

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

UNITED STATES COAST GUARD

Complainant

vs.

RANIA AZZAZI

Respondent.

Docket Number: CG S&R 07-0478
CG Case No. 3061500

DECISION AND ORDER

Issued: October 3, 2008

Issued by: Hon. Parlen L. McKenna

Appearances:

For Complainant

LT Ann McSpadden, esq.
CWO James Mints
U.S. Coast Guard
Sector San Diego
2710 N. Harbor Dr.
San Diego, CA 92101

For Respondent

Rania Azzazi, pro se

I. PRELIMINARY STATEMENT

In discharge of its duty to promote the safety of life and property at sea, the United States Coast Guard (“Coast Guard”) initiated this administrative action seeking revocation of the Coast Guard Merchant Mariner Document issued to Rania Azzazi (“Respondent”) (See CG Ex. 1). This action was brought pursuant to the legal authority contained in 46 U.S.C. 7704, and the proceedings were conducted in accordance with the procedural requirements of 5 U.S.C. 551-559, 46 Code of Federal Regulations (“CFR”) Part 5, and 33 CFR Part 20.

On September 24, 2007, the Coast Guard filed a Complaint against Respondent’s Coast Guard issued document alleging the following factual allegations:

1. On April 4, 2007, Respondent took a pre-employment drug test;
2. A urine specimen was collected by Evangeline Perreaut of UCSD;
3. The Respondent signed a Federal Drug Testing Custody and Control Form;
4. The urine specimen was analyzed by Quest Diagnostics/Van Nuys using procedures approved by the Department of Transportation;
5. That specimen subsequently tested positive for Marijuana metabolites; and
6. The positive test was reviewed and certified by Hani Khella., Medical Review Officer.

(See CG Ex. 3).

On October 17, 2007, Respondent filed an Answer to the Complaint denying both the jurisdictional and factual allegations in the Complaint (See CG Ex. 4).

The hearing in this matter commenced on January 8, 2008. At that initial hearing, Respondent modified her plea to admit to the jurisdictional allegations in the Complaint (See TR. 9, January 8, 2008). Respondent also changed her plea to admit that she took a pre-employment drug test on April 4, 2007 (See TR. 9, January 8, 2008).

Thereafter, the Coast Guard made its opening statement. Respondent then moved to dismiss the case based on the Coast Guard's (1) failure to disclose what she is being charged with prior to the commencement of the hearing; and (2) failure to turn over its documentary exhibits and list of witnesses fifteen (15) days or more before the hearing. (See 33 CFR 20.601(c) (2)). After hearing the arguments of both parties, the case was continued to allow for the proper exchange of exhibits/witness list. By Order dated January 23, 2008, Respondent's Motion to Dismiss was denied. That Order fully discussed the controlling regulatory/legal issues raised and is hereby incorporated by reference.¹

The hearing resumed on March 4, 2008. At that time, the Coast Guard put on its case in chief which included the introduction of eight (8) exhibits and the testimony of the Director of Medtox Laboratory, Jennifer Collins, M.D., and the Medical Review Officer (MRO) Hani J. Khella, M.D.

Because the specimen collector was unavailable to attend the hearing for medical reasons, the case was continued to April 30, 2008, over Respondent's objection. An Order discussing the factual and legal issues was issued on February 29, 2008 and is hereby incorporated by reference. At the April 30, 2008 hearing, the Coast Guard called Ms. Evangeline Perroute of UCSD Occupational Medicine.² Ms. Perrout is a medical assistant at the University and was the specimen collector for Respondent's sample (See TR. 21, April 30, 2008).

¹ Timely and proper notice was given to Respondent of the dates, times and place of the hearings in this matter (See Orders dated November 26, 2007 for the January 8, 2008 hearing; February 4, 2008 for the March 4, 2008 hearing; and April 1, 2008 for the April 30, 2008 hearing).

² The Coast Guard had marked the MRO copy of the Custody and Control form for purposes of identification at the March 4, 2008 hearing. The Coast Guard moved its introduction at the April 30, 2008 hearing. The Coast Guards request to admit Exhibit No. 9 into evidence was granted without objection.

Respondent did not proffer any documentary exhibits but was sworn-in and testified. In her testimony, Respondent stated that she did not understand how her specimen could have tested positive for marijuana (THC) since she does not “smoke pot, marijuana”. (See TR. 29, April 30, 2008). In response to Respondent’s assertion that she never uses marijuana, the Coast Guard introduced a rebuttal exhibit which was marked as Coast Guard Ex. 10. This exhibit was a letter from the certified addiction counselor which evaluated Respondent as required by the Sweeney cure process³. Respondent did not object to the admission of Coast Guard Exhibit No. 10 and it was admitted into evidence. (See TR. 3, April 30, 2008). Importantly, while not raising an objection to its admission, Respondent questioned whether the Coast Guard violated her privacy rights by issuing a subpoena to the certified drug treatment counselor in order to obtain her report.

Based on Respondent’s concern, the Coast Guard was given five (5) days to cite authority which demonstrated that it had a legal right to subpoena the certified drug treatment counselor’s report. The undersigned stated that if the report was not acquired in accordance with law/regulation, it would be struck from the record (See TR. 38, April 30, 2008). The Coast Guard submitted its response on May 5, 2008. After fully considering the issue raised by Respondent, an Order issued on June 26, 2008, finding that Coast Guard Exhibit 10 was properly obtained. The June 26, 2008, Order is hereby incorporated by reference.

The findings of fact and conclusions of law which follow are prepared upon my analysis of the entire record, and applicable regulations, statutes, and case law. Each exhibit entered, although perhaps not specifically mentioned in this decision, has been carefully reviewed and given thoughtful consideration.

³ Appeal Decision 2535 (SWEENEY)(1992).

II. FINDINGS OF FACT

1. Rania Azzazi, the Respondent herein, was at all times the holder of Merchant Mariner Document (MMD) No. 120096. Respondent's Document was issued in Honolulu, Hawaii and expires on September 26, 2011. The document authorizes her to serve as: Ordinary Seaman, Wiper, Steward's Department (Food Handler). (See CG Ex. 1);
2. On September 24, 2007, the Coast Guard filed a Complaint against Respondent's MMD alleging use of or addiction to the use of a dangerous drug (THC-Marijuana metabolites) (See CG Ex. 3);
3. Respondent was fully advised of her right to counsel and stated on the record that she wished to proceed pro se (See TR. 4, January 8, 2008);
4. Respondent filed an Answer to the above-noted charge and denied the jurisdictional and factual allegations therein (See CG Ex. 4). At the January 8, 2008 hearing, Respondent changed her plea to admit to the jurisdictional allegations and the first specification of the factual Complaint - - that on April 4, 2007, Respondent took a pre-employment drug test (See TR. 9, January 8, 2008);
5. Respondent's urine specimen was collected by Evangeline Perreaut of UCSD (See CG Ex. 9). Ms. Perreaut is a DOT certified collector (See TR. 8, April 30, 2008). Respondent's urine specimen was collected in accordance with all DOT guidelines and requirements contained in 49 CFR Part 40 (See TR 7-28, April 30, 2008). Procedures Ms. Perreaut followed include, but are not limited to, the following:
 - a. The collector verified the identity of Respondent, the specimen provider (See TR. 9, April 30, 2008);
 - b. Following collection, Ms. Perreaut checked the temperature of Respondent's specimen and ensured the sample measured within the appropriate temperature range (See TR. 11, April 30, 2008);
 - c. Ms. Perreaut placed the specimen into two (2) separate specimen bottles, referred to as a "split sample" (See TR. 11, April 30, 2008);
 - d. Ms. Perreaut sealed the specimen bottles in Respondent's presence (See TR. 11-15, April 30, 2008);
 - e. Respondent initialed the seal on each specimen bottle (See TR. 14, April 30, 2008);
 - f. Ms. Perreaut completed the Custody and Control form with Respondent's information (See TR. 14-15, April 30, 2008; and CG Ex. 9);

- g. Respondent signed a federal Custody and Control Form during the drug test that reads at step 6:

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner, each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information on this form and the label affixed to each specimen bottle is correct.

(See CG Ex. 9); and

- h. Each Custody and Control Form contains a specimen identification number (See CG Ex. 9; and TR. 21, April 30, 2008).
6. Ms. Perreaut's testimony is found to be credible (See TR. 7-29, April 30, 2008).
 7. USCD sent Respondent's split specimen to Medtox Laboratories of St. Paul, Minnesota (See CG Ex. 2).
 8. Medtox received Respondent's urine specimen via courier on April 10, 2007 (See CG Ex. 2, page 6).
 9. The split sample urine specimen bottles arrived in a sealed package with seals intact for both specimen bottles (See TR. 48, March 4, 2008; and CG Ex. 2).
 10. Medtox tested Respondent's urine specimen in accordance with DOT guidelines (See CG Ex. 2).
 11. The chain of custody for Respondent's specimen was intact (See TR. 48, March 4, 2008).
 12. The initial drug screening of Respondent's urine detected the presence of marijuana metabolite (THC) above the cutoff level (See CG Ex. 2).
 13. A confirmatory test verified the presence of marijuana metabolite (THC), above the cutoff level of 15 ng/ml. The actual results were 78 ng/ml (See CG Ex. 2; and TR. 32, March 4, 2008).
 14. The Confirmatory testing was performed in accordance with 49 CFR Part 40 utilizing gas chromatography mass spectroscopy (See CG Ex. 2).
 15. Dr. Jennifer A. Collins, laboratory director for Medtox, testified in the proceeding as the Responsible Person under the Federal Guidelines For Workplace Drug Testing (See TR. 21, March 4, 2008). Dr. Collins testified that Respondent's sample was tested in accordance with all federal regulations and that both the initial and confirmatory tests were positive for THC metabolite (See TR. 30-31, March 4, 2008).
 16. The testimony of Dr. Collins is found to be credible (See TR. 19-52, March 4, 2008).

17. Medtox reported the positive drug test to Dr. Hani Khella, a medical review officer (MRO) who contacted Respondent on April 12, 2007. Respondent denied using marional/dronabinol or hemp products, and could not offer a medical or otherwise legitimate reason for the positive drug test results (See CG Exs. 6 & 7) (See TR. 60-61, March 4, 2008).
18. The Testimony of Dr. Hani J. Khella is found to be credible (See TR. 54-74, March 4, 2008).
19. Respondent did not request that the split sample of her urine specimen be sent to another DOT certified laboratory for testing (See CG Ex 7; TR. 68-70).
20. The burden of proof for such a showing is on the Coast Guard.
21. By the submission of reliable and probative evidence, the Coast Guard met that burden. The burden of going forward then shifts to Respondent to rebut the Coast Guard's prima facie case.
22. Respondent did not produce any documentary evidence to rebut the Coast Guard's prima facie showing. Moreover, Respondent did not put forth any testimony that might explain why her urine specimen tested positive for marijuana metabolite. Respondent did, however, deny under oath using marijuana (See TR. 99, March 4, 2008).
23. In rebuttal to Respondent's assertion that she did not use marijuana, the Coast Guard proffered the substance abuse evaluation for Respondent (See CG Ex. 10).
24. By that document, Mr. Theodore Walker, a Certified Addiction Treatment Counselor wrote:

In regards to drug and alcohol use; Ms. Rania Azzazi reports some recreational use of marijuana and alcohol, but states she is able to maintain periods [sic] of abstinence on her own. Specifically, Rania states that she has not used marijuana in the past (4) weeks, and she rarely drinks alcohol.
- (See CG Ex. 10).
25. Based upon the specific statements of Respondent to Mr. Walker, I find the Respondents testimony concerning the denial of drug use not credible. In making this Finding of Fact, I specifically reject MST-2 Daniels testimony to the extent that he remembered that Respondent admitted using marijuana (See TR. 89-100, March 4, 2008).
26. Respondent failed to rebut the Coast Guard's prima facie case. Therefore, the charge of use of or addiction to the use of dangerous drugs is hereby found PROVED.

27. Respondent, prior to the March 4, 2008 hearing, commenced to Sweeney cure process and completed the initial rehabilitation phase (See TR. 35, April 30, 2008). However, Respondent has voluntarily and knowingly decided not to continue the Sweeney cure process since she failed to notify the Court that she has commenced the one-year non-association period or entered into a settlement agreement with the Coast Guard (See TR. 42-45, April 30, 2008).
28. Respondent's merchant mariner's document be, and it hereby is, REVOKED.

III. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The acts and conduct of Respondent are within the suspension and revocation jurisdiction provided by Title 46 U.S.C. 7704, 46 CFR Part 5 and Title 33 CFR Part 20.
2. Respondent holds a Coast Guard issued merchant mariner's document that expires on September 26, 2011 (See CG Ex. 1).
3. On April 4, 2007, Respondent reported to the testing Center for a pre-employment drug test. In administering the drug test, the collector followed the Center's procedures set forth for drug testing by the Department of Transportation in 49 CFR, Part 40 and 46 CFR 5.35.
4. Respondent's drug test tested positive for marijuana metabolite. It indicated she registered a measurement that exceeded the 15 ng/ml cut-off level for marijuana metabolite.
5. The positive drug test creates a presumption that Respondent is a drug user within the meaning of 46 CFR 16.21(b), which, on the basis of the record, she has failed to rebut. She has also failed to rebut the Coast Guard's prima facie case.
6. The Coast Guard introduced evidence of cure and stipulated on the record that Respondent had completed the initial rehabilitation phase of "cure" (See CG Ex. 10; TR.

78-88, March 4, 2008; and TR. 35, April 30, 2008). However, Respondent has not notified the Court that she wished to complete the cure process.

7. Respondent's use of drugs violates the provisions of 46 U.S.C. 7704 (c) which requires that her merchant mariner's document and any other Coast Guard documents she may hold be revoked.
8. Pursuant to 33 CFR § 20.904(f) Respondent may file a Motion for reopening of a proceeding to modify the Order of revocation if the basis for the revocation is no longer valid (e.g., Respondent in fact commenced the one (1) year non-association period and failed to notify the Coast Guard or the Court).

IV. DISCUSSION

This Suspension and Revocation proceeding is remedial and not penal in nature. It is “intended to help maintain the standards of competence and conduct essential to the promotion of safety at sea.” 46 CFR 5.5. The Commandant of the U.S. Coast Guard has delegated to Administrative Law Judges the authority to suspend or revoke a license, certificate, or merchant mariner's document for violations arising under 46 U.S.C. 7703 and 7704. See 46 CFR 5.35. Here, the Coast Guard charged Respondent under 46 U.S.C. 7704(c) and 46 CFR 5.35 alleging the use of dangerous drugs. In accordance with the law and regulations it must seek revocation of the merchant mariner's document. Finally, it is noted that this proceeding is conducted in accordance with the procedures set out in the Administrative Procedures Act, at 5 U.S.C. 551, et seq., and with the provisions contained in 33 CFR Parts 20 and 46 CFR Part 5.

A. Witness Credibility

It is well established that an ALJ is the finder of fact; therefore witness credibility and assessment of evidence is determined by the presiding ALJ. Appeal Decision 2632 (WHITE)

(2002). “The ALJ is not bound by the witnesses’ opinion, but must make his own determination based on the facts and the law.” Id. When conflicting or inconsistent testimony is presented during an administrative hearing, the ALJ is afforded broad discretion to determine the credibility of witnesses. Appeal Decision 2616 (BYRNES) (2000).

I conclude Ms. Perreaut’s testimony regarding the collection of specimen to be credible. (TR. 9-15, April 30, 2008). Furthermore, Dr. Collins’ testimony confirming that the sample was tested in accordance with all federal regulations is credible. (See TR. 30-31, March 3, 2008). Finally, Dr. Khella’s testimony finding that Respondent’s urine specimen was positive for marijuana metabolite (THC) and that there was no exculpatory medical explanation for the positive drug test is found to be credible (See TR. 54-74, March 4, 2008).

B. Burden of Proof and Presumption

The Coast Guard has the burden of proving the allegations of the Complaint by a preponderance of the evidence. See Appeal Decisions 2468 (LEWIN); 2477 (TOMBARI); Dept. of Labor v. Greenwich Collieres, 512 U.S. 267 (1994); Steadman v. SEC, 450 U.S. 91, 101-3 (1981). To prevail under this standard, the Coast Guard must establish that it is more likely than not that Respondent committed the violations alleged in the Complaint. 33 CFR § 20.701-702(a). To satisfy the burden of proof, the Coast Guard may rely on direct and/or circumstantial evidence. See generally, Monsanto Co. v. Spray-Rite Serv. Corp., 465 U.S. 752, 764-765 (1984).

In Coast Guard cases brought under 46 CFR 5.35, if the Coast Guard initially establishes the required elements by a preponderance of the evidence, it has made a prima facie case and the burden of proof of going forward shifts to Respondent. To establish a prima facie case, the Coast Guard must show that (1) the Respondent was tested for a dangerous drug, (2) the

Respondent tested positive for a dangerous drug, and (3) the test was conducted in accordance with 49 CFR Part 40. Appeal Decisions 2584 (SHAKESPEARE), 2379 (DRUM), 2589 (MEYER), 2592 (MASON), 2603 (HACKSTAFF), 2598 (CATTON) and 2583 (WRIGHT). In this case, the Coast Guard has proven the three (3) above-noted requirements and therefore established a prima facie case.

At this point it is also important to recognize that because Respondent tested positive for marijuana metabolite, a presumption arises that she is a drug user. 46 CFR 16.201(b). SHAKESPEARE, supra; MEYER, supra; MASON, supra, HACKSTAFF, supra, Appeal Decision 2379 (DRUM). So here, the burden of going forward shifts to the Respondent to produce persuasive evidence that contravenes the prima facie case made by the Coast Guard, and rebuts the presumption that she is a drug user. 46 CFR 16.201; 46 CFR 16.201(b); 33 CFR 20.703.

C. Respondent's Case

Respondent may rebut the presumption involved with persuasive evidence that (1) calls into question any element of the prima facie case; (2) indicates an alternative medical explanation for the positive test result; or (3) indicates the use was not wrongful or not knowing. Appeal Decision 2560 (CLIFTON) (1995), Appeal dismissed sub. nom. Kramek v. Clifton, NTSB EM-180 (1995). Here, Respondent's sole defense was her unsupported denial of never using marijuana. Indeed she did not base her defense on challenging the Coast Guard's prima facie case, assert an alternative explanation for the positive test result, or that the use was not wrongful or not knowing.

Credibility determinations and the weight to be given to the testimony involved is not a matter of truth versus untruth, but rather how the efficacy of that testimony fits with the other

evidence of record. Here, the testimony of the collector, the laboratory Responsible Person, and the MRO are clearly supported by the rest of the record.

On the other hand, the Respondent's testimony denying drug use stands alone; there is no corroboration of any kind. Indeed, the submission of the letter from Mr. Walker who is a Certified Addiction Treatment Counselor clearly rebuts Respondent's denial of drug use (See CG Ex. 10). In this regard, Respondent did not object to the admission of this exhibit or challenge its content.

V. SANCTION

The authority to impose sanctions at the conclusion of a case is exclusive to the 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 NTSB Docket ME-174. Once the Coast Guard proves a mariner used or was addicted to the use of dangerous drugs, his credentials must be revoked unless cure is proven. See 46 U.S.C. 7704(c); 46 CFR 5.569; Appeal Decision 2535 (SWEENEY) (1992). Absent evidence of cure, an ALJ must revoke Respondent's license and document. Appeal Decision 2634 (BARRETTA) (2002). In contrast, where Respondent demonstrates "substantial involvement in the cure process by proof of enrollment in an accepted [drug] rehabilitation program," an ALJ may stay the revocation and continue the Suspension and Revocation hearing. Id. See also Review Decision 18. Absent evidence of cure or substantial involvement in the cure process, an ALJ has no choice but to revoke under 46 U.S.C. 7704(c). Appeal Decision 2583 (WRIGHT) (1997); Appeal Decision 2552 (FERRIS) (1993).

The record does not indicate that Respondent has a prior disciplinary record with the Coast Guard (See entire record for this proceeding). Title 46 of the United States Code section 7704(c) provides that if a holder of Coast Guard issued merchant mariner's papers has been shown to be a user of dangerous drugs, her merchant mariner's document shall be revoked absent satisfactory proof of "cure." The administrative law judge has no discretion in cases brought under 46 U.S.C. 7704 (c) to grant any leniency to Respondent.

However, Respondent asserts that the "cure" process is too burdensome and argues that the "cure" process and its regulatory requirements should not be mandated on her. Restated, Respondent proposes that in her cases, the "cure" requirements be alleviated.

Here, once Respondent was notified of her positive drug test, she went to a Certified Addiction Treatment Counselor to begin the "cure" process. Counselor Walker issued a report finding:

With regards to the Family/Social section of the ASI, client does not relate evidence of dysfunction. By history, Rania relates no history of emotional, physical, or sexual abuse. Additionally, she reports a positive system of family and social support. In her assessment session, Ms. Rania Azzazi demonstrated a wide range of emotion and ability to properly process thoughts, feelings and behaviors. Rania was unrestricted in her ability to self-disclose uncomfortable events, and willing to incorporate coping skills that would improve her life. Thus, Ms. Rania Azzazi's rating in this area rated as "0" and indicated that treatment is unnecessary. It is generally accepted that substance abusers have some history of family dysfunction. Ms. Rania Azzazi's inability to identify areas of concern may be either legitimate or, as yet, undiscovered. Nonetheless, Rania reports a current system of positive support with family and friends that will support her stability.

In summary, client's overall ratings were in the lower end of the scale indicating that some form of treatment is probably unnecessary. Further, client does not meet the criteria required to prove medical necessity for treatment as outlined in the Diagnostic Statistical Manuel IV-R. This is due to her ongoing stability involvement in employment, social support, participation in social/recreational activities that are supportive of a healthy lifestyle, etc. Inability to meet these criteria makes the client ineligible for

treatment as mandated by the San Diego County Department of Drug and Alcohol Services and the American Psychiatric Association.

Based on the findings of the Addiction Severity Index it is agreed that the client presents no current need for formal treatment. Ms. Rania Azzazi could be supported by regular and/or random drug and alcohol screenings. There is never a promise of ongoing sobriety for any person with a history of substance use and this Counselor does not provide for such a guarantee. Moreover it should be noted that those persons who continue to experiment with illicit drugs or alcohol could develop addiction. Nonetheless, treatment at this juncture would not be indicated.

Respondent argues that she should not have to wait one (1) year after completion of her initial rehabilitation program to get her document back. Unfortunately for Respondent, 46 CFR 5.59(b) and Appeal Decision 2536 (SWEENEY) mandate revocation of a merchant mariner's credentials upon a finding of use of dangerous drugs. Importantly, the Commandant took up this exact issue in Appeal Decision 2638 (PASQUARELLA) (2003). In that case, Respondent Pasquarella moved for the return of his document prior to completing the one (1) year non-association with drugs. The regulatory basis for this request was 46 CFR 5.521(b) which provides that when a hearing is continued or delayed, the judge shall return the document unless a prima facie case has been established that the individual would pose a "definite danger to public health, interest or safety at sea". After six (6) months, the Pasquarella hearing was reopened to consider that specific issue. Respondent offered persuasive evidence which was not rebutted by the Coast Guard. Accordingly, I ordered the return of Respondent Pasquarella's merchant mariner papers. The Coast Guard Investigating Officer filed an appeal and the Commandant reversed my February 22, 2002 Decision and Order. Because the one (1) year non-association period was completed by the time of the Commandant's reversal and Respondent Pasquarella would not suffer further suspension, no appeal to the NTSB was perfected. Regardless of these facts, Respondent Azzazi does not comprehend the fact that a judge cannot

modify the Sweeney cure requirements even if the facts would warrant such action. To resolve Respondent's incredulity, I am attaching Appeal Decision 2638 (PASQUARELLA)(2003). It matters not that Ms. Azzazi only occasionally used marijuana as opposed to a cocaine/heroin addict. The one year non-association period is still applicable regardless of the type of drug or the severity of addiction. If Respondent disagrees with the Sweeney cure requirements, she may appeal this decision in accordance with Attachment B to this Decision and Order.

After careful consideration of the entire record, I find that the Coast Guard's case against the Respondent is **PROVED**. In so holding, it is noted that under 46 CFR 5.901 the Coast Guard provides clemency where a person's document has been revoked. Further, 33 CFR 20.904 provides that the Respondent may, under certain circumstances, enunciated therein, file a motion to reopen the proceeding.

VI. ORDER

WHEREFORE,

IT IS HEREBY ORDERED, that the Respondent's Merchant Mariner's Document and all other credentials issued to her by the U.S. Coast Guard are hereby REVOKED.

IT IS FURTHER ORDERED that Service of the Decision and Order upon the U.S. Coast Guard and Respondent serves notice to the parties' of their right to appeal under 33 CFR Part 20, Subpart J. A copy of Subpart J is provided as Attachment B.

/s/ Parlen L. McKenna
HON. PARLEN L. MCKENNA
ADMINISTRATIVE LAW JUDGE
U.S. COAST GUARD

Done and dated on this 3rd day of October 2008
Alameda, California

ATTACHMENT A

WITNESS AND EXHIBIT LISTS

COAST GUARD WITNESSES

IO Witness 1	Jennifer A. Collins, M.D. Director of Medtox Laboratory
IO Witness 2	Hani J. Khella, M.D., Medical Review Officer
IO Witness 3	Ms. Evangeline Perroute, UCSD Occupational Medicine
IO Witness 4	MST2 Alfred Daniel

RESPONDENT WITNESSES

Respondent Witness 1	Rania Azzazi
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EXHIBIT LIST

COAST GUARD EXHIBITS

CG Ex. 1	Copy of Respondent's Merchant Mariner's Document
CG Ex. 2	Litigation Package
CG Ex. 3	Complaint dated September 24, 2007
CG Ex. 4	Respondent's Answer to Complaint
CG Ex. 5	Motion of Request of Change of Location
CG Ex. 6	MRO Report, dated April 12, 2007
CG Ex. 7	MRO Notes
CG Ex. 8	Notice of Discovery
CG Ex. 9	MRO Copy of the Custody and Control form
CG Ex. 10	Letter from Certified Addiction Counselor

RESPONDENT EXHIBITS

None

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) (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.