

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

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UNITED STATES COAST GUARD

Complainant

vs.

WILLIE JAMES HUBBARD

Respondent.

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Docket Number CG S&R 06-0179  
CG Case No. 2610332

**DECISION AND ORDER**

**Issued: October 17, 2007**

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

**Appearances:**

Lieutenant Jerry D. Butwid and  
Chief Marine Science Technician Steven D. Stapleton,  
of the U.S. Coast Guard Marine Safety Unit Galveston,  
P.O. Box 0149, Galveston, Texas 77553

**For the Coast Guard**

Willie James Hubbard, pro se.

**For the Respondent**

## PRELIMINARY STATEMENT

The Investigating Officers ("IOs") of the U.S. Coast Guard ("Coast Guard") Marine Safety Unit Galveston initiated this administrative action seeking revocation of the Merchant Mariner's Document and any other credentials issued by the Coast Guard to the captioned Respondent, William James Hubbard ("Respondent"). The Coast Guard issued a Complaint to the Respondent pursuant to the legal authority contained in 46 U.S. Code ("USC") 7704(c) and its underlying regulations contained in 46 Code of Federal Regulations ("CFR") Part 5, including 46 CFR 5.35.

The Respondent holds a U.S. Merchant Mariner's Document ("MMD") issued to him by the U.S. Coast Guard Regional Examination Center, in the Port of Houston, Texas. This MMD was identified and the Respondent admitted to it in Respondent's Answer to the Complaint.

There are five (5) factual allegations in the Complaint served by certified mail on Respondent and the Respondent only denied the last one. The Respondent admitted to the following four (4) Factual Allegations-Use of or Addiction to the Use of Dangerous Drugs that the Coast Guard alleged:

1. On 03/09/2006 Respondent took a random drug test.
2. A urine specimen was collected by Tom Halcomb of Chem Chek, Inc.
3. The Respondent signed a "Federal Drug Testing Custody and Control Form".
4. The urine specimen was collected and analyzed by using procedures approved by the Department of Transportation.

All of the above four (4) allegations were admitted to by the Respondent in his Answer to this Complaint that was dated April 11, 2006. The Complaint was so dated by

the Investigating Officer. The Respondent denied that Respondent's urine specimen subsequently tested positive for Cocaine Metabolites.

The proposed order by the Coast Guard was revocation if they proved their case. Respondent admitted that he holds the identified Coast Guard issued credential. The Coast Guard offered three (3) witnesses who testified credibly under oath and eight (8) exhibits were admitted into evidence by the undersigned Judge.

IO's Exhibit 1 is a certified copy of Respondent's "Application for License as an Officer, Staff Officer, or Operator and for Merchant Mariner's Document".

IO's Exhibit 2 is a certified copy of the Urine Sample Collector, Tom Halcomb's credentials.

IO's Exhibit 3 is the Collector's copy of the "Federal Drug Testing Custody and Control Form" used on March 09, 2006 and signed by Respondent.

IO's Exhibit 4 is an extract from the U.S. Federal Register dated March 7, 2006, showing that the certified laboratory, Quest Diagnostics, Inc., of Irving, Texas, is certified by the U.S. agency, Substance Abuse and Mental Health Services Administration ("SAMHSA").

IO's Exhibit 5 is the Litigation Package, also called the "Documentation Package", from Quest Diagnostics, Inc., of Irving, Texas, the scientific laboratory that analyzed the urine specimen donated by the Respondent on the date in question.

IO's Exhibit 6 is a certified copy of the Medical Review Officer ("MRO"), Dr. William G. Franklin's credentials.

IO's Exhibit 7 is the MRO's copy of the "Federal Drug Testing Custody and Control Form".

IO's Exhibit 8 is the test results reported from the MRO to Respondent's marine employer reporting that Respondent had a positive test for cocaine metabolites. After the

drug test was performed, it was found positive for cocaine metabolites in Respondent's urine sample. Respondent was and is employed by the Galveston Ferry System, by the State of Texas, Department of Transportation.

The hearing was held on Tuesday, April 03, 2007, commencing at 9:30 a.m., at the Houston trial-type Hearing Room. The Respondent was present together with his wife and his other witnesses. These included the Reverend Charles Edward Wheat, as a character witness; his wife, Lillie Hubbard; and at least one more character witness. The Respondent did not submit his lists of witnesses and exhibits until Friday, March 30, 2007.

Respondent's Exhibit 1 is a letter of recommendation by Guy M. Moore MA. LPC, dated May 04, 2006, regarding Willie Hubbard. The letter stated that he had the opportunity to meet with Mr. Hubbard in the counseling setting on two occasions and in addition to speaking with and meeting his wife, as well as talking to other persons involved in Mr. Hubbard's life regarding the likelihood of his dangerous drug use. From his opinion, Respondent has too much to lose to even consider dangerous drug use.

Respondent's Exhibit 2 is a "Driver's Record Check Report – Summary".

Respondent's Exhibit 3 is a letter from the University of Texas Medical Branch, in Galveston, Texas, stating Mr. Hubbard was treated for an Upper Respiratory Infection on March 07, 2006, and was given a prescription for Tussionex which contains Codeine. This does not contain cocaine.

Respondent's Exhibit 4 is a brief note of recommendation by friend John R. Shaw.

Respondent's Exhibit 5 is a statement by Christine Ramirez-Mendoza, LCDC #8098, Substance Abuse Professional #0189.

Respondent's Exhibit 6 is a list signed by the Respondent of a couple of medicines that Respondent took or were prescribed to him, Levaquin 500 mg tablet MCN and Tussionex Pennkinetic Susp MPI, and were filled on February 28, 2006. The list was signed "Willie Hubbard".

Respondent's Exhibit 7's first page is a photocopy of a pill bottle from a pharmacy, without stating the name of the medicine, but it shows it was issued to Willie Hubbard. The second page is another photocopy of something similar. The third page is another photocopy of a medicine bottle that partially reads "...PENNKINETIC SUSP MPI".

Respondent's Exhibit 8 is his leave record as of February 28, 2006, from his employer.

Respondent's Exhibit 9 is a photocopy of an A&A Drug & Alcohol Education, Texas Drug Offender Education Program Certificate of Completion for Respondent Willie J. Hubbard.

Respondent's Exhibit 10 is a Texas Department of Transportation form signed by the Respondent and a Substance Control Officer on March 15, 2006. The subject is "Request for retest of the donor urine specimen".

Respondent's Exhibit 11 consists of fourteen (14) pages for Willie Hubbard, Galveston Crewmember, showing Respondent had negative drug tests starting back in July 21, 1993 through January 30, 2007, but he did have a positive drug test of cocaine use on the date in question, March 09, 2006, after a random drug test. This was the only positive of several drug tests that he had passed otherwise but this was the one in his own records that shows he was found to have a positive of his urine specimen taken on March 09, 2006, the date in question. The pages are Respondent's record of drug tests with his

Galveston Ferry Boat's employer showing he did have a positive for cocaine use after a random drug test, on the test date of March 09, 2006.

Respondent's Exhibit 12 is Respondent's positive drug test from Respondent's urine collected on March 09, 2006. The positive results were reviewed by Dr. William Franklin, the Medical Review Officer ("MRO"). The MRO received date was March 13, 2006 and the MRO reporting date was March 15, 2006. The urine specimen was tested by Quest IG Scientific Laboratory. The laboratory received date was March 11, 2006 and the lab reported date was March 12, 2006 for accession number 587898D. The date tested was March 12, 2006. The date scheduled was March 09, 2006. The date collected was March 09, 2006. The date tested was March 12, 2006. The date reviewed was March 15, 2006 with results positive for cocaine use by Respondent.

Respondent's Exhibit 13 is emails between IO LT Jerry D. Butwid and Joe Lindsey, of the Texas Department of Transportation, concerning the "MRO Return to Work Letter".

I find the three (3) Investigating Officer's witnesses who testified under oath to be credible. Namely the Specimen Collector, Mr. Tom Halcomb, in that he attested to a proper collection of Respondent's urine sample and a chain of custody as well as adherence to 49 CFR Part 40, in regards to the Respondent's urine sample collection procedures.

The Lab Director, Harold H. Miller, of Quest Diagnostics, Inc., credibly verified the lab's U.S. SAMHSA certification, as well as the testing's chain of custody and the careful adherence to the applicable laws including 49 CFR Part 40, in regards to urine testing procedures.

The MRO, Dr. William G. Franklin, attested to the proper chain of custody and the accuracy of the lab tests results. Dr. Franklin reported a positive test, as well as did

the laboratory. This was after this Medical Review Officer reviewed and examined the urine specimen collection documents and the laboratory's documents and final results.

### **FINDINGS OF FACT**

The Findings of Fact are based upon a thorough and careful analysis of the entire hearing record considered as a whole, including documentary evidence and witnesses' testimonies.

1. At all relevant times herein mentioned and specifically on or about the date of the Respondent's urine sample collection, March 09, 2006, Respondent was the holder of a U.S. Coast Guard issued MMD, a U.S. Merchant Mariner's Document, issued to him by the U.S. Coast Guard. Respondent served in the U.S. Merchant Marine and was employed by the Ferry System, in the Galveston area, by the State of Texas Department of Transportation and had been working for them for many years. (Respondent's testimony and exhibits).
2. The Respondent's urine sample collection process begins with the integrity of the collection site where the sink and toilet are separate. There is bluing of the toilet water to eliminate or make obvious to a trained collector's eyes any sources of contamination of Respondent's urine sample. The collector requested from this donor of the urine specimen a valid photo identification and social security number. The Respondent then chooses a cup for his urine sample and is instructed to remove extra clothing that may contain an adulterant, such as in a

vial or bottle. Afterwards the collector writes the Respondent's social security number on the "Custody Collection and Control Form" and secures and seals the Respondent's urine specimen cups with tamperproof evidence tape.

3. Each "Custody and Control Form" contains a unique identification number, which is recorded on the tamperproof tape. The Respondent was directed to write the date of collection and Respondent's initials on the tape on both bottles of his urine samples.
4. After the Respondent gave the urine sample to the trained samples collector, the collector checks the temperature of the specimen to ensure that the sample is between 90° and 120° degrees Fahrenheit. This is the normal temperature range for human urine when measured within four (4) minutes of its production. Once the collector determines the sample is within the accepted normal temperature range, the specimen is "split" or divided into two (2) containers or bottles. Sometimes this is referred to as a "split sample". Both sealed urine containers of Respondent's urine sample were placed into a transport bag for direct delivery to the certified testing laboratory.
5. The Lab Director for Quest Diagnostics, Inc. is Dr. Harold Miller, the Director for this inspected and certified testing laboratory for many years. Dr. Miller offered credible sworn expert testimony regarding laboratory procedures performed on Respondent's urine sample or specimen in accordance with the applicable statutes and regulations including 49 CFR Part 40, the drug testing rules and regulations.
6. Quest Diagnostics, Inc. is a tested, certified and registered laboratory with the U.S. Department of Health and Human Services and its subsidiary U.S. agency,

U.S. Substance Abuse and Mental Health Services Administration ("SAMHSA") certified, as evidenced in the publication of the U.S. Federal Register.

7. At the drug testing laboratory, the urine specimens were kept in a secured environment, accessed only by a special key card, in a locked refrigerator.
8. The said laboratory's first or initial test of the Respondent's urine specimen is often called or referred to as an immunoassay test (semi-quantitative result concluding whether specimen is positive or negative for drugs) performed on a spectrometer that is calibrated on each day of use.
9. Respondent's urine drug test resulted in a positive for cocaine metabolites on the Respondent's urine sample collected on March 09, 2006. Respondent's urine specimen samples tested positive for cocaine metabolites by both required tests, including the second required test, the Gas Chromatography, Mass Spectrometry test. The positive results and documents were then forwarded to the Medical Review Officer ("MRO").
10. When the initial test was positive for cocaine metabolites, a second confirmatory test, also known as the Gas Chromatography, Mass Spectrometry ("GC/MS") test is and was performed, and also resulted in a positive result for cocaine use by Respondent.
11. The confirmatory test cutoff measurement for a negative test is fifteen (15) nanograms per milliliter.
12. The second confirmatory test also confirmed the presence of cocaine metabolites in Respondent's urine sample, which exceeded the minimum of the fifteen (15) nanograms per milliliter needed for a positive test.

13. The five (5) dangerous drugs usually tested for are marijuana metabolites, cocaine metabolites, amphetamine, opiate metabolites and phencyclidine. See 49 CFR 40.85.
14. The MRO in this case is Dr. William G. Franklin, from Victory Medical Co., Austin, Texas, who testified credibly to the chain of custody and accuracy of the lab test results.
15. Respondent testified in his own behalf and called his wife, Lillie Hubbard, to testify in his behalf. He also had two (2) other character witnesses, the Reverend Charles Wheat and Zeltee Gamble. None of these witnesses testified credibly that they were always with Respondent twenty-four (24) hours and seven (7) days every week.
16. The testimony and the evidence provided at the hearing and admitted into evidence by the Judge proved by a preponderance of the credible, substantial and probative evidence that the Respondent, Mr. Willie Hubbard, was a user of a dangerous drug, namely cocaine, in accordance with 46 CFR Part 16, including Part 16.201(b), on and about the day he was tested by giving his urine samples or specimens.
17. The Respondent did not provide any convincing or credible evidence to show that his tests of his urine samples were not a positive test for cocaine. Respondent claims that he was under medication; however, there was no credible medical evidence or testimony to prove that the medications he listed as taking would test positive for cocaine use. The Medical Review Officer did not rule or testify that these medications would produce a positive cocaine test.

18. The Respondent's witnesses testified to his character; however, none of them claimed to being around Respondent twenty-four (24) hours a day, seven (7) days a week, continuously.
19. It was proven by the IOs that Respondent took a random drug test. The Respondent's urine specimen was collected by a certified and experienced urine specimen collector. The Respondent and Collector signed and dated the proper "Federal Drug Testing Custody and Control Form". The Respondent's urine specimen was properly collected and analyzed by procedures approved by the U.S. Department of Transportation, at the tested and certified laboratory. The Respondent's urine specimen or sample subsequently tested positive for cocaine used by the Respondent. The laboratory's finds were supported by the Medical Review Officer's credible testimony.
20. The IOs called to testify three (3) qualified, credible witnesses that testified that the chain of custody was proper and not broken and that the regulations mentioned in 49 CFR Part 40 were followed carefully at all times. The IO stated that the government was seeking revocation of Respondent's U.S. Coast Guard issued U.S. Merchant Mariner's Document (or "MMD"), in accordance with 46 USC Section 7704, especially including Section 7704(c). Official notice was requested by the IOs and was taken by the Judge of the Commandant's Appeal Decision 2637 (TURBEVILLE).

## ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all relevant times, the captioned Respondent was the holder of a U.S. Coast Guard issued U.S. Merchant Mariner's Document, which Respondent admitted to in his Answer to the Investigating Officer's ("IO's") Complaint.
2. Respondent and the subject matter of this hearing are properly within the jurisdiction vested in the U.S. Coast Guard under 46 USC Chapter 77; 46 USC 7704(c); 46 CFR Parts 5 and 16; 33 CFR Part 20; and the U.S. Administrative Procedure Act, 5 USC 551-559.
3. On March 09, 2006, Respondent participated in a drug test in which he provided his urine sample which was tested and proved positive for cocaine metabolites.
4. Respondent's positive drug test created the proper and logical conclusion that Respondent is a user of a dangerous drug, namely cocaine. 46 CFR 16.201(b).
5. Respondent failed to rebut the findings and conclusions that Respondent is a user of a dangerous drug, namely cocaine.
6. The IOs proved by a preponderance of reliable, probative, substantial and credible evidence that Respondent was a user of or addicted to the use of a dangerous drug, namely cocaine.

## DISCUSSION

A major purpose of Coast Guard Suspension and Revocation trial-type hearings is to promote safety of lives and properties at sea and in ports. 46 USC 7701. These hearings are remedial in nature and do not affix criminal or civil liability. See 46

CFR 5.5; Appeal Decision 2639 (HAUCK) (2003). The U.S. Coast Guard Commandant delegated to U.S. Administrative Law Judges the authority to hear at trial-type hearings these cases and decide to dismiss or suspend or revoke a U.S. issued license, certificate or merchant mariner's document for proved violations arising under 46 USC 7703 and 7704; 46 CFR Part 5.

A U.S. Merchant Mariner's U.S. Coast Guard issued Merchant Mariner's License, Certificate of Registry, or Merchant Mariner's Document is subject to revocation upon proof to a U.S. Administrative Law Judge that the holder of such a document is a user of, or addicted to the use of a dangerous drug such as cocaine. 46 USC 7704(c). See also Appeal Decision 2634 (BARRETTA) (2002). "Congress enacted 46 U.S. Code 7704 with the express purpose of removing those individuals possessing and using [dangerous] drugs from service in the United States merchant marine." Id. (Citing U.S. House Report No. 338, 98<sup>th</sup> Cong., 1<sup>st</sup> Sess. 177 (1983)).

To eliminate or minimize the use of dangerous drugs by U.S. merchant mariners, the Coast Guard chemical drug testing laws, regulations and rules require maritime employers to conduct drug testing, including pre-employment, periodic, random, serious marine incident and reasonable cause drug testing. See 46 CFR Part 16. The type of testing at issue in this trial-type hearing is a random drug test. Under the laws and rules, a marine employer must subject prospective employees and present employees to chemical drug testing prior to employment and also while employed. 46 CFR Part 16. Further, the marine employer's chemical drug testing program must be conducted in accordance with applicable laws, statutes and regulations and Appeal Decisions. See generally 49 CFR Part 40; 46 CFR Part 16, including Section 16.113. If an employee

fails the chemical drug test by testing positive for dangerous drugs, the individual is then presumed to be a user of a dangerous drug. 46 CFR 16.201(b). See also Appeal Decision 2584 (SHAKESPEARE) (1997). Moreover, the maritime employer is then required to remove the employee from duties that directly affect the safe operation of the vessels and must quickly report the positive drug test results to the nearest U.S. Coast Guard Officer in Charge of a Coast Guard Marine Inspection Office or Marine Safety Office. 46 CFR 16.201(c).

Here, the IOs charged Respondent with use of or addiction to the use of a dangerous drug, namely cocaine, because he tested positive for cocaine metabolites in an employment sponsored drug test. They alleged Respondent violated 46 USC 7704(c) and its underlying regulations codified at 46 CFR Part 5. The Coast Guard IOs seek revocation of Respondent's U.S. Coast Guard issued MMD in accordance with 46 CFR 5.569. A major issue for determination by the Undersigned Judge in this case is whether Respondent's positive drug test is the result of dangerous drug use of cocaine or innocent ingestion of cocaine.

**A. Burden of Proof**

The U.S. Administrative Procedure Act ("APA"), 5 USC 551-559, applies to Coast Guard Suspension and Revocation trial-type hearings before U.S. Administrative Law Judges. 46 USC 7702(a). The APA authorizes imposition of sanctions if, upon consideration of the entire record as a whole, the charges are supported by credible, reliable, probative and substantial evidence. APA and 5 USC 556(d). Under Coast Guard procedural rules and regulations, the burden of proof is on the IOs, to prove the

charges are supported by a preponderance of the evidence. 33 CFR 20.701, 20.702(a). “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 proving a fact by a preponderance of the evidence “simply requires the trier of fact ‘to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact’s existence.’” Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 622 (1993) (citing In re Winship, 397 U.S. 358, 371-72 (1970). (Harlan, J., concurring) (brackets in original)). Therefore, the IOs must prove by credible, reliable, probative and substantial evidence that Respondent more likely than not committed the violation charged.

**B. Prima Facie Case of Use of a Dangerous Drug, COCAINE**

The IO must establish a prima facie case to prove the allegation of use of a dangerous drug. Appeal Decision 2603 (HACKSTAFF) (1993). First, the IO must prove that respondent was the individual tested for dangerous drugs. Second, a showing must be made that respondent tested positive for dangerous drugs by a certified laboratory and confirmed by a Medical Review Officer (“MRO”), thus failing the drug test. Third, the IO must prove the drug test was conducted in substantial compliance with 46 CFR Part 16. Id. Once these requirements are satisfied, the burden of proof shifts to the Respondent who must produce persuasive evidence to rebut the positive drug test evidence. Id. If the respondent fails to rebut the evidence, the Administrative Law Judge

must find the charges proved based upon the substantial evidence and the presumption.

Id. See also Appeal Decision 2592 (MASON) (1997).

Here, the first test or the initial immunoassay test by the tested and certified laboratory concluded the Respondent's urine specimen was positive for cocaine metabolites. Moreover, the second or confirmatory test, known as the "Gas Chromatography/Mass Spectrometry ('GC/MS') test", also confirmed the presence of cocaine metabolites which tested positive. This was well above the minimum positive of fifteen (15) nanograms per milliliter. These two tests when combined are substantial evidence of the tested and certified laboratory's findings. The Laboratory Director, Dr. Hal Miller, testified that the amount of cocaine metabolites exceeded the cutoff or minimum level established in 49 CFR Part 40. The Medical Review Officer, Dr. William Franklin, received and verified the laboratory's initial two test results and confirmed the findings of the laboratory. The MRO testified credibly that the medications that the Respondent was taking would not result in a positive for cocaine metabolites. The MRO did not discover any satisfactory medical explanation for the Respondent's positive drug test for cocaine metabolites. The laboratory's two tests and the MRO's testimony all reported positive findings of cocaine use by the Respondent on the day Respondent provided urine samples to be tested for his marine employer, the State of Texas and the Galveston Ferries System.

It is found that the Coast Guard IOs did establish and prove a prima facie case of dangerous drug use of cocaine. Respondent, identified by his signature on the "Drug Testing and Control Form" with his date of birth, social security number, lab accession number, initials and date evidenced on the "Custody and Control Form" in accordance

with 46 CFR Part 40 was the individual who provided the urine specimen or sample tested for drugs in this case. Furthermore, Respondent did not dispute that he was the individual who participated in this drug test at issue in this matter. The urine collected subsequently tested positive for cocaine metabolites; thus Respondent failed the drug test. This included two (2) positive drug tests by the certified laboratory, and its Dr. Hal Miller, and was confirmed by the Medical Review Officer, Dr. William Franklin.

### **SANCTION**

The authority to impose sanctions at the conclusion of a case is exclusive to the U.S. Administrative Law Judge ("ALJ"). Appeal Decision 2362 (ARNOLD) (1984). Title 46 of the Code of Federal Regulations Part 5 Section 569 provides the Table of Suggested Range of Appropriate Orders ("Table") for various offenses. The purpose of the Table is to provide guidance to the ALJ and promote uniformity in orders rendered. Appeal Decision 2628 (VILAS) (2002), *aff'd* by National Transportation Safety Board Docket ME-174.

Here, the Investigating Officers proved and the Undersigned Judge found that the Respondent used a dangerous drug. Furthermore, Respondent did not provide or demonstrate proof or evidence of cure of drug use by substantial involvement in the drug cure process or a drug cure program. Generally this would be done by Respondent's evidence of enrollment in an acceptable drug rehabilitation program acceptable to the IOs in the Galveston office, since this positive finding by the laboratory and by the Medical

Review Officer. Therefore, I am precluded or prevented from issuing an order less than **REVOCATION** by the applicable law.

## **ORDER**

**IT IS HEREBY ORDERED** that Respondent's said U.S. Merchant Mariner's Document, all duplicates and all other valid unexpired Coast Guard documents, licenses, certificates and authorizations whatsoever are hereby **REVOKED**. This revocation **WILL BE STAYED OR DELAYED** upon a filing by the Respondent within thirty (30) days after receipt of this Decision and Order by Respondent that the Respondent has notified LT Jerry Butwid or the Investigating Officers at the U.S. Coast Guard Marine Safety Unit Galveston, P.O. Box 0149, Galveston, Texas 77553-0149, telephone: 409-766-5411 and fax: 409-766-5420 that Respondent has enrolled to enter or entered into a Coast Guard Investigating Officers' approved drug rehabilitation program with the specific intent to complete the requirements of drug use cure, in accordance with 46 U.S. Code Section 7704(c) and the Appeal Decision 2535 (SWEENEY) (1992).

The Respondent's U.S. Merchant Mariner's Document, all duplicates and all other Coast Guard licenses whatsoever will then be **SUSPENDED** and deposited with the Senior Investigating Officer at the U.S. Coast Guard Marine Safety Unit Galveston for a period of at least twelve (12) months. It is to be deposited for a period of at least twelve (12) months to allow the Respondent time to complete the requirements of drug use cure and rehabilitation.

Following Respondent's successful completion of cure, the Respondent's U.S. Merchant Mariner's Document, all duplicates and all other Coast Guard documents, licenses, certificates and authorizations whatsoever shall be subject to a twelve (12) month probation period whereby no charge relating to drug possession or drug use under 46 U.S. Code § 7703 or § 7704 can be proved against the Respondent without violating this probation resulting in Revocation of all Coast Guard issued credentials issued to Respondent.

**OTHERWISE**, if Respondent does not so enroll in drug use rehabilitation within thirty (30) days after receipt of this Decision and Order by Respondent, the Respondent's U.S. Merchant Mariner's Document and all duplicates and all other valid and unexpired Coast Guard documents, licenses, certificates and authorizations whatsoever are **REVOKED OUTRIGHT**.

**PLEASE BE ADVISED** that the service of this Decision on Respondent will serve as notice to Respondent of his right to appeal. The rules and procedures governing administrative appeals are set forth in 33 CFR 20.1001 – 20.1004. (Attachment A).



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Thomas E. P. McElligott  
U.S. Administrative Law Judge

Done and dated on this 17<sup>th</sup> day of October, 2007  
Houston, Texas

**DOCKET NUMBER CG S&R 06-0179**

**ATTACHMENT A**

33 C.F.R. PART 20  
SUBPART J  
APPEALS

**§ 20.1001 General.**

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

**§ 20.1002 Records on appeal.**

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

**§ 20.1003 Procedures for appeal.**

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
  - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --
    - (i) Basis for the appeal;
    - (ii) Reasons supporting the appeal; and
    - (iii) Relief requested in the appeal.
  - (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
  - (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
- (c) No party may file more than one appellate brief or reply brief, unless --
  - (1) The party has petitioned the Commandant in writing; and
  - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
- (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

**§ 20.1004 Decisions on appeal.**

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