

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

UNITED STATES COAST GUARD

Complainant

vs.

TRACEY LEE TRAHAN

Respondent.

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BALTIMORE, MD

Docket Number: CG S&R 07-0149
CG Case No. 2880246

ORDER GRANTING MOTION FOR SUMMARY DECISION

Issued: August 14, 2007

**Hon. Parlen L. McKenna, Presiding
Preliminary Statement**

The United States Coast Guard (Coast Guard) initiated this administrative action seeking revocation of License Number 962916 issued to Tracey Lee Trahan (Respondent). This action is brought pursuant to the legal authority contained in 46 U.S.C. 7704 and its underlying regulations codified at 46 CFR Part 5.

On April 4, 2007, the Coast Guard issued a Complaint charging Respondent with one (1) count of Conviction for a Dangerous Drug Law Violation, in violation of 46 U.S.C. 7704(b). Specifically, the Coast Guard alleges Respondent was convicted of Attempted Possession of Cocaine in Excess of 400 Grams by the State of Louisiana on March 28, 2005. In response, on April 19, 2007, Respondent filed a letter titled Request for Review by the Chief Administrative Law Judge (Answer). In the Answer, Respondent admits to the alleged conviction, however

Respondent asserts he "was wrongly convicted in that trial" and is appealing the trial court's ruling. Respondent requests that he maintain possession of his license while his conviction is on appeal.

On April 30, 2007, the Coast Guard filed a Motion to Amend Complaint. In the Amended Complaint, the Coast Guard charges Respondent with an additional factual allegation, Violation of Law or Regulation. The Coast Guard alleges Respondent mastered an Uninspected Towing Vessel without the proper mariner credential, a violation of 46 CFR 15.610. Respondent did not file an Answer addressing the new allegation. On May 1, 2007, this case was assigned to this judge for adjudication.

On May 7, 2007, the Coast Guard filed a Motion for Summary Decision. In this Motion, the Coast Guard moves for summary decision on the grounds that there are no genuine issues of material fact concerning the charge of Conviction of a Dangerous Drug Law Violation. The Coast Guard withdrew the Violation of Law or Regulation charge. On June 15, 2007, Respondent filed a Response to the Coast Guard's Motion for Summary Decision. In that response, Respondent states his attorney "formally appealed my conviction on attempted possession" and that revocation of his license would "be a miscarriage of justice" and would deny him "a livelihood to adequately support" his family.

Discussion

Motion for Summary Decision

Pursuant to 33 CFR 20.901(a), "[a]ny party may move for a summary decision in all or any part of the proceeding on the grounds that there are no genuine issues of material fact and that the party is entitled to a decision as a matter of law." An a judge may grant a party's motion for summary decision "if the filed affidavits, the filed documents, the material obtained by

discovery or otherwise, or matters officially noted show that there is no genuine issue of material fact and that a party is entitled to a summary decision as a matter of law." 33 CFR 20.901(b).

The undersigned will conduct an examination of the charge, Conviction for a Dangerous Drug Law Violation, to determine whether there exist any issues of material fact so as to make a summary decision inappropriate.

Conviction for a Dangerous Drug Law Violation

The Coast Guard has charged Respondent with Conviction for a Dangerous Drug Law Violation. (Coast Guard Complaint and Coast Guard Amended Complaint). Pursuant to 46 U.S.C. 7704(b):

If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or merchant mariner's document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be suspended or revoked.

In order to prove its case, the Coast Guard must demonstrate that: (1) Respondent is "a holder of a license, certificate of registry, or merchant mariner's document;" and (2) "within 10 years before the beginning of the proceedings, [Respondent] has been convicted of violating a dangerous drug law of the United States or of a State." See 46 U.S.C. 7704(b).

The Coast Guard properly made all required jurisdictional and factual allegations to prove a violation of 46 U.S.C. 7704(b). The Coast Guard established that Respondent is a holder of a Coast Guard issued license. (Motion for Summary Decision: Exhibit 2). Respondent admits to using his license to earn a living and requests he maintain possession of this license while his

conviction for Attempted Possession of Cocaine is on appeal. (Answer). In addition, Respondent provided a copy of his license with his Answer.¹ (Answer: Enclosure 2).

The Coast Guard also demonstrated that Respondent was convicted within the last ten (10) years of violating a dangerous drug law of the United States. In support of this factual allegation, the Coast Guard provided court records establishing that the State of Louisiana found Respondent "guilty of attempted possession of cocaine in excess of 400 grams after trial to the Court on March 28, 2005." (Motion for Summary Decision: Enclosure 1). A conviction for attempted possession of cocaine satisfies the requirement of violating a dangerous drug law. See Appeal Decision 2459 (LOMAND) (1987).

Respondent admits to the 2005 conviction of attempted possession of cocaine, but maintains his innocence and is appealing the conviction. (Answer). Respondent states, "[w]hile I admit openly to you in this letter that I was 'convicted', . . . I believe I was wrongly convicted in that trial." (Id.). However, a belief in one's "innocence of the charge underlying the state conviction . . . has no bearing on these proceedings." See Appeal Decision 2459 (LORMAND) (1987). Revocation is mandatory when a respondent is "convicted for a violation of the dangerous drug laws, **whether or not further court action is pending**, and such charge is found proved." Appeal Decision 2511 (GILTNER) (1990) (citing 46 CFR 5.59(b)). A "conviction is considered 'final' regardless of any pending appeal." Id. If a respondent's license is revoked and then the underlying conviction is set aside on appeal, that respondent "could then request that the order [of] revocation be rescinded." Appeal Decision 2201 (BROADNAX) (1980). Also see, 33 C.F.R. § 20.904.

¹ Respondent's license was issued at the Port of New Orleans, Louisiana on December 6, 2001 and was set to expire on December 6, 2006. (Answer: Enclosure 2). However, because of the devastation created by Hurricane Katrina, Congress extended, by one year, the renewal date of all mariner credentials issued at New Orleans, Louisiana which expire between August 29, 2005 and April 1, 2007. *Coast Guard and Maritime Trans. Act*, Pub. L. No. 109-241, § 702 (2006); published in the *Merchant Marine Credentials: Temporary Procedures*, 71 Fed. Reg. 47,238. Respondent's license is therefore valid until December 6, 2007.

However, prior to a conviction being set aside, a respondent's "collateral attack on his criminal conviction . . . can not be raised in these administrative proceedings." See Id. Respondent's conviction of attempted possession of cocaine is considered a violation of a dangerous drug law, whether or not the conviction is on appeal.

The Coast Guard properly made all required jurisdictional and factual allegations to prove Respondent violated 46 U.S.C. 7704. The Coast Guard has established that (1) Respondent is a holder of License No. 962916 and (2) Respondent was convicted of violating a dangerous drug law of the United States, on March 28, 2005. Respondent has raised no arguments which call into question the elements required to prove a Conviction for a Dangerous Drug Law Violation. As such, as a matter of law, the undersigned finds the charge of Conviction for a Dangerous Drug Law Violation, in violation of 46 U.S.C. 7704(b) proved. The Motion for Summary Decision is Granted.

Sanction

The Coast Guard seeks revocation of Respondent's license. Respondent argues that revocation is not mandatory and asserts "[t]he law at 46 U.S. Code § 7704(b) states a license or document may be suspended or revoked." (Respondent's Response to the Coast Guard Motion for Summary Decision). Respondent cites to the ALJ decision USCG v. Savoie, 05-0008 (USCG ALJ June 10, 2005) to support his argument.² (Answer). While Respondent is correct that the statute indicates both suspension and revocation are appropriate sanctions for Conviction for a Dangerous Drug Law Violation, it is clear that revocation is the only appropriate sanction

² In USCG v. Savoie, 05-0008 (USCG ALJ June 10, 2005), the Coast Guard charged Respondent with a violation of 46 USC 7704(b). In that case, the judge found the charges proved and suspended the respondent's credentials for four (4) months. The Coast Guard believed the only appropriate sanction was revocation and appealed the decision. That case is still pending review by the Commandant. The undersigned agrees that the only appropriate sanction for cases arising under 46 USC 7704(b) is revocation; as explained in the Sanction section of this decision. The

in this matter. When the Coast Guard and Maritime Transportation Act³ amended 46 U.S.C. 7704(b), it changed "shall be revoked" to "shall be suspended or revoked." Allowing the Coast Guard "the discretion to suspend a mariner's credentials . . ." was intended to "allow the use of Settlement Agreements to resolve cases involving minor drug convictions." H.R. Conf. Rep. No. 108-617, at 78 (2004). However, the Act did not amend 46 CFR 5.59 which mandates revocation (emphasis added) if a charge of Conviction for a Dangerous Drug Law Violation is found proved. Consequently, in absence of a settlement agreement, if a Conviction for a Dangerous Drug Law Violation is found proved, the judge must order revocation. Since the undersigned found that Respondent violated 46 U.S.C. 7704(b), Conviction for a Dangerous Drug Law Violation, revocation of Respondent's license is the only legally appropriate sanction in this matter.

ORDER

IT IS HEREBY ORDERED that the Coast Guard's Motion for Summary Decision is GRANTED; Respondent's License, and all other valid licenses, documents, and endorsements issued by the Coast Guard to Tracey Lee Trahan are **REVOKED**.

undersigned is not bound by the judicial holding in USCG v. Savoie. Unlike Commandant Decisions, ALJ decisions are not published and cannot be relied upon as precedent. See 46 CFR 5.65; See also 5 U.S.C. 552(a)(2).

³ Pub. L. 108-293, Title IV, § 402 (Aug. 9, 2004).

PLEASE TAKE NOTICE that the service of this Order Granting Motion for Summary Decision serves as notice to the Respondent of his right to appeal, the procedures for which are set forth in 33 CFR 20.1001 through 20.1003 and are located below in Attachment A.



**HON. PARLEN L. MCKENNA
ADMINISTRATIVE LAW JUDGE
U.S. COAST GUARD**

Done and dated on this 14th day of August, 2007
Alameda, CA

ATTACHMENT A**NOTICE OF ADMINISTRATIVE APPEAL RIGHTS****33 CFR 20.1001 General.**

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

33 CFR 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
 - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
 - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 CFR 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
 - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --

- (i) Basis for the appeal;
 - (ii) Reasons supporting the appeal; and
 - (iii) Relief requested in the appeal.
- (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
- (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
- (c) No party may file more than one appellate brief or reply brief, unless --
- (1) The party has petitioned the Commandant in writing; and
 - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
- (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

33 CFR 20.1004 Decisions on appeal.

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.