Respondent, the Respondent failed to disclose previous Respondent’s drug use.

The second Misconduct charge again alleged the July 30, 2005, alcohol use and the LOOP fence jumping incidents. The Amended Complaint also alleged a Driving Under the Influence (“DUI”) conviction of Respondent on or about October 31, 2005, by a state, city or county criminal court.

The Investigating Officers sought Revocation of the Respondent’s U.S. Coast Guard Merchant Mariner’s License and his U.S. Coast Guard Merchant Mariner’s Document in the Amended Complaint under 46 USC 7703.

This matter proceeded to a trial-type hearing at the Marine Safety Unit trial-type hearing room, in Morgan City, Louisiana, on September 26, 2006, before Thomas E. P. McElligott, U.S. Administrative Law Judge. The Respondent's attorney, the Respondent and the Investigating Officers were present throughout the hearing. Both sides made opening statements summarizing what they intended to show occurred in these matters. The Investigating Officers offered six (6) documentary exhibits, which were admitted into evidence by the undersigned Judge and three (3) witnesses who testified under oath, one of whom testified via telephonic testimony in accordance with 33 CFR Part 20.707. The Respondent through his attorney offered nine (9) exhibits and two (2) witnesses. The Respondent's nine (9) exhibits were admitted into evidence by the undersigned Judge, and one (1) Respondent's character witness. The Respondent was also called to testify under oath by his attorney. The Investigating Officers produced three (3) witnesses. There were a total of five (5) witnesses testifying under oath in this trial-type hearing and the undersigned admitted fifteen (15) of the offered exhibits into evidence.

FINDINGS OF FACT

The Findings of Fact are based upon a thorough and careful analysis of the documentary evidence, the testimonies of witnesses under oath and the entire hearing record considered as a whole, as well as the applicable laws.

1. The Respondent was issued by the U.S. Coast Guard his original 1600 Gross Tons ("GT") Merchant Mariner Mate's License #842104 on or about October 23, 1997, having an expiration date of October 23, 2002. On October 31, 2003, the Respondent received from the U.S. Coast Guard his second issue of the 1600 GT Mate's License, Serial #1084482, having an expiration date of October 31, 2008. (IO Exhibit #1).

2. The Respondent was issued his original Merchant Mariner's Document (MMD) on or about August 5, 1997. On October 31, 2003, the Respondent was issued his second MMD, Serial Number 006849 and having an expiration date of October 31, 2008. (IO Exhibit #1).
3. On March 21, 2002, the Respondent's urine tested positive for use of the dangerous drug cocaine after a random chemical test by a certified laboratory of Respondent's urine specimen and confirmed by a Medical Review Officer. (IO Exhibit #2).
4. The Respondent admitted to this drug use and entered and later completed a drug cure program as part of a Suspension and Revocation Consent Agreement between Respondent and some other Coast Guard IOs, on or about April 11, 2002. (IO Exhibit #3).
5. At the Coast Guard Regional Examination Center at the port of Houston, Texas, on September 13, 2003, during the process of renewing his license, the Respondent completed, signed and certified that all the information on his Coast Guard issued credentials renewal application was true and correct. (IO Exhibit #1).
6. At the Coast Guard Regional Examination Center in Houston, Texas, during the process of renewing Respondent's Coast Guard license, the Respondent wrote and signed that he had never been a user of a dangerous drug. He wrote this and signed it on or about September 13, 2003. (IO Exhibit #1). This was on the U.S. Coast Guard's renewal application form that Respondent completed, signed and filed with the Coast Guard at its Regional Examination Center.
7. The Respondent also pled no contest to the offense of *Driving While Intoxicated – Subsequent*, on October 31, 2005. (IO Exhibit #4).

8. The Respondent was employed by Kevin Gros Marine, Inc., on or about July 30, 2005, as the master or captain of the Offshore Supply Vessel SEA BROOKE. (Hearing transcripts beginning at page 54).
9. Respondent as the captain of the SEA BROOKE was required by law to have a Coast Guard issued merchant mariner's captain's or master's license. (Transcripts beginning at page 54).
10. Respondent's maritime employer, Kevin Gros Marine, Inc. had a zero tolerance drug and alcohol policy in force on July 30, 2005. The Respondent was made aware of that policy around the time Respondent was first employed by this maritime corporation or company. (IO Exhibit #5).
11. The Respondent was detained by the Greater Lafourche Harbor Police Department, on July 30, 2005, in Louisiana. He was issued a police summons for criminal trespass and disturbing the peace by public intoxication on or about that date. (IO Exhibit #6). This was the date involving Respondent's intoxication and the climbing of the LOOP fence to get back to the vessel Respondent was assigned and hired for. Respondent and his two (2) crew members together left the vessel docked at a LOOP area dock and went shopping and drinking alcoholic beverages ashore.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The U.S. Coast Guard had and has jurisdiction over both the Respondent's Coast Guard issued merchant marine license and his MMD. Respondent applied for and filed for the renewal of those two credentials at the Coast Guard Regional Examination Center in

Houston, Texas, on or about September 13, 2003. 46 CFR 5.57(b) states that a person is considered to be acting under authority of the license, certificate or document while engaged in official matters regarding the license, certificate or document. The renewal of these credentials is specifically cited as an official matter in that regulation, 49 CFR 5.57 (b).

2. The Respondent used a dangerous drug, to wit: cocaine, in March of 2002. A “dangerous drug” is defined as a narcotic drug, a controlled substance, or a controlled substance analog (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970). 46 U.S. Code 2101(8)(a). A “narcotic drug” includes “[c]oca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine of their salts have been removed. [The term also includes] [c]ocaine, its salts, optical and geometric isomers, and salts of isomers.” 21 U.S. Code 802(17).
3. Respondent on his signed, completed and filed with the Coast Guard renewal application, on September 13, 2003, stated and wrote on page 2, Section III, Respondent’s answer was “No” to the question, “Have you ever been a user of/or addicted to a dangerous drug, including marijuana?”
4. The U.S. Coast Guard had and has jurisdiction over both the Respondent’s U.S. Coast Guard issued merchant mariner license and his MMD, on Count 2, Conviction under the National Driver Register Act. 46 U.S. Code 7703(3) required merely that the Respondent hold the credentials and not that he be acting under the authority of those credentials. A plea of “No Contest” amounts to a conviction for Coast Guard credentialing purposes. See the definition of “Conviction” under 46 CFR 10.103 for licenses and for documents

see 46 CFR 12.01-6. *Driving While Intoxicated – Subsequent* is within the purview of the U.S. National Driver Register Act. Appeal Decision 2613 (SLACK) (1999).

5. The U.S. Coast Guard had and has jurisdiction over the third factual allegation, the LOOP fence jumping incident involving intoxication of Respondent because the Respondent, despite going ashore or away from his assigned vessel, was acting under the authority of his license. Though not necessarily controlling, 33 CFR 95.015(b) is persuasive on this issue:

For purposes of this part [intoxicated operation], an individual is considered to be operating a vessel when: The individual is a crewmember (including a licensed individual), pilot or watch stander not a regular member of the crew, of a vessel other than a recreational vessel.

6. See also in Appeal Decision Number 2624 (DOWNS) Year Decided (1999). In that case the Commandant decided on appeal that a master or captain was acting under the authority of his license, and therefore subject to revocation, despite the fact that he had not been onboard the vessel for 12 hours when he refused a reasonable suspicion chemical drug and/or alcohol test. Respondent's employers conferred and decided based upon telephone notification that the Respondent Downs had been found by police to be intoxicated and in possession of a "crack pipe," reasonable cause existed to obtain a urine sample from the Respondent for the purpose of testing him for drug usage by his maritime employers.

DISCUSSION

A major purpose of Coast Guard suspension and revocation trial-type hearings is to promote safety of lives and properties at sea, in ports and related waterways. 46 U.S. Code 7701.

These hearings are remedial in nature and do not affix criminal or civil liability. See 46 CFR 5.501; Appeal Decision 2639 (HAUCK) (2003).

The U.S. Administrative Procedure Act (“APA”), 5 U.S. Code 551-559, applies to this Coast Guard suspension and revocation trial-type hearings before a U.S. Administrative Law Judge. 46 USC 7702(a). The APA 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. Code 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 [the judge] 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 the procedural and substantive rules, laws and regulations of the Coast Guard, the Investigating Officers bear the burden of proving their allegations by a preponderance of the evidence. 33 CFR 20.701, 20.702(a). Therefore, the Coast Guard Investigating Officers must prove with reliable, credible and probative evidence that Respondent more likely than not committed the violations they alleged in the amended Complaint.

Under the first Misconduct charge, the Coast Guard Investigating Officers alleged that on September 13, 2003, on his written, signed and filed by Respondent license and MMD renewal application, the Respondent failed to disclose and denied previous drug use of cocaine. The

Respondent admitted this lack of disclosure but claimed this omission was an error, hence an unintentional omission. This is a remedial proceeding where specific intent is not at issue.

In Appeal Decision 2608 (SHEPHERD) (1999), the Appellant argued that the U.S. Administrative Law Judge should have dismissed the Misconduct specifications charging submission by Respondent of a fraudulent application written and signed by Respondent Larson because the Coast Guard Investigating Officers did not allege or prove specific intent. In upholding after appeal the U.S. Administrative Law Judge, the Commandant stated and ruled on the appeal:

I have previously held that specific intent is not a prerequisite element of a charge of misconduct or a violation of law or regulation in suspension and revocation hearings which are by their nature remedial in nature. See Appeal Decisions 2496 (MCGRATH); 2490 (PALMER); 2286 (SPRAGUE); 922 (WILSON); 2445 (MATHISON); 2248 (FREEMAN). (T)he Coast Guard was not required to allege specific intent nor was it required to offer any proof of specific intent. The specifications at issue were part of a misconduct charge in which specific intent is not an element.

In Appeal Decision 2025 (ARMSTRONG) (1975), the Commandant stated, "The truth of information provided by applicants for documents and licenses is essential to the discharge of the Coast Guard mission of protection of life and property at sea."

In Appeal Decision 2569 (TAYLOR) the Investigating Officer sought an order of revocation because of a fraudulent application and after the proofs were offered and completed, the ALJ decided to accept the Investigating Officer's recommendation. Although not insisting on revocation, the Commandant did find it appropriate. While doing so, he stated:

In Appeal Decision 2205 (ROBLES), I said, "...if a fraud in the procurement of a license is found, revocation (not a suspension or a suspension or probation) is the only appropriate disposition when a hearing under R.S. 4450 has been accorded." Although ROBLES involved a fraudulently obtained license, and this case involves a MMD, the principle is the same. As explained in Appeal Decision 2025

(ARMSTRONG), information concerning the drug use background of an applicant is a crucial factor for the Coast Guard in deciding whether to issue seaman's papers because an applicant's character relates to the risk he may pose to the seafaring world. Consequently, the truth of information provided by applicants for licenses and documents is essential to the Coast Guard's ability to discharge its mission of protecting life and property at sea. *Id.* I therefore hold that fraud in the procurement of any license, certificate, or document is a clear threat to the safety of life or property. As such, the ALJ's revocation of the MMD was neither an abuse of his discretion nor inappropriate.¹

And finally in Appeal Decision 2613 (SLACK) (1999), the Commandant in an Appeal Decision reaffirmed that revocation is an appropriate sanction for fraud in the procurement of a Coast Guard issued official credential. In the SLACK case and its subsequent Appeal Decision, the Coast Guard filed and served on Respondent a misconduct charge that alleged the Respondent-Appellant wrongfully made fraudulent or false statements on his Merchant Mariner's license renewal application. Concerning the misconduct charge, the Commandant stated on appeal, "I have previously stated that where fraud in the procurement of a license is proved by Investigating Officers in a suspension and revocation proceeding, revocation in the only appropriate sanction. See Appeal Decisions 2570 (HARRIS); 2346 (WILLIAMS); 2205 (ROBLES); 2569 (TAYLOR)." Emphasis in the original.

¹ The Taylor language undoubtedly shows the Commandant considers submitting and filing a false or fraudulent license or document (MMD application) a threat to the public welfare. This once again shows that intent is not an element in regards to a fraudulent application.

Protection of Public Health and Safety

One element of a public welfare statute is the protection of the public's well being. In United States v. Dotterweich, 320 U.S. 277 (1943), the [U.S.] Supreme Court affirmed the defendant's conviction under the Federal Food, Drug, and Cosmetic Act of 1938, which subjected the defendant to criminal penalties even though he was not aware that he was committing any wrongdoing. More recently, in United States v. Park, 421 U.S. 658 (1975), the [U.S.] Supreme Court reaffirmed its decision in Dotterweich by holding that it was not necessary to prove knowledge or intent in a prosecution under this statute. A Little Knowledge Can Be a Dangerous Thing: State of New Jersey v. Robertson & The Freshwater Wetlands Protection Act of 1987, Barry Capp Pace Environmental Law Review, VOLUME 15, SPRING 1998, NO. 2. <http://www.law.pace.edu/pelr/vol15no21998/bcapp.html>

The Commandant has held and ruled that information concerning the drug use background of an applicant is a crucial factor for a Coast Guard Regional Examination Center Credential Examiner in deciding whether to issue seaman's or mariner's documents. An applicant's character relates to the risk he may pose to the seafaring world. A Coast Guard Regional Examination Center Credential Examiner cannot make a correct determination without accurate and truthful information filed by the applicant in his written and signed renewal application. Intent is not an element when a mariner submits an inaccurate or untruthful or false credential application and intent is not an issue in this case. It is found that the Coast Guard has proved its case and revocation of both affected merchant mariner credentials is the appropriate sanction for that lack of accuracy and/or truthfulness.

The "Driving While Intoxicated – Subsequent" conviction is at least the Respondent's second Driving Under the Influence ("DUI") conviction and adding in the LOOP intoxication and fence jumping incident (which I find properly charged and proved at this hearing), I count four substance abuse incidents (three alcohol incidents and a drug incident) in a five-year period by Respondent. This five-year period also included at least two forced substance abuse cure or drug cure attempts by two separate sovereigns of this captioned Respondent Larson.

Further, I take official notice that as early as 1997 this Respondent raised his hand and took an oath in a formal ceremony swearing that he would faithfully and honestly, according to his best skill and judgment, without concealment or reservation, perform all his duties as required by law 46 CFR 10, including 46 CFR 10.202(d).

SANCTION

ORDER

IT IS HEREBY ORDERED that all three allegations in the Amended Complaint served well before the hearing date on Respondent and Respondent's attorney in the above captioned administrative proceedings and trial-type hearing are found proved. All the Respondent's Coast Guard issued U.S. Merchant Mariner's licenses and documents are Revoked. Respondent and Respondent's attorney are ordered to immediately deliver Respondent's U.S. Coast Guard issued said licenses and documents, if they have not already done so, to the Coast Guard Investigating Officers at the Marine Safety Unit in Morgan City, Louisiana, by mail, overnight deliver service or in person. The address of the Commanding Officer, Assistant Chief Investigating Officer, Attorney James Wilson and the Senior Investigating Officer is: U.S. Coast Guard Marine Safety Unit, 800 David Drive, Room 232, Morgan City, Louisiana 70380; telephone: 985-380-5339, fax: 985-380-5379.

PLEASE TAKE NOTICE that the service of this Decision and Order on the Respondent Larson and Respondent's attorney serves as notice to the Respondent of his right to appeal, the procedures for which are set forth in 33 CFR part 20, including 33 CFR 20.1001 through 20.1003. (See Attachment D).

Done and dated July 16, 2007
Houston, Texas



Thomas E. P. McElligott
Administrative Law Judge

DOCKET NUMBER CG S&R 05-0486

ATTACHMENT A

WITNESS AND EXHIBIT LISTS

WITNESS LIST (FIVE)

COAST GUARD'S WITNESSES (3)

1. Mr. Armojen Cantrelle, Jr., General Manager of Kevin Gros Offshore, Inc., LLC, of Larose, Louisiana Respondent's marine employer company
2. Mr. Randy Chiasson, Police Officer with the Greater Lafourche Port Commission Harbor Police in Louisiana
3. Ms. Stephanie Marie Tastet, Security Guard for Sutton Guard Company at the MI Dock at Fourchon (Loop Guard)

RESPONDENT'S WITNESSES (2)

1. Mr. Michael J. Smith, Owner of Sun Towing Corp. and Present Employer of Respondent
2. Mr. Robert Martin Larson, Jr., Respondent

EXHIBIT LIST (SEVENTEEN)

COAST GUARD'S EXHIBITS (6)

IO Ex. 1 Respondent's written, dated and signed "Application for License as an Officer, Staff Officer, or Operator and for Merchant Mariner's Document", Completed, Signed and Dated by Respondent on September 13, 2003

IO Ex. 2 A Screen Print Abbreviation from the "Marine Information for Safety and Law Enforcement" ("MISLE") Database, Concerning Respondent

IO Ex. 3 A prior case Settlement Agreement Signed by the U.S. Coast Guard other Investigating Officers and the captioned Respondent Larson on April 11, 2002, and a related Consent Order Signed by U.S. ALJ Edwin M. Bladen

IO Ex. 4 Certified Court Minutes of the Conviction of Respondent for the Driving Under the Influence ("DUI") Respondent Committed on May 21, 2005

IO Ex. 5 Substance Abuse Policy between Respondent and Respondent's Merchant Marine Employer, Kevin Gros Marine, Inc., Dated August 24, 2004 and signed by Respondent, Larson

IO Ex. 6 Complaint Incident Report of Criminal Trespass and Intoxication at the Louisiana Offshore Oil Port ("LOOP") by Respondent Larson on July 30, 2005

RESPONDENT'S EXHIBITS (11)

Resp't Ex. 1 Not Offered

Resp't Ex. 2 Letter from Sun Towing Corp, Dated June 19, 2006, Concerning Respondent's Employment with the Company

Resp't Ex. 3 Letter of Recommendation Signed by Respondent's friend, Karl Miller, on July 1, 2006

Resp't Ex 4 Letter of Recommendation Signed by Respondent's friend, Captain Tom O'Farrell, on July 28, 2006

Resp't Ex 5 Not Offered

Resp't Ex 6 Certificate, Dated December 14, 2005, Showing Respondent Larson's Completion of the Williamson County Victim Impact Panel Program, Sponsored by Mothers Against Drunk Driving (MADD), Heart of Texas Chapter

Resp't Ex 7 Community Service Restitution (CSR) Log, Proving Respondent Completed Community Service

Resp't Ex 8 Community Service Restitution ("CSR") Attendance Log, Verifying that Respondent Attended the Program

Resp't Ex 9 Respondent's Alcoholic's Anonymous-Narcotics Anonymous ("AA-NA") Attendance Log

Resp't Ex 10 Copy of William C. Yoakum's, Respondent Larson's Probation Officer's, Business Card and Proof that Respondent Underwent Individual Counseling with The Resiliency Program

Resp't Ex 11 The Resiliency Program Letter Dated September 15, 2006, concerning Respondent Larson's Progress in the Program

DOCKET NUMBER CG S&R 05-0486

ATTACHMENT B

**JUDGE THOMAS E. P. MCELLIGOTT'S RULINGS ON THE FINDINGS OF FACT
PROPOSED BY THE U.S. COAST GUARD INVESTIGATING OFFICERS
U.S. COAST GUARD vs. ROBERT MARTIN LARSON, JR.**

1. On October 23, 1997, the Respondent was issued his original 1600 [Gross Tons] GT Mate's License #842104 having an expiration date of October 23, 2002. On October 31, 2003, the Respondent received his second issue 1600 GT Mate's License, Serial #1084482 having an expiration date of October 31, 2008. (IO Exhibit #1.)

RULING: ACCEPTED

2. On October 23, 1997, the Respondent was issued his original Merchant Mariner's Document having an expiration date of October 23, 2002. On October 31, 2003, the Respondent received his second MMD, Serial Number 006849 and having an expiration date of October 31, 2008. (IO Exhibit #1.)

RULING: ACCEPTED

3. On March 21, 2002, the Respondent Larson tested positive for cocaine on a random chemical test. (IO Exhibit #2.)

RULING: ACCEPTED

4. On April 11, 2002, the Respondent entered and completed a drug use cure program as part of a Suspension and Revocation Consent Agreement between himself and the Coast Guard prior Investigating Offices. (IO Exhibit #3.)

RULING: ACCEPTED

5. On September 13, 2003, at the Coast Guard Regional Examination Center in the Port of Houston, TX, during the process of renewing his license, the Respondent certified that all the information on his application was true and correct. (IO Exhibit #1.)

RULING: ACCEPTED

6. On September 13, 2003, at the Coast Guard Regional Examination Center in Houston, TX, during the process of renewing his license, the Respondent Larson indicated he had never been a user of a dangerous drug. (IO Exhibit #1.)

RULING: ACCEPTED

7. On October 31, 2005, the Respondent Larson pled no contest to the offense of *Driving While Intoxicated – Subsequent*. (IO Exhibit #4.)

RULING: ACCEPTED

8. On July 30, 2005, the Respondent was under the employment of Kevin Gros, Marine, Inc., as the captain of the Offshore Supply Vessel *Sea Brooke*. (Transcripts beginning at page 54.)

RULING: ACCEPTED

9. The captain of the *Sea Brooke* was required by law to have a Coast Guard issued license. (Transcripts beginning at page 54.)

RULING: ACCEPTED

10. Kevin Gros, Marine, Inc., had a zero tolerance drug and alcohol policy in force on July 30, 2005, and the Respondent was aware of that policy. (IO Exhibit #5.)

RULING: ACCEPTED

11. On July 30, 2005, the Respondent Larson was detained at the Greater Lafourche Harbor Police Department, Louisiana, and was issued a summons for criminal trespass and disturbing the peace by public intoxication. (IO Exhibit #6.)

RULING: ACCEPTED

**JUDGE THOMAS E. P. MCELLIGOTT'S RULINGS ON THE
ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW PROPOSED BY
THE U.S. COAST GUARD INVESTIGATING OFFICERS**

1. The Coast Guard had jurisdiction over both the Respondent's license and his MMD when he applied for the renewal of those credentials at the Coast Guard Houston Regional Examination Center on September 13, 2003. 46 CFR 5.57 9(b) states that a person is considered to be acting under the authority of the license, certificate of document while engaged in official matters regarding the license, certificate or document. The renewal of these credentials is specifically cited as an official matter in that regulation.

RULING: ACCEPTED

2. In March of 2002, the Respondent used a dangerous drug, to wit: cocaine. A "dangerous drug" is defined as "a narcotic drug, controlled substance, or a controlled substance analog (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of

1970). 46 U.S. Code 2101(8)(a). A "narcotic drug" includes "[c]oca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed. [The term also includes] [c]ocaine, its salts, optical and geometric isomers, and salts of isomers." 21 U.S. Code 802(17).

RULING: ACCEPTED

3. On his September 13, 2003, renewal application the Respondent indicated on Page 2, Section III his answer was "No" to the question, "Have you ever been a user of/or addicted to a dangerous drug, including marijuana?"

RULING: ACCEPTED

4. The Coast Guard had jurisdiction over both the Respondent's license and his MMD on Count 2, Conviction under the National Driver Registration Act. 46 USC 7703(3) requires merely that the Respondent hold the credentials and not that he be acting under the authority of those credentials. A plea of "No Contest" is a conviction for Coast Guard credentialing purposes. See the definition of "Conviction" under 46 CFR 10.103 for licenses and 46CFR12.01-6 for documents. *Driving While Intoxicated – Subsequent* is within the purview of the National Driver Registration Act. Appeal Decision 2613 (SLACK) (1999).

RULING: ACCEPTED

5. The Coast Guard had jurisdiction over the third factual allegation, the LOOP fence jumping incident, because the Respondent, despite being away from his assigned vessel, was acting under the authority of his license. Though not necessarily controlling, 33 CFR 95.15(b) is persuasive on this issue:

For purposes of this part [intoxicated operation], an individual is considered to be operating a vessel when: The individual is a crewmember (including a licensed individual), pilot or watch stander not a regular member of the crew, or a vessel other than a recreational vessel.

Also, in Appeal Decision 2624 (DOWNS) (1999), the Commandant decided that a master was acting under the authority of his license, and therefore subject to revocation, despite the fact that he had not been onboard the vessel for 12 hours when he refused a reasonable suspicion chemical test. Respondent's supervisors conferred and decided based upon telephone notification that the Respondent had been found by police to be intoxicated and in possession of a "crack pipe," reasonable cause existed to obtain a urine sample from the Respondent for the purpose of testing him for drug usage.

RULING: ACCEPTED

DOCKET NUMBER CG S&R 05-0486

ATTACHMENT C

JUDGE THOMAS E. P. MCELLIGOTT'S RULINGS ON THE REVISED FINDINGS OF
FACT PROPOSED BY RESPONDENT'S ATTORNEY, LARRY P. BOUDREAU, OF
THIBODAU, LOUISIANA

1. On July 30th, 2005 Robert M. Larson, Jr. (LARSON) was employed by Kevin Gros Marine, Inc. (GROS) as Captain aboard the M/V SEA BROOKE which, at all times pertinent, was docked and not in service at a facility located at Port Fourchon in Lafourche Parish, Louisiana.

RULING: NOT ACCEPTED. Although the vessel was docked, it was ready for service and it could be called out in a moment's notice by the vessel's owners or operators. Respondent and at least a crew of two more men were assigned and paid as captain and crew for that vessel, on that date.

LARSON and a deckhand, Foster Miller (MILLER) and an engineer, Danny Leach, went on authorized shore leave to purchase provisions. Each individual needed specific personal items and went on shore to purchase these items at a local store. While on shore the trio visited a bar and consumed alcoholic beverages. The preponderance of the evidence suggests that one or both of the other crewmembers consumed more alcohol than LARSON.

RULING: THE FIRST SENTENCE IS ACCEPTED; THE LAST SENTENCE IS NOT ACCEPTED. The preponderance of the credible evidence does not suggest that one or both of the other crewmembers consumed more alcohol than Captain LARSON, Respondent.

LARSON and the crewmen had left the vessel by foot but got a ride back to a security gate. When the group arrived at the security gate the security guard, Stephanie Tastet, an unarmed, female security guard, who had been on the job seven months with no prior experience, refused entry because they appeared to be under the influence.

RULING: ACCEPTED

In order to return to the vessel the trio scaled a high metal fence LARSON, without incident. FOSTER, whoever [sic], was highly intoxicated, was injured. As a result of this incident LARSON and the other crew members were terminated by GROS for violation of its substance abuse policy and LARSON was arrested by Officer Randy

Chiasson of the Harbor Police and charged with trespass, a misdemeanor grade offense under Louisiana Law. LARSON was ejected from his home by his wife, however, the parties reconciled, following a brief separation. LARSON described this experience as a "wake up" call and the low point of his life.

RULING: ACCEPTED.

2. LARSON failed a job-required drug screen by testing positive for cocaine in March, 2002.

RULING: ACCEPTED.

He self reported this information to the Coast Guard. This matter was later the subject of a "settlement agreement" between the United States Coast Guard and LARSON that was approved by an Administrative Law Judge. As a result LARSON's Coast Guard document was suspended from 4-11-02 for a period of fourteen (14) months. During this time LARSON worked as a construction worker at a substantial reduction in income. On an application, dated October 1, 2003 or September 13, 2003, for renewal of his Coast Guard document, LARSON failed to answer questions in the affirmative relative to prior drug use and suspension of his Coast Guard document.

RULING: ACCEPTED.

The Coast Guard was a party to the settlement agreement, was aware of the circumstances and LARSON acted upon the advise and/or representations made to him by the Coast Guard representative who signed the settlement agreement, that it was not necessary for him to disclose this information on the renewal application.

RULING: THIS PARAGRAPH OR SENTENCE IS NOT ACCEPTED, as it is not found credible.

3. On May 21, 2005 [Respondent] was convicted of a DWI offense in Texas for which he was placed on active probation that expired on or about October 31, 2006. LARSON's current Coast Guard document does not come up for renewal until 2008. Since this conviction LARSON has addressed his alcohol problem by attending AA meetings and completing a course of counseling with The Resiliency Program is equivalent to a repeat offenders program. Topics covered in the counseling included life style issues, values, self-esteem, positive thinking versus irrational beliefs, responsibility, physiological/psychological effects of drugs, alcoholism, chemical dependency, how drug abuse affects family members, co-dependency, Al-Anon, treatment options, 12 step self help groups, peer pressure, relapse prevention, problem solving and action planning. LARSON has also been active in the 12-step community and has been sober since July

30, 2005. At no time did LARSON drink on a vessel, either on 5-30-05 and on the other days when he received the DWI convictions. LARSON addressed his drug problem by completing an extensive drug rehabilitation program as a condition of the settlement agreement with the Coast Guard. The preponderance of the evidence establishes that LARSON is substantially rehabilitated and is motivated to continue his recovery and live a drug/alcohol free lifestyle.

RULING: THE LAST TWO SENTENCES ARE NOT ACCEPTED. They were not shown or established in the hearing to be credible.

4. LARSON lives with his wife of twenty-one years and supports her and his son, who is in college.

RULING: ACCEPTED.

5. LARSON is a key, valued employee of his present employer, Sun Towing Corporation, as he is DP certified. His employer, Mike Smith, testified that he would literally have to close the doors of his business if LARSON's license was revoked and he could no longer work for his company, an event that would severely impact Sun Towing, its employees, LARSON and the local economy.

RULING: NOT ACCEPTED. This has not been proven. I do not find such statements credible in this document or in the hearing.

JUDGE THOMAS E. P. MCELLIGOTT'S RULINGS ON THE CONCLUSIONS OF LAW PROPOSED BY RESPONDENT'S ATTORNEY, LARRY P. BOUDREAUX, OF THIBODAUX, LOUISIANA

1. The Coast Guard has proved that LARSON's actions on July 30, 2005 constitute misdemeanor grade "misconduct" as defined in 46 CFR 5.27, consisting of trespass as defined by Louisiana Law.

RULING: ACCEPTED.

2. The Coast Guard has proved LARSON's actions regarding the renewal application submitted in 2003, however, his actions do not constitute "misconduct" as he did not intentionally misrepresent or fail to disclose information that the Coast Guard already was aware of due to its participation in the settlement agreement which resulted in the voluntary suspension of LARSON's captain's license for one year and an economic

hardship to him. In addition, LARSON acted upon responsibilities made to him by the Coast Guard representative who signed the "Settlement Agreement" that the matter was closed.

RULING: NOT ACCEPTED, not credible, including the last sentence.

3. The Coast Guard has proved that LARSON received a DWI conviction in 2005, however, this conviction is subject to the provisions of 46 CFR 10.201 et seq. which involve an evaluation period between the date of his conviction and when his license comes up for renewal. In accordance with determining the selection of an appropriate order 46 CFR 5.569 provides that the ALJ should consider remedial actions which had been undertaken independently by the respondent, the prior record of the respondent, considering the period of time between prior acts and the act or offense for which he is presently charged is relevant, and evidence of mitigation or aggravation. In addition, the Court must consider the provisions of CFR 10.201 which require that the Court consider proof of completion of an accredited alcohol or drug abuse rehabilitation program, active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous, character references from persons who can attest the applicant's sobriety, reliability and suitability for employment in the merchant marine including parole or probation officers, steady employment, successful completion of all conditions of parole or probation. The Court finds that the letters of reference by his co-captain, Tom O'Farrell and of his lifelong friend, Carl Miller and the testimony of his employer and his testimony establish that LARSON has complied with all of these conditions in such a manner that reflects favorably on the Court's decision in this matter.

RULING: NOT ACCEPTED as credible based upon all the evidence and record considered as a whole.

4. The Court finds that an appropriate order in this matter would be an admonition as provided by 46 CFR 5.19 and 5.567(a).

RULING: NOT ACCEPTED. See Commandant's Appeal Decisions cited by the Investigating Officers and others, such as Appeal Decision 2613 (SLACK) (1999) where it was held that a plea of "No Contest" is a conviction for Coast Guard credentialing purposes. See the definition of "Conviction" under 46 CFR 10.103 for licenses and 46 CFR 12.01-6 for documents. Driving While Intoxicated – Subsequent is within the purview of the U.S. National Driver Registration Act. See Commandant's Appeal Decision 2613 (SLACK) (1999). The appropriate order is Revocation of Respondent's U.S. Coast Guard issued U.S. Merchant Mariner's Licenses and Documents and all other U.S. Coast Guard issued merchant mariner credentials to Respondent, when applying the applicable statutes, regulations and appeal Decisions mentioned in this entire Decision to Respondent Larson's case.

DOCKET NUMBER CG S&R 05-0486

ATTACHMENT D

NOTICE OF 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.