

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

UNITED STATES COAST GUARD

Complainant

v.

CHARLES DAVID RICH

Respondent

Docket No: 09-0065
CG Enforcement Activity No: 3403919

DECISION AND ORDER

Date Issued: October 20, 2009

Issued by: HON. BRUCE TUCKER SMITH
Administrative Law Judge

Appearances:

For Complainant

MST2 Kathleen E. Lepper, IO
MST1 Aaron M. Frost, IO
USCG Marine Safety Detachment Panama City

Robert Foster, SIO
USCG Sector Mobile

For Respondent

Charles David Rich, *pro se*

I. PRELIMINARY STATEMENT

The United States Coast Guard (Coast Guard) initiated this administrative action seeking revocation of Respondent Charles David Rich's (Respondent) Coast Guard-issued Merchant Mariner's Document (MMD) and Coast Guard-issued Merchant Marine License (MML) (*hereinafter*, collectively referred to as Coast Guard-issued credentials). This action is brought pursuant to the legal authority codified at 46 U.S.C. §§7703 and 7704 and the underlying regulations contained in 46 C.F.R. Part 5.

The Coast Guard's Original Complaint, filed on February 17, 2009, alleged that Respondent was convicted under the National Driver Registry Act and that Respondent was convicted of a dangerous drug violation within the last ten years, in violation of 46 U.S.C. §7704(b). Service was attempted upon Respondent via U.S. Postal Service Certified Mail, Return Receipt. On April 21, 2009, the Coast Guard filed an Amended Complaint proposing alternative dates from those proposed in the Original Complaint. Respondent was served with the Amended Complaint via U.S. Postal Service Certified Mail, Return Receipt. On May 14, 2009, Respondent filed an Answer wherein he admitted the jurisdictional allegations and denied the factual allegations of the Amended Complaint. Respondent did not allege an affirmative defense to the Amended Complaint.

On May 18, 2009, the instant matter was assigned by the Chief Administrative Law Judge to the undersigned Administrative Law Judge (ALJ) for adjudication. On June 4, 2009, the parties participated in a pre-hearing telephone conference during which time preliminary matters were discussed and a hearing date was set.

On August 10, 2009, this matter came on for hearing at the Okaloosa County Courthouse Annex in Shalimar, Florida. 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 C.F.R. Part 20. Investigating Officers (IOs) MST2 Kathleen

E. Lepper, MST1 Aaron M. Frost, USCG Marine Safety Detachment Panama City, and Senior Investigating Officer (SIO) Robert Foster, USCG Sector Mobile, appeared on behalf of the Coast Guard. Respondent appeared on his own behalf. During the course of the Coast Guard's opening statements, it became apparent to the court that the Coast Guard was alleging more than what was originally plead in its Complaint. Because of a concern for the due process rights of Respondent, the court noted a problem with "notice" and thereafter charges were dismissed without prejudice. The Coast Guard thereupon lodged an oral motion requesting leave to amend its Complaint, which the court granted.

On August 11, 2009, the Coast Guard filed a Second Amended Complaint against Respondent again alleging violations of 46 U.S.C. §7703(3); §7704(b) and 46 C.F.R. §5.35. The Coast Guard's Second Amended Complaint again alleged Respondent was found guilty on October 28, 2008, of reckless driving—reduced from DUI. However, the Coast Guard's Second Amended Complaint differed from previous Complaints in that it alleged with specificity that Respondent was convicted of possession of paraphernalia and possession of a controlled substance without a prescription and thereby violated 46 U.S.C. §7704(b) and 46 C.F.R. §5.35. The Second Amended Complaint seeks revocation of Respondent's Coast Guard-issued credentials.

On August 25, 2009, Respondent filed an Answer to the Second Amended Complaint wherein he admitted jurisdictional allegations, denied factual allegations and asserted the "circumstances of [his] convictions" constituted an affirmative defense.

This matter came on for hearing again on September 17, 2009, at the Okaloosa County Courthouse Annex in Shalimar, Florida. USCG Marine Safety Detachment Panama City IOs MST2 Kathleen E. Lepper and MST1 Aaron M. Frost, appeared on behalf of the Coast Guard, as well as SIO Robert Foster of USCG Sector Mobile. Respondent appeared on his own behalf and was joined at counsel table by his father Perry Rich.

Both parties appeared, presented their respective cases and rested. One (1) witness testified as part of the Coast Guard's case-in-chief and the Coast Guard offered six (6) exhibits into evidence, all of which were admitted. Respondent cross-examined the witness offered by the Coast Guard; Respondent did not testify on his own behalf nor did he call any witnesses to testify on his behalf. Respondent offered thirteen (13) exhibits into evidence, all of which were admitted.¹

At the conclusion of the September 17, 2009 hearing, the court permitted the parties to orally present their closing arguments prior to closing the administrative record.

II. FINDINGS OF FACT

The Findings of Fact are based on a thorough and careful analysis of the documentary evidence, testimony of witnesses, and the entire record taken as a whole.

1. At all relevant times mentioned herein Respondent Charles David Rich was the holder of Coast Guard-issued Merchant Mariner's License (MML) and a Merchant Mariner's Document (MMD).
2. On May 19, 2007, Respondent was involved in a motor vehicle accident near the intersection of West Highway 98 and Molitor Avenue in Bay County, Panama City, Florida. (CG Ex. 1).
3. On May 19, 2007, following the motor vehicle accident near the intersection of West Highway 98 and Molitor Avenue in Bay County, Panama City, Florida, Respondent was arrested by the Panama City Police for violating FLA. STAT. 316.193, Driving Under the Influence (DUI). (CG Ex. 1).
4. On May 19, 2007, following the motor vehicle accident near the intersection of West Highway 98 and Molitor Avenue in Bay County, Panama City, Florida, Respondent was cited by the Panama City Police for violating FLA. STAT. 316.193 (DUI) and 316.121 (Right of Way). (CG Ex. 1).
5. On October 29, 2008, Respondent entered a plea of no contest to the charge of "reckless driving—reduced from DUI" and was adjudicated guilty by the County Court of Bay County, Florida. (CG Ex. 2).

¹ Citations referencing the transcript are as follows: Transcript followed by the volume number and page number (Tr. at ___). Citations referring to Agency Exhibits are as follows: Investigation Officer followed by the exhibit number (CG Ex. 1, etc.); Respondent's Exhibits are as follows: Respondent followed by the exhibit letter (Resp. Ex. A, etc.); ALJ Exhibits are as follows: ALJ followed by the exhibit Roman numeral (ALJ Ex. I, etc.).

6. On October 29, 2008, the County Court of Bay County, Florida, ordered Respondent's "probation will be reinstated . . . to original terms and conditions and include suspended sentence." Respondent was additionally ordered to pay a monetary fine. (CG Ex. 3).
7. On August 8, 2008, Respondent was arrested by Panama City Police in Bay County, Panama City, Florida for possession of oxycodone, a violation of FLA. STAT. 893.13; possession of paraphernalia, a violation of FLA. STAT. 893.147; and possession of a prescription drug without a prescription, a violation of FLA. STAT. 499.03. (CG Ex. 4).
8. On December 13-14, 2008, Respondent completed Level One, DUI Substance Abuse Course conducted by the Fourteenth Judicial Circuit DUI program. (Resp. Ex. C).
9. On December 23, 2008, Respondent entered a plea of no contest to the charges of "(I) possession of paraphernalia" and "(II) possession of a controlled substance without a prescription" and was adjudicated guilty by the County Court of Bay County, Florida. (CG Ex. 6).
10. On December 23, 2008, the County Court of Bay County, Florida, ordered Respondent to 3 months of supervised probation. (CG Ex. 6).
11. On January 26, 2009, the County Court of Bay County, Florida, entered a notice of completion of probation conditions indicating Respondent completed the 6 month probationary period stemming from the October 29, 2008, conviction of reckless driving. (Resp. Ex. A).
12. On March 14, 2009, Respondent completed the "Drug and Alcohol Awareness Class" at Judicial Correction Services, Inc., in Panama City, Florida. (Resp. Ex. D).
13. On March 23, 2009, the County Court of Bay County, Florida, entered a notice of completion of probation conditions indicating Respondent completed the 3 month probationary period stemming from the December 23, 2008, conviction for "possession of drug paraphernalia" and "possession of prescription drug [without] a prescription." (Resp. Ex. B).

III. SUMMARY OF DECISION

The Coast Guard **PROVED** by a preponderance of reliable, probative, and credible evidence that Respondent's October 29, 2008, conviction for reckless driving constitutes a conviction under the National Driver Register Act.

The Coast Guard **PROVED** by a preponderance of reliable, probative, and credible evidence that Respondent's December 23, 2008, conviction for possession of paraphernalia and possession of a controlled substance without a prescription are dangerous drug law convictions.

For the reasons set forth *supra*, the Merchant Mariner's Documents, Merchant Mariner's Licenses, and all other credentials issued by the U.S. Coast Guard to Charles David Rich are **REVOKED OUTRIGHT**.

IV. DISCUSSION

A. General

The purpose of Coast Guard Suspension and Revocation proceedings is to promote safety at sea and to maintain standards of competence and conduct. *See* 46 U.S.C. §7701; 46 C.F.R. §5.5. Title 46 Code of Federal Regulations section 5.19 gives an Administrative Law Judge (ALJ) the authority to conduct hearings and to suspend or revoke a license or certificate for violations arising under 46 U.S.C. §§7703 and/or 7704.

Determining the weight of the evidence and making credibility determinations as to the evidence is within the sole purview of the ALJ. *See* Appeal Decision No. 2640 (PASSARO) (2003).² Additionally, the ALJ is vested with broad discretion in resolving inconsistencies in the evidence, and findings do not need to be consistent with all of the evidence in the record as long as there is sufficient evidence to reasonably justify the findings reached. *Id.*; Appeal Decision No. 2639 (HAUCK) (2003).

B. Burden of Proof

In this case, like any Suspension and Revocation case, the Coast Guard bears the burden of proof to establish the requisite facts mandated by the organic statute, 46 U.S.C. §§7703(3), 7704(b) and the implementing regulations, 46 C.F.R. Part 10, Subpart B. The Administrative

² Pursuant to 46 C.F.R. § 5.65, "[t]he decisions of the Commandant in cases of appeal... are officially noticed and the principals and policies enunciated therein are binding upon all Administrative Law Judges."

Procedure Act (APA), 5 U.S.C. §§551-559, applies to Coast Guard Suspension and Revocation hearings before United States Administrative Law Judges. The APA authorizes imposition of sanctions if, upon consideration of the entire record as a whole, the charges are supported by reliable, probative and substantial evidence. 5 U.S.C. §556(d). The Coast Guard bears the burden of proof to establish the charges are supported by a preponderance of the evidence. 33 C.F.R. §§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 & Products of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal., 508 U.S. 602, 622 (1993) (quoting In re Winship, 397 U.S. 358, 371-72 (1970)) (Harlan, J., concurring) (brackets in original).

Therefore, the Coast Guard was obligated to prove by credible, reliable, probative and substantial evidence that Respondent more-likely-than-not committed the violations charged in the Amended Complaint.

C. Jurisdiction

“The jurisdiction of administrative bodies is dependent upon the validity and the terms of the statutes reposing power in them.” Appeal Decision 2620 (COX) (2001) quoting Appeal Decision 2025 (ARMSTRONG) (1975). Where an Administrative forum acts without jurisdiction its orders are void. Id. Therefore, establishing jurisdiction is critical to the validity of a proceeding. Appeal Decision 2677 (WALKER) (2008) citing Appeal Decisions 2104 (BENSON) (1977); 2094 (MILLER) (1977); 2090 (LONGINO) (1977); 2069 (STEELE) (1976); and 2025 (ARMSTRONG) (1975). *See*, Appeal Decision 2656 (JORDAN) (2006). Jurisdiction is a question of fact that must be proven. Appeal Decision 2425 (BUTTNER) (1986). *See also*,

Appeal Decision 2025 (ARMSTRONG) (1975) (stating “jurisdiction must be affirmatively shown and will not be presumed.”)

The Coast Guard has jurisdictional authority to seek the suspension or revocation of a Coast Guard-issued credential if the holder is found to have been convicted of an offense described in 49 U.S.C. §30304(a)(3)(A) or (B) within the last three years. 46 U.S.C. §7703(3).

The Coast Guard also has jurisdictional authority to seek the suspension or revocation of a Coast Guard-issued credential if the holder is found to have been convicted of violating a dangerous drug law within the last ten years. 46 U.S.C. §7704(b). Where the proceeding is based exclusively on the provisions of 46 U.S.C. §7704, the Complaint must allege jurisdiction as required by 46 U.S.C. §7704. 46 C.F.R. §5.35. This includes establishing Respondent is a holder of a Coast Guard-issued credential and that he was convicted of dangerous drug law of the United States or of a State within the past ten years. *Id.*

D. Conviction under National Driver Register

A license, certificate . . . , or merchant mariner’s document . . . may be suspended or revoked if the holder—

. . .

(3) within the 3-year period preceding the initiation of the suspension or revocation proceeding is **convicted of an offense described in section 30304(a)(3)(A) or (B) of title 49.**

46 U.S.C. §7703(3) (emphasis added).

The evidence adduced by the Coast Guard established that on May 19, 2007, Respondent was involved in a motor vehicle accident near the intersection of West Highway 98 and Molitor Avenue in Bay County, Panama City, Florida. (CG Ex. 1). As a result of the aforementioned motor vehicle accident, Respondent was cited by the Panama City Police for violating FLA. STAT. 316.193 (DUI) and 316.121, (Right of Way). (CG Ex. 1). Respondent was arrested by the Panama City Police for Driving under the Influence, a violation of FLA. STAT. 316.193 (DUI). (CG Ex. 1).

On October 29, 2008, Respondent entered a plea of no contest to the charge of “reckless driving—reduced from DUI” and was adjudicated guilty by the County Court of Bay County, Florida. (CG Ex. 2).

The offenses listed in Section 30304(a)(3)(A) and (B) of Title 49 relate to an individual

(3) who is convicted under the laws of that State of any of the following motor vehicle-related offenses or comparable offenses:

(A) operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance.

(B) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

As discussed *supra*, Respondent **was not** adjudicated guilty to the arresting charge of driving under the influence. Accordingly, 49 U.S.C. §30304(a)(3)(A) is inapplicable to the instant matter. However, 49 U.S.C. §30304(a)(3)(B) is applicable to the instant matter as Respondent **was** adjudicated guilty of reckless driving.

Respondent did not offer any objection to the admission of records pertaining to the motor vehicle accident, ensuing citation and arrest. Nor did Respondent object to the admission of records relating to the subsequent reckless driving conviction, which stemmed from the motor vehicle accident, and ensuing citation and arrest. Moreover, Respondent did not offer any defense to the allegations mounted by the Coast Guard.

The Coast Guard has clearly established the jurisdictional element for pursuing the instant suspension and revocation action by showing Respondent holds two Coast Guard-issued credentials—a Merchant Mariner’s License and a Merchant Mariner’s Document.

The Coast Guard has clearly satisfied its burden of proof by a preponderance of the evidence that Respondent was convicted of an offense described in 49 U.S.C. §30304(a)(3)(B) within the three year period preceding the institution of this action. A “judgment of conviction by a State court . . . is admissible in evidence and constitutes substantial evidence adverse to the

respondent.”³ Notably, Respondent did not attempt to offer any evidence to the contrary or in mitigation of the conviction. Therefore, this court hereby finds that the Coast Guard **PROVED** the allegation that Respondent was convicted of a motor vehicle offense as set forth in the National Driver Register Act of 1982.

E. Conviction for a Dangerous Drug Law Violation

Section 7704 of Title 46, entitled “Dangerous drugs as grounds for revocation” provides:

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

Therefore, it is clear from review of 46 U.S.C. §7704(b) that the Coast Guard must establish the following jurisdictional elements by a preponderance of the evidence:

- (1) that Respondent is the holder of a license, certificate, or merchant mariner’s document;
- (2) that Respondent has been convicted of violating a dangerous drug law of the United States or of a State; and
- (3) that Respondent’s conviction for violation of a dangerous drug law of the United States or of a State occurred within the previous 10 years.

The evidence adduced by the Coast Guard established that on August 8, 2008, Respondent was arrested by Panama City Police in Bay County, Panama City, Florida for possession of oxycodone, a violation of FLA. STAT. 893.13; possession of paraphernalia, a violation of FLA. STAT. 893.147; and possession of a prescription drug without a prescription, a violation of FLA. STAT. 499.03.⁴ (CG Ex. 4).

³ Although 33 C.F.R. §20.1307(c)(3) *may* be applicable; the court chose not to undertake an exhaustive review of the legislative history of the National Driver Register Act of 1982 herein to determine whether the citation to subparagraph 205(a)(3)(A) or (B) was merely legislative inattentiveness.

⁴ Pursuant to 33 C.F.R. §20.806, the court takes official notice of FLA. STAT. 893.13; FLA. STAT. 893.147; FLA. STAT. 499.03. (Tr. at p. 48).

Evidence adduced at the hearing of this matter further established that on December 23, 2008, Respondent entered a plea of no contest to the charges of “(I) possession of paraphernalia” and “(II) possession of a controlled substance without a prescription” and was adjudicated guilty by the County Court of Bay County, Florida. (CG Ex. 6).

Respondent did not offer any objection to the admission of records pertaining to his arrest on August 8, 2008. Nor did Respondent object to the admission of records relating to the subsequent conviction for possession of paraphernalia and possession of a controlled substance without a prescription. Respondent attempted to explain away his convictions by claiming he “had poor legal advice to begin with . . . through the process of these charges” and that the “legal advice [he] was given was to take the pleas, that they were misdemeanor[s] . . . [he] did not know the misdemeanor would affect his captain’s license or [he] would have fought them.” (Tr. at pp. 42-43). The court is not persuaded by Respondent’s latter-day allegations of ineffective assistance of counsel.

It is well established and not in dispute herein, that Respondent holds a merchant mariner’s license and a merchant mariner’s document.

The Coast Guard has established, and it was not in disputed herein that, Respondent was convicted by a Florida court of possession of paraphernalia and possession of a controlled substance without a prescription. The Coast Guard has established, and it is not disputed herein that Respondent’s conviction for possession of paraphernalia and possession of a controlled substance without a prescription occurred within the previous 10 years. “A judgment by a State court . . . is conclusive if an S&R [Suspension and Revocation] proceeding alleges conviction for—(1) A violation of a dangerous-drug law.” 33 C.F.R. §20.1307(c)(1).

The inquiry now becomes, “was Respondent convicted of a dangerous drug law violation?” Neither 46 U.S.C. §7704(b) nor 46 C.F.R. §5.35 define a dangerous drug law for purposes of establishing a conviction of violating a dangerous drug law. However, 46 U.S.C.

§2101(8)(a) defines “dangerous drug” as a “narcotic drug, controlled substance or controlled substance analog.”

A review of statutory law reveals that, numerous maritime and shipping laws contained within Public Law 89-98 were codified by Congress in the early 1980s. “During that project, Congress replaced 46 U.S. §239(a) with 46 U.S.C. §7704 and substituted the term *dangerous drug law* for *narcotic drug law*.” Appeal Decision 2674 KOVALESKI (2008). The instant matter is strikingly similar the issues reviewed in Appeal Decision 1803 (PACKARD) (1971) and Appeal Decision 2674 (KOVALESKI) (2008). Both decisions involved a review of whether a conviction for possession of drug paraphernalia constituted a conviction of a dangerous drug law.

PACKARD provides precedential guidance stating “a ‘narcotic drug law’ is **a law designed to regulate and control the use** of narcotic drugs, and a conviction under such a law is conviction within the meaning of [conviction of violation of a narcotic drug law].” Appeal Decision 1803 (PACKARD) (1971) (emphasis added). PACKARD articulates a sensible rationale that the placement of a statute within a chapter which regulates and controls the use of narcotic drugs evinces statutory intent the statute is a “narcotic drug law.”

Appeal Decision KOVALESKI (2008) also provides excellent guidance for the instant matter. Like KOVALESKI, Respondent herein was convicted under FLA. STAT. 893.147, entitled “use, possession, manufacture, delivery, transportation, or advertisement of drug paraphernalia.” FLA. STAT. 893.147 appears within Chapter 893, entitled “Drug Abuse, Prevention and Control.” Based upon the rational set forth by PACKARD, and affirmed by KOVALESKI, the statutes that Respondent was convicted under are “designed to regulate and control the use” of dangerous drugs. FLA. STAT. 893.147. Accordingly, Respondent’s conviction for possession of paraphernalia and possession of a controlled substance without a prescription constitutes a conviction for dangerous drug law violations. Therefore, this court

hereby finds that the Coast Guard **PROVED** the allegation that Respondent was convicted of a dangerous drug law of the State of Florida.

V. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent and the subject matter of this hearing are properly within the jurisdiction vested in the Coast Guard under 46 U.S.C. §7703 (3); 46 U.S.C. §7704(b); 46 C.F.R. Part 5; 33 C.F.R. Part 20; and the APA as codified at 5 U.S.C. §§551-59.
2. On October 29, 2008, Respondent entered a plea of no contest to the charge of “reckless driving—reduced from DUI” and was adjudicated guilty by the County Court of Bay County, Florida.
3. On December 23, 2008, Respondent entered a plea of no contest to the charges of “(I) possession of paraphernalia” and “(II) possession of a controlled substance without a prescription” and was adjudicated guilty by the County Court of Bay County, Florida.
4. A conviction for reckless driving is a conviction under the National Driver Register Act of 1982.
5. A conviction for possession of paraphernalia and possession of a controlled substance without a prescription are dangerous drug law convictions.
6. Respondent’s October 29, 2008, conviction for reckless driving constitutes a conviction under the National Driver Register Act.
7. Respondent’s December 23, 2008, conviction for possession of paraphernalia and possession of a controlled substance without a prescription are dangerous drug law convictions.
8. The Coast Guard **PROVED** by a preponderance of reliable, probative, and credible evidence that Respondent’s October 29, 2008, conviction for reckless driving constitutes a conviction under the National Driver Register Act.
9. The Coast Guard **PROVED** by a preponderance of reliable, probative, and credible evidence that Respondent’s December 23, 2008, conviction for possession of paraphernalia and possession of a controlled substance without a prescription are dangerous drug law convictions.

VI. CONCLUSION

For the foregoing reasons, I find the Coast Guard has **PROVED** its allegation that Respondent’s conviction for reckless driving constitutes a conviction under the National Driver Register Act. I further find the Coast Guard has **PROVED** its allegation that Respondent’s

December 23, 2008, conviction for possession of paraphernalia and possession of a controlled substance without a prescription are dangerous drug law convictions.

VII. SANCTION

The authority to impose sanctions at the conclusion of a case is exclusive to the ALJ. 46 C.F.R. § 5.567; Appeal Decision 2362 (ARNOLD) (1984). The selection of an appropriate sanction is the responsibility of the ALJ. 46 C.F.R. §5.569(a). The nature of this administrative proceeding is to “promote, foster, and maintain the safety of life and property at sea.” Appeal Decision 1106 (LABELLE) (1959); 46 U.S.C. §7701. These proceedings are remedial, not penal in nature, and “are intended to help maintain standards for competence and conduct essential to the promotion of safety at sea.” 46 C.F.R. §5.5. As discussed *supra*, Respondent was convicted by Florida state courts of reckless driving, as well as possession of paraphernalia and possession of a controlled substance without a prescription which are dangerous drug law convictions.

The Second Amended Complaint seeks revocation of the Respondent’s Coast Guard-issued credentials pursuant to 46 U.S.C. §§7703(3) and 7704(b). Those Code sections provide in relevant part:

46 U.S.C. §7703(3). Bases for suspension or revocation

A license, certificate . . . , or merchant mariner’s document . . . may be suspended or revoked if the holder—

...

(3) within the 3-year period preceding the initiation of the suspension or revocation proceeding is **convicted of an offense described in section 30304(a)(3)(A) or (B) of title 49.**

46 U.S.C. §7703(3) (emphasis added).

46 U.S.C. §7704. Dangerous drugs as grounds for revocation

(b) If it is shown at a hearing under this chapter that a holder of a license, certificate . . . , or merchant mariner’s document. . . , **within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United**

States or of a State, the license, certificate, or document shall be suspended or revoked.

Remedial Action: In the instant matter, Respondent did not provide any evidence of any **independent**, remedial action undertaken by him which might mitigate the sanction here imposed. *See* 33 C.F.R. §5.569(b)(1). Respondent's attendance and completion of one or two day alcohol and drug awareness courses were strictly involuntary as they were part of the convicting court's order.

Respondent's Prior Records: The undersigned notes that the Respondent does lawfully hold a Merchant Mariner's License and Merchant Mariner's Document which, per the evidence adduced in the hearing, has never been the subject of previous disciplinary action. *See* 33 C.F.R. §5.569(b)(2). He has served as a merchant mariner for several years.

Mitigation or Aggravation: Respondent presented no witnesses or evidence in mitigation of his actions. *See* 33 C.F.R. §5.569(b)(3). His assertion that he was the recipient of bad legal advice renders his credibility null.

The facts adduced in these proceedings reveal that Respondent was convicted of reckless driving, that he has abused alcohol, that he has been found to possess dangerous drugs and associated paraphernalia. Sergeant James Hines, a twelve year and eleven month veteran of the Panama City Police Department, testified as part of the Coast Guard's case in chief that Respondent was found in the possession of dangerous drugs and associated paraphernalia in an area known for drug trafficking. (Tr. at pp. 22-23). Respondent intentionally placed himself, and others, in harm's way on multiple occasions, as evidenced by his recent convictions. These are aggravating factors that justify the Coast Guard's request for revocation. It is likely that Respondent poses a significant threat to the maritime environment; therefore, his Coast Guard-issued license is hereby **REVOKED**.

"Of paramount concern is the safety of life at sea and the welfare of individual seamen."

Appeal Decision 2624 (MOORE) (2005) citing Appeal Decision 2017 (TROCHE), *aff'd* NTSB

Order No. EM-49 (1976). Of great concern to the court is Respondent's refusal to acknowledge his errors or that he may have a substance abuse problem.

However, the law is not without mercy. Under the provisions of 33 C.F.R. §20.904 an Administrative Law Judge may, for good cause shown, reopen a record of a proceeding and take additional evidence. Specifically, §20.904(e)(1)(i) provides that a respondent, such as Captain Rich, may file a petition with the court to rescind any order of revocation of a mariner's license.

If, at some future date, Respondent were to recognize the role alcohol and drugs plays in his personal and professional life and if he were to avail himself to the many resources (such as any credible twelve-step program, or other appropriate medical/psychological agencies) and if he were to demonstrate, objectively, a significant course change – then he might successfully avail himself to the provisions of 33 C.F.R. §20.904 and return to the maritime service.

WHEREFORE,

VIII. ORDER

IT IS HEREBY ORDERED, that all elements of the Amended Complaint filed against Charles David Rich on August 11, 2009, are found **PROVED**.

IT IS FURTHER ORDERED, that the Merchant Mariner's Documents, Merchant Mariner's Licenses, and all other credentials issued by the U.S. Coast Guard to Charles David Rich are **REVOKED OUTRIGHT**.

IT IS FURTHER ORDERED, that Charles David Rich is to immediately tender his valid Coast Guard-issued Merchant Mariner's Documents, Merchant Mariner's Licenses, and all other credentials to the Marine Safety Detachment Panama City, 1700 Thomas Drive, Panama City, Florida 32407-8043.

IT IS FURTHER ORDERED, that Charles David Rich is hereby prohibited from serving aboard any vessel requiring a Merchant Mariner's Document or Merchant Mariner's License issued by the U.S. Coast Guard.

PLEASE TAKE NOTE, that issuance of this Decision and Order serves as notice of the parties' right to appeal under 33 CF.R. Part 20, Subpart J. A copy of Subpart J is provided as Attachment B.

Bruce Tucker Smith
US Coast Guard Administrative Law Judge

Date: October 20, 2009

ATTACHMENT A – EXHIBIT & WITNESS LIST

COAST GUARD EXHIBITS

1. Certified copy of Panama City Police Records
 - a. Panama City Police Offense Incident Report, May 19, 2007 (2 pages)
 - b. Panama City Police Arrest Report, May 19, 2007 (1 page)
 - c. Patrol Case Management File (1 page)
 - d. Florida DUI Uniform Traffic Citation No. 4754-XDP (1 page)
 - e. Alcohol Influence Report (1 page)
 - f. Arresting Officer Narrative (3 pages)
 - g. State of Florida, Implied Consent Warning (1 page)
 - h. State of Florida, Department of Highway Safety & Motor Vehicles Affidavit of Refusal to Submit to Breath, Urine, or Blood Test (1 page)
 - i. Florida Traffic Crash Report, Long Form (4 pages)
2. Certified copy of Motion and Order to Transfer to County Court (1 page)
3. Certified copy of the County Court, Bay County, Florida, Judgment and Sentence entered on October 29, 2008, in Case Number 07003957CTMA and entry of plea (2 pages)
4. Certified copy of Panama City Police Records
 - a. Panama City Police Officer Report for Incident 08-09776 (7 pages)
 - b. Panama City Police Probable Cause Affidavit/Arrest/Notice to Appear (2 pages)
 - c. Towing Waiver (1 page)
 - d. Vehicle Inventory (1 page)
5. Certified copy of Motion and Order to Transfer to County Court (2 pages)
6. Certified copy of the County Court, Bay County, Florida, Judgment and Sentence entered on December 23, 2008, in Case Number 08-2566H and entry of plea (2 pages)

COAST GUARD WITNESSES

1. Sergeant Greg Hines, Panama City Police Department

RESPONDENT EXHIBITS

- A. Bay County Florida Court Notice of Completion of Probation Conditions: Order terminating probation effective January 26, 2009 (1 page)
- B. Bay County Florida Court Notice of Completion of Probation Conditions: Order terminating probation effective March 23, 2009 (1 page)
- C. Certificate of Completion: DUI Substance Abuse Course (1 page)
- D. Certificate of Completion: Alcohol & Drug Education Awareness Class (1 page)
- E. Transocean memo dated December 25, 2002
- F. Hall-Houston Exploration memo dated January 15, 2007
- G. Character reference submitted by Derrick Blakeley
- H. Character reference submitted by Kevin Fox
- I. Character reference submitted by Hanky Pankey Guide Service, Inc., dated July 26, 2009
- J. Character reference submitted by Kickback Charters, Inc. dated July 28, 2009
- K. Character reference submitted by Andy Schleichardt-Paprocki
- L. Character reference submitted by Luke Preslaski, dated July 23, 2009
- M. Character reference submitted by Michael Shane Hernandez

RESPONDENT WITNESSES

None

ALJ EXHIBITS

None

ALJ WITNESS LIST

None