

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

UNITED STATES COAST GUARD

Complainant

vs.

WILLIAM S. MATT

Respondent.

Docket Number: CG S&R 07-0327
CG Case No. 2984077

DECISION AND ORDER

Issued: May 13, 2008

**Issued by: HON. BRUCE T. SMITH,
Administrative Law Judge**

Appearances:

For Complainant:
PO Cynthia Dubach
LCDR Melissa Harper
Coast Guard Sector New Orleans
1615 Poydras Street
New Orleans, Louisiana 70112

For Respondent:
Tulane Law Clinic
6329 Freret Street
New Orleans, Louisiana 70118

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-14-08 BY 60322 UCBAW/ML

PRELIMINARY STATEMENT

The United States Coast Guard (Coast Guard) initiated this administrative action seeking revocation of William S. Matt's (Respondent) Merchant Marine License (MML), number 1185097. This action is brought pursuant to the legal authority contained in 46 U.S.C. § 7703 and its underlying regulations codified at 46 CFR Part 5.

The original Complaint, issued on July 5, 2007, charged Respondent with one (1) count of Violation of Law or Regulation. The Coast Guard filed an Amended Complaint on January 8, 2008, which revised the regulatory authority. The Amended Complaint specifically alleges that on April 13, 2007, Respondent refused to take a pre-employment drug test, a violation of U.S. laws and regulations set forth in 46 U.S.C. § 7703, 46 CFR § 5.33, and 49 CFR § 40.191.¹

Respondent filed an Answer to the original Complaint on July 24, 2007. In the Answer, Respondent denied the jurisdictional and factual allegations. Respondent did not file an Answer to the Amended Complaint. However, Respondent was not required to file an Answer to the Amended Complaint since the Amended Complaint was submitted less than twenty (20) days before the January 23, 2008, hearing. See 33 CFR § 20.308(a). Since the Amended Complaint did not create any new issues, it merely provided a more specific law and regulation citation, Respondent's denial of the allegations in his prior Answers are considered an adequate denial of the allegations asserted in the Amended Complaint.

On January 23, 2008, a hearing was held on these matters. At the onset of this hearing, and prior to addressing the merits of the case, Respondent stated he desired to be represented by counsel; however, he was financially unable to hire an attorney. The undersigned asked

¹ The Amended Complaint cites to regulatory authority 46 CFR § 40.191 for "refusal to test." The correct regulatory citation for "refusal to test" is 49 CFR § 40.191. This typographical error is found not to have affected Respondent's notice of the allegations charged.

Respondent if he was interested in receiving free representation from law students, under the supervision of licensed attorneys, from Tulane University Law School. Respondent accepted the offer from Tulane and moved for a continuance of the hearing in order to confer with the law school representatives. The Coast Guard made no objections to either the offer by the law school to provide legal assistance or to the motion for continuance.

On April 3, 2008, the continued hearing reconvened in New Orleans, Louisiana. The proceeding was conducted in accordance with the Administrative Procedure Act, as amended and codified at 5 U.S.C. § 551-59, and Coast Guard procedural regulations located at 33 CFR Part 20. Petty Officer Cynthia Dubach and Lieutenant Commander Melissa Harper represented the Coast Guard at the hearing. Respondent appeared at the hearing and was represented by counsel from Tulane Law Clinic, to include Andrea Wilkes (associate professor), Stacy Seicshnaydre (associate professor), Greg Euteneir (student attorney), Armand Perry (student attorney), Jason Kafoury (student attorney), and Jason Kuczek (student attorney).

A total of five (5) witnesses, including Respondent, testified at the proceeding. During the hearing, the Coast Guard introduced six (6) exhibits into evidence; Respondent introduced five (5) exhibits into evidence. The witnesses and exhibits are listed in Attachment A.

After careful review of the entire record, including witness testimony, applicable statutes, regulations, and case law, the allegation of Violation of Law or Regulation in violation of 46 U.S.C. § 7703 is found NOT PROVED.

FINDINGS OF FACT

The Findings of Fact are based on documentary evidence, witness testimony, and the entire record as a whole.

1. Respondent is the holder of MML number 1185097. (Gov't Ex. 1 - pg. 6). He is licensed as a master of steam or motor vessels of not more than 100 gross registered tons (domestic tonnage) upon near coastal waters. (Id.).
2. Respondent was issued his MML on March 30, 2007. (Id.).
3. On April 13, 2007, Respondent drove from his home (Ferriday, Louisiana) to Phil Guilbeau Offshore (Galliano, Louisiana) seeking employment for a captain's position. (Tr. at 26, 143-45; Gov't Ex. 1).
4. Phil Guilbeau Offshore had employment opportunities and Respondent filled out an application. (Tr. at 26, 147; Gov't Ex. 1).
5. The position Respondent sought required a Coast Guard license. (Id.).
6. Conditions for employment with Phil Guilbeau Offshore required Respondent to take and pass a pre-employment drug test. (Tr. at 29, 35-37, 51). Respondent was instructed to submit to a drug test at Complete Occupational Health Services. (Tr. at 29-30, 147).
7. Respondent arrived at Complete Occupational Health Services around 11:00 a.m. on April 13, 2007. (Tr. at 149-50).
8. Respondent signed in at Complete Occupational Health Services and waited to take the drug test. (Tr. at 151). While waiting, Respondent called Mike Guidry. (Tr. at 151; Gov't Ex. 1- pg. 9-19).
9. Mr. Guidry was a boat captain employed by Cheramie Marine on April 13, 2007. (Tr. at 129; Gov't Ex. 1 - pg. 8). Respondent previously worked for Cheramie Marine and developed a close working relationship with Mr. Guidry. (Tr. at 137-38; Gov't Ex. 1- pg. 8).

10. While speaking with Respondent, Mr. Guidry offered Respondent a job with Cheramine Marine. (Tr. at 153-54; Gov't Ex. 1, pg. 9-19). Respondent decided to accept this position and left Complete Occupational Health Services prior to anyone calling his name for testing. (Tr. at 154-55).
11. Respondent worked for Cheramine Marine from May 1, 2007 until July 27, 2007. (Tr. at 124-26).
12. Hailey Angelette is a collector at Complete Occupational Health Services. (Tr. at 60). Ms. Angelette was certified to work as a collector on April 4, 2007. (Tr. at 110; Gov't Ex. 2)
13. Ms. Angelette filled out a Custody and Control Form (CCF) for Respondent on April 13, 2007. (Tr. at 63; Gov't Ex. 3, 4a). This form is used when conducting drug screens. (Id.).
14. Ms. Angelette indicated on the CCF that the first urine sample provided by Respondent had no temperature. (Tr. at 68; Gov't Ex. 3, 4a). Ms. Angelette wrote "Donor refused 2nd collection/Donor discarded 1st sample" on the CCF. (Tr. at 66; Gov't Ex. 3, 4a).
15. Ms. Angelette does not know Respondent and does not remember Respondent coming in for a drug screen on April 13, 2007. (Tr. at 76-77).
16. Ms. Angelette obtained Respondent's social security number from previous paperwork and used this paperwork to fill in Respondent's social security on the April 13, 2007 Custody and Control Form. (Id.).
17. The Custody and Control Form indicates that Respondent discarded his urine sample and that the urine sample was delivered to the testing laboratory by DHL. (Tr. at 106, 114-15; Gov't Ex. 3, 4(a)).

18. Complete Occupational Health Services completed a final report which states Respondent refused the pre-employment drug screen. (Tr. at 101-02, 107; Resp't Ex. A – pg. 1).
This report contains the Medical Review Officer's (MRO) signature stamp, but Ms. Angelette actually filled out the form. (Id.)
19. The MRO did not review the CCF. (Id.). The CCF was used to create the final report. (Id.)
20. The final report indicates Respondent took a two-panel drug screen on April 13, 2007. (Resp't Ex. A – pg.1). The CCF indicates that Respondent took a five-panel drug screen on April 13, 2007. (Gov't Ex. 3; 4a).
21. Complete Occupational Health Services has no documents from April 13, 2007 that contain Respondent's signature. (Tr. at 105).
22. Ms. Angelette does not remember anyone from Complete Occupational Health Service calling Phil Guilbeau Offshore to inform them Respondent refused to test. (Tr. at 106).
23. Ms. Angelette makes no mention in Respondent's file that he attempted to fake the drug test or that he asked for help to fake the test. (Tr. at 109).
24. The U.S. Coast Guard received Phil Guilbeau Offshore's letter reporting Respondent's alleged refusal to submit to a pre-employment drug screen examination sometime between May 14, 2007 and May 23, 2007. (Tr. at 134; Resp't Ex. C).

DISCUSSION

The purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea. 46 U.S.C. 7701. To assist in this goal, Administrative Law Judges (ALJs) have the authority to suspend or revoke mariner licenses if the mariner commits an act of violation of law

or regulation during the performance of his duties. See 46 U.S.C. § 7703. Under Coast Guard procedural rules and regulations, the Coast Guard bears the burden of proof and shall prove any violation by a preponderance of the evidence. See 33 CFR § 20.701-702; see also Appeal Decision 2485 (YATES) (1989). In this case, the Coast Guard seeks to prove Respondent committed a violation of law or regulation.

Jurisdiction

Jurisdiction is a question of fact and must be determined before the substantive issues of the case are decided. Appeal Decision 2620 (COX) (2001). Under 46 U.S.C. § 7703(1)(a), the Coast Guard has jurisdictional authority to revoke a respondent's license if the respondent violated a regulation while acting under the authority of that license. A mariner is considered to be acting under authority of a license when he is engaged in an act required by an employer as a condition of employment. 46 CFR § 5.57(a)(2). In this case, Respondent is charged with refusal to take a pre-employment drug test, a violation of 49 CFR § 40.191. Since the test was a condition of employment, Respondent's alleged refusal to test would have occurred while he was acting under authority of his license. Therefore, if Respondent did refuse to test, the undersigned has jurisdictional authority to revoke Respondent's license.

Refusal to Test

The term "refusal to test" is defined as a refusal to take a drug test as set forth in 49 CFR § 40.191. Under this regulation, an employee is found to have refused a drug test if the employee fails "to remain at the testing site until the testing process is complete" 49 CFR § 40.191(a)(2). The term employee includes "applicants for employment subject to pre-employment testing." 49 CFR § 40.3. If the employee leaves the testing site before the testing commences, the employee is deemed not to have refused the test. 49 CFR § 40.191(a)(2).

Testing commences when, in the presence of both the collector and employee being tested, a collection container has been selected and its seal is broken. 49 CFR § 40.63, 191(c). If a mariner refuses to test, the mariner will have violated a regulation and his license is subject to revocation. See 46 U.S.C. § 7703, 46 CFR § 5.33, 49 CFR § 40.191.

In this case, the Coast Guard argues that on April 13, 2007, Respondent applied for and was offered a boat captain position with Phil Guilbeau Offshore on condition that he pass a pre-employment drug test. (Tr. at 13). On that same day, Respondent proceeded to a testing facility and provided a urine sample. (Id.). The Coast Guard's alleges that the Respondent provided a urine sample and that the urine sample fell outside of the temperature limits and that the collector asked Respondent for a second sample. (Id.). The Coast Guard alleges that the Respondent then refused to provide the second sample and left the testing facility. (Id.). The Coast Guard alleges these actions constitute a refusal to test.

By contrast, Respondent argues that he arrived at the collection facility, but never provided a urine sample. (Tr. at 20-21). Shortly after checking into the collection facility and while sitting in the waiting room, Respondent states that made a telephone call to an employee of Cheramie Marine and was offered a job. (Tr. at 19-20). Respondent asserts that he decided to accept the offer from Cheramie Marine and left the testing facility prior to the commencement of the testing. (Id.).

After careful review of the entire record, the undersigned finds Respondent's recollection of the events to be the most accurate.

Coast Guard's Evidence

Testimony of Hailey Angelette

The Coast Guard's case rests primarily upon the testimony of Hailey Angelette. Ms. Angelette is a specimen collector with Complete Occupational Health Services and testified that she would have been the person to collect Respondent's urine on April 13, 2007. (Tr. at 60-69). Ms. Angelette received training on Department of Transportation collection procedures and obtained her collector's certification on April 4, 2007, nine (9) days before allegedly collecting Respondent's specimen. (Tr. at 61-62, 110; Gov't Ex. 2). She conducts approximately thirty (30) to fifty (50) drug collections a day and understandably does not specifically remember Respondent's April 13, 2007, specimen collection. (Tr. at 77, 95). Since Ms. Angelette has no independent recollection of the events from that day, the basis of her testimony is derived entirely from a Custody Control Form (CCF) she filled out and signed on the day in question. (Tr. at 76-77, 95; Gov't Ex. 3, 4a). The CCF is a chain of custody form that collectors use when collecting urine specimens. (Tr. at 63).

Ms. Angelette testifies that prior to performing a drug screen, the information in "Step 1" of the CCF is filled in. (Tr. at 63-65, 76-77, 99; Gov't Ex. 3, 4a). Such information includes the name of the employer, tests to be performed, and social security number of the employee. (Id.). Ms. Angelette obtained Respondent's social security from Respondent's prior files which were on hand at Complete Occupational Health Services. (Id.; Gov't Ex. 3, 4a). Ms. Angelette testifies that she received a urine sample from Respondent, but the sample fell outside of the appropriate temperature range. (Tr. at 65-68; Gov't Ex. 3, 4a). She then asked Respondent to provide an additional sample, but Respondent refused and he discarded his first sample. (Id.). Ms. Angelette does not specifically remember these events, but testified as to what the CCF indicated. (Tr. at 66).

Several discrepancies were noted on paperwork prepared by Complete Occupational Health Services. First, a notation on the April 13, 2007, CCF indicates that Respondent's specimen was released to DHL for delivery to the testing laboratory. (Tr. at 106, 114-15; Gov't Ex. 3, 4a). This is in conflict with another notation which states "donor discarded sample." (Id.). Ms. Angelette testified that the specimen was not released to DHL and, as a matter of pure routine, she automatically makes a notation that specimens are released to DHL. (Tr. at 115). Second, the CCF indicates that a five-panel test was to be performed on Respondent's urine sample. (Gov't Ex. 3, 4a). However, Complete Occupational Health Services final report (titled In-House Drug Screen) for Respondent's April 13, 2007 drug screening indicates that a two-panel test was performed. (Resp't Ex A – pg. 1). Ms. Angelette was not questioned on this discrepancy. Third, the Medical Review Officer's (MRO) signature appears on the final report establishing that Respondent's April 13, 2007, drug screening was invalid because of refusal. (Rept's Ex. A – pg. 1). However, Ms. Angelette testified that the MRO never reviewed the CCF, upon which the final report is based. (Tr. at 101-03). She also testified that she filled out the final report and that the MRO's signature stamp was used at the bottom of that document; Ms. Angelette is not aware if the MRO actually reviewed the final report. (Id.). These discrepancies give reason for concern, especially considering that Ms. Angelette's testimony is developed entirely from this paperwork and not from personal knowledge,

Testimony of Melanie Badeaux

The Coast Guard also relies upon the testimony of Melanie Badeaux. Ms. Badeaux is the executive assistant in charge of sales, logistics, and personnel for Phil Guilbeau Offshore. (Tr. at 25-26). Ms. Badeaux testified she was working at Phil Guilbeau Offshore, on April 13, 2007, when Respondent came to the office seeking employment for a captain's position. (Tr. at 25-26).

Ms. Badeaux testified that Respondent filled out an application and she was prepared to offer him a position following the completion of a pre-employment physical and drug screen. (Tr. at 26-29, 37). She then called Complete Occupational Health Services and informed them that she would send Respondent over to obtain a drug screening. (Tr. at 29-30). Ms. Badeaux testifies Respondent left to obtain the drug screening and he returned to her office later in the day with a form indicating he refused the drug test. (Id.).

Prior to Respondent returning to Phil Guilbeau Offshore, Ms. Badeaux testifies that a Mr. Joey Fullilove called her office. (Tr. at 38, 54-57). Joey Fullilove manages Complete Occupational Health Services. (Tr. at 54). Ms. Badeaux testified that Mr. Fullilove informed her that Respondent had asked how to use fake urine sample. (Tr. at 38, 54-57). Oddly, Ms. Badeaux alleged that Mr. Fullilove had never had anyone ask how to fake a urine sample before. (Id.). Shortly after this telephone call, Ms. Badeaux testifies Respondent returned to Phil Guilbeau Offshore and spoke with her boss, Phil Guilbeau. (Tr. at 31,38, 54-57). She further claims that she overheard Respondent say that he refused the test because he would have tested positive for marijuana. (Tr. at 31-32, 43-44). Ms. Badeaux testified that Mr. Guilbeau told Respondent to calm down, to take a drug awareness class, to come back in a few days, and he would then reconsider Respondent for employment. (Tr. at 40-44). She further testifies she called Respondent on May 7, 2007, to see if he had enrolled in a drug awareness program. (Tr. at 44).

The undersigned finds Ms. Badeaux's testimony wholly unpersuasive and specifically discounts major portions of it. First, most of Ms. Badeaux's testimony is based upon hearsay evidence. While hearsay evidence is allowed in suspension and revocation proceedings, hearsay evidence is less reliable than firsthand knowledge. The testimony and/or written statements of

Joey Fullilove and Phil Guilbeau would have been vitally important in corroborating the testimony of Ms. Badeaux. Their respective absences speaks volumes about the credibility of Ms. Badeaux's allegations. Second, Ms. Badeaux testified that Mr. Fullilove says he was shocked that Respondent asked how to fake a urine sample and that no one had never made such a request. However, Ms. Angelette, the collector, had neither a recollection of Respondent asking such a question nor any recollection of Respondent at all. If such a unique incident had, in fact occurred, surely the collector would have remembered or at least noted it on the CCF. Third, the undersigned finds it highly unlikely that Respondent, a newly licensed Captain, would admit to smoking marijuana to a potential employer. Furthermore, it is unlikely Mr. Guilbeau would maintain an interest in hiring Respondent after he admitted to taking drugs. It is also unlikely that Ms. Badeaux initiated a call to Respondent, on May 7, 2007, to see if Respondent had enrolled in a drug rehabilitation program. Such concern, for a non-employee, seems unlikely.

The undersigned believes that Ms. Badeaux and Phil Guilbeau Offshore were angered when Respondent turned down their job offer and accepted employment elsewhere. Per the regulations, *potential employers are required to promptly report failed drug tests to the Coast Guard.* 46 C.F.R § 16.201(c). However, the Coast Guard did not receive Phil Guilbeau Offshore letter reporting Respondent's alleged refusal to test until sometime between May 14, 2007 and May 23, 2007, a month after the alleged refusal to test. (Tr. at 134; Resp't Ex. C). This letter was undated and was sent after Ms. Badeaux's telephone call to Respondent, on May 7, 2007. (Gov't Ex. 1 – pg. 4). It is believed that during this telephone call, Ms. Badeaux learned that Respondent was no longer interested in employment with Phil Guilbeau Offshore and was angry

with Respondent.² Following this telephone call, Ms. Badeaux mailed the letter to the Coast Guard informing them of Respondent's refusal to test. Ms. Badeaux's only explanation for the late mailing was that, "I mailed it when I mailed it. I thought Mr. Matt was going to come back and, you know - - ." (Tr. at 48). This raises an inference of a fabrication motivated by Respondent's refusal of employment and significantly discredits the testimony of Ms. Badeaux.

Respondent's Rebuttal

Respondent's rebuttal of the Coast Guard's case concerns mainly the chain of events at the collection facility. Respondent acknowledges that on April 13, 2007, he drove to Phil Guilbeau Offshore and sought employment. (Tr. at 144-47). After completing an application, he was offered employment on the contingency that he pass the drug screening and physical. (Id.). Respondent left Phil Guilbeau Offshore and proceeded to Complete Occupational Health Services to obtain the drug screening and physical. (Tr. at 149-50). Upon arrive at the facility, Respondent signed in and sat down in the waiting room. (Tr. at 151).

While waiting to be tested, Respondent decided to call Mike Guidry, a boat captain working for Cheramie Marine. (Tr. at 129, 151; Gov't Ex. 1 - pg. 8-19). Respondent previously worked for Cheramie Marine and developed a close working relationship with Mr. Guidry. (Tr. at 137-38; Gov't Ex. 1 - pg. 8). Respondent informed Mr. Guidry that he had obtained his captain's license and was going to take a position with Phil Guilbeau Offshore. (Tr. at 152-54). Mr. Guidry told Respondent that Phil Guilbeau was a difficult man to work for and Cheramie

² Janice Finley, Respondent fiancé, testified that she talked to Ms. Badeaux on May 7, 2007. (Tr. 200-02). Ms. Finley testified that Ms. Badeaux asked for Respondent and Ms. Finley informed her that Respondent was working. (Id.). Upon hearing that Respondent was working, Ms. Badeaux become rude and insisted on obtaining a telephone number to call Respondent. (Id.). Ms. Finley did not have an alternate telephone number for Respondent. (Id.). Ms. Finley testified that Ms. Badeaux did not make any references to drugs. (Id.). While the undersigned does understand the possible self-serving testimony of Respondent's fiancé, this testimony does help establish why Ms. Badeaux would wait until after this telephone call to mail the letter to the Coast Guard informing them of Respondent's refusal to test.

Marine would like to hire Respondent as a captain. (Id.). Respondent decided to accept the position and left Complete Occupational Health Services. (Tr. at 154). Respondent testified that no one called his name while he was waiting, he did not fill out any paperwork, and he provided no urine sample. (Tr. at 154-61).

Respondent's testimony is corroborated by testimony from Mike Guidry. In a deposition, Mr. Guidry testified that Respondent called him April 13, 2007. (Gov't Ex. – pg. 9-11,17-19). Mr. Guidry says Respondent informed him that he was going to accept a job with Phil Guilbeau Offshore and he was getting ready to take a drug test. (Id.). Mr. Guidry testified he told Respondent that he should not do that, Phil Guilbeau was a difficult man to work for, and Respondent should come back to work for Cheramie Marine. (Id.). Mr. Guidry states Respondent was very happy with the job offer. (Gov't Ex. – pg. 19). On May 1, 2007, Respondent successfully completed a drug screen at Complete Occupational Health Services for the position he accepted with Cheramie Marine. (Rept's Ex. A – p. 8). Also on this date, Complete Occupational Health Services obtained records detailing Respondent's physical health, to include his pulse, vision, and blood pressure. (Rept's Ex. A – p. 7). Respondent worked for Cheramie Marine from May 1, 2007 until July 27, 2007. (Tr. at 126).

Coast Guard Failed to Prove Case

In these proceedings, the Coast Guard bears the burden of proof and must prove any violation by a preponderance of the evidence. In this case, in order to prove failure to test, the Coast Guard needed to prove Respondent left Complete Occupational Health Services after the commencement of the drug testing process. The Coast Guard's case rested primarily on the collector's testimony. The collector, who had only nine (9) days of experience prior to testing Respondent on April 13, 2007, had no recollection of Respondent. Her testimony was based

entirely from a custody and control form. This form contained significant errors, to include indicating Respondent's urine was both discarded and sent to the testing laboratory. When questioned on these errors, the collector testified she just automatically fills out the form. The form also indicated Respondent was going to have a five-panel test, while the final report indicated Respondent was going to have a two-panel test. The collector also testified that the medical review officer never reviewed this form. The reliability of this form is seriously in doubt.

The Coast Guard also relied upon the testimony of Ms. Badeaux. She gave very damaging testimony about Respondent, stating he admitted to smoking marijuana and he asked how to fake a urine sample. However, Ms. Badeaux's testimony was based almost entirely on hearsay evidence. Furthermore, evidence was given that raises an inference that Ms. Badeaux fabricated portions of her testimony. This fabrication was likely motivated by Respondent's refusal to obtain employment with Phil Guilbeau Offshore.

The undersigned finds the testimony of Respondent and his supporting witnesses credible. Respondent arrived at Complete Occupational Health Services on April 13, 2007, with the intent to complete a drug screening. However, while waiting to be tested, Respondent received a job offer that he perceived to be better. He therefore decided not to take the position with Phil Guilbeau Offshore and left the testing facility before testing began.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent and the subject matter of this hearing are properly within the jurisdiction of the United States Coast Guard and the Administrative Law Judge in accordance with 46 U.S.C. § 7703, 46 CFR Part 5, and 33 CFR Part 20.

2. Respondent arrived at arrived at Complete Occupational Health Services on April 13, 2007, intending to take a pre-employment drug test.
3. Respondent deceived to leave Complete Occupational Health Services prior to the commencement of the drug testing process.
4. The factual allegation "Violation of Law or Regulation" against Respondent is found **NOT PROVED** by a preponderance of the reliable and credible evidence and testimony as taken from the record considered as a whole.

ORDER

IT IS HEREBY ORDERED that the allegation of "Violation of Law or Regulation" against Respondent is found not proved.

PLEASE TAKE NOTICE that service of this Decision on the parties and/or parties' representative(s) serves as notice of appeal rights set forth in 33 CFR § 20.1001-20.1004.

(Attachment B).

Done and dated May 13, 2008 at
New Orleans, LA


HON. BRUCE T. SMITH
Administrative Law Judge
United States Coast Guard

Certificate of Service

I hereby certify that I have forwarded the attached document by Facsimile to the following persons:

LCDR Melissa Harper, IO
PO Cynthia Dubach, IO
USCG Sector New Orleans
1615 Poydras Street
New Orleans, LA 70112
Fax: (504) 589-4244

Andrea Wilkes, Esquire
Tulane Law Clinic
6329 Freret Street
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I hereby certify that I have forwarded the attached document by hand delivery to the following:

ALJ Docketing Center
Attention: Hearing Docket Clerk
40 South Gay Street, Room 412
Baltimore, MD 21202

Done and dated the 14th of May, 2008 at
Baltimore, Maryland



Lauren M. Meus
Paralegal Specialist

ATTACHMENT A

WITNESS AND EXHIBIT LISTS

WITNESS LIST

COAST GUARD WITNESSES

Gov't Witness 1	Melanie Badeaux
Gov't Witness 2	Hailey Angelette
Gov't Witness 3	Dino Cheramie (via telephone)

RESPONDENT WITNESSES

Resp't 1	William S. Matt
Resp't 2	Janice Finley

EXHIBIT LIST

COAST GUARD EXHIBITS

Gov't Ex. 1	Phil Guilbeau Offshore, Inc. file
Gov't Ex. 2	Certified Professional Collector Course Certificate
Gov't Ex. 3	Federal Drug Testing Custody and Control Form, Copy 1 – Laboratory Copy
Gov't Ex. 4	Federal Drug Testing Custody and Control Form, Copy 2 – Medical Review Officer Copy
Gov't Ex. 4a	Federal Drug Testing Custody and Control Form, Copy 2 – Collector Copy
Gov't Ex. 5	March 27, 2008, deposition of Captain Michael Anthony Guidry, Jr.

RESPONDENT EXHIBITS

- Resp't Ex. A Complete Occupational Health Services, LLC file
- Resp't Ex. B 1-8 Eight photographs
- Resp't Ex. C Stipulation
- Resp't Ex. D Call Detail for witness telephone number
- Resp't Ex. E Statement of Amy Marie Roach

ATTACHMENT B

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.