

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

UNITED STATES COAST GUARD

Complainant

v.

RANDY JOE GREEN

Respondent.

Docket Number CG S&R 2010-0372
CG Case No. 3820152

DECISION & ORDER

Date Issued: January 4, 2011

Issued By: Honorable Bruce Tucker Smith
Administrative Law Judge

Appearances:

For the Complainant
LT Charlotte A. Keogh
U.S. Coast Guard Marine Safety Unit Paducah

MSSE4 Tim S. Smith
U.S. Coast Guard Sector Ohio Valley

For the Respondent
Randy Joe Green, pro se

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I. PRELIMINARY STATEMENT

On September 24, 2010, the United States Coast Guard (“Coast Guard”) filed an Amended Complaint against Respondent Randy Joe Green (Respondent) seeking revocation of Respondent’s Coast Guard-issued Merchant Mariner’s License (MML) alleging use of, or addiction to the use of, dangerous drugs under 46 U.S.C. §7704(c) and 46 C.F.R. §5.35. More particularly, the Amended Complaint alleged that Respondent provided a random urine sample that subsequently tested positive for marijuana metabolites.

On October 11, 2010, Respondent filed his Answer admitting all jurisdictional allegations and admitting all factual allegations, save paragraphs four and five of the Amended Complaint.

On December 9, 2010, the hearing of this matter commenced at the U.S. District Courthouse in Paducah, Kentucky. Non-attorneys LT Charlotte A. Keogh and CWO Tim Smith represented the Coast Guard; Respondent appeared pro se and was assisted by his non-attorney wife, Lisa Green. Both parties appeared and presented their respective cases. Three witnesses testified as part of the Coast Guard’s case-in-chief.¹ The Coast Guard offered thirteen exhibits into evidence, all of which were admitted.

Respondent called no witnesses to testify. Respondent offered six exhibits, all of which were admitted into evidence.

At the conclusion of the evidence, the parties made their respective final arguments and thereafter the court closed the administrative record.

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: Coast Guard 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.).

II. FINDINGS OF FACT

1. Respondent Randy Joe Green holds a Coast Guard-issued merchant mariner's license. (CG Ex. 1).
2. On or about July 15, 2010, Respondent Randy Joe Green reported to his place of employment, American Electrical Power River Operations (AEP), near Paducah, Kentucky, and was immediately thereafter notified of his selection for random drug testing. (Tr. at 26).
3. The process used by American Electrical Power River Operations (AEP) to select its employees for drug testing was random. (Respondent's Answer).
4. Clifford Ray Williamson (Williamson) is employed by West Kentucky Drug Screen as a urinalysis specimen collector and has held such position for three years and four months. (Tr. 16). In 2007, Williamson received a training certificate for Department of Transportation urinalysis collection training. (Tr. at 14; CG Ex. 07). His certificate was current on July 15, 2010.
5. On July 15, 2010, Clifford Ray Williamson made positive identification of Respondent Randy Joe Green and thereafter collected a urine specimen from Respondent Randy Joe Green. (Tr. at 20-35).
6. On July 15, 2010, Clifford Ray Williamson (Williamson) completed a Custody Control Form (CCF) pertaining to the urine sample collected from Respondent. Williamson ensured that unique specimen identification number 112526314 was assigned to Respondent Randy Joe Green's sample and that the same unique number was indicated on the CCF. (Tr. at 21-25, 33-37).
7. The urine specimen collection procedures utilized by Clifford Ray Williamson and West Kentucky Drug Screen relative to urine specimen number 112526314 were conducted in accordance with Department of Transportation regulations as codified at 49 C.F.R. Part 40.
8. Clifford Ray Williamson subsequently ensured that Respondent Randy Joe Green's urine specimen, bearing the unique specimen identification number 112526314, was sent to the Advanced Toxicology Network laboratory (lab) via FedEx, where it was received for testing on July 16, 2010. (Tr. at 70; CG Ex. 04a, 09a).
9. Kathy D. Atkins is a certifying scientist employed by Advanced Toxicology Network and was employed by that entity on July 16, 2010. (Tr. at 61-62; CG Ex. 06ac).
10. Advanced Toxicology Network, of Memphis, Tennessee, is a Department of Transportation "approved" laboratory; meaning that facility has met the

federally-mandated standards to engage in urine drug testing for federal agencies. (CG Ex. 08).

11. Kathy D. Atkins, certifying scientist, testified that on July 16, 2010, Advanced Toxicology Network tested a urine specimen bearing the unique identification number. (Tr. at 73-83; CG Ex. 06).
12. Kathy D. Atkins (Atkins), certifying scientist, testified that the urine specimen bearing the unique identification number 112526314 tested positive for the presence of the marijuana metabolite. Atkins testified that initial screening, by immunoassay, revealed specimen number 112526314 contained fifty-nine point one nanograms per milliliter, well in excess of the fifty nanograms per milliliter cutoff level established by the Department of Transportation. Atkins further testified that confirmatory testing, via gas chromatography/mass spectrometry, revealed that specimen number 112526314 contained twenty-six nanograms per milliliter, which is in excess of the fifteen nanograms per milliliter cutoff level established by the Department of Transportation. (Tr. at 75-78).
13. Kathy D. Atkins, certifying scientist, further testified that the results from these separate testing procedures, employed by Advanced Toxicology Network on specimen number 112526314 were reflected in Coast Guard Exhibit 06, commonly referred to as a "litigation package" and on the Custody Control Form (CCF). (CG Ex. 04a, 06).
14. Kathy D. Atkins, certifying scientist, further testified that the results from these separate testing procedures on specimen number 112526314 were then forwarded to Dr. Daniel Drew, the Medical Review Officer. (Tr. at 81-83).
15. The testing procedures utilized by Advanced Toxicology Network laboratory and performed on urine specimen number 112526314 were conducted in accordance with Department of Transportation regulations codified at 49 C.F.R. Part 40.
16. Dr. Daniel Drew, the Medical Review Officer, is familiar with and is certified in the utilization of the procedures contained in 49 C.F.R. Part 40. Dr. Drew is an appropriately educated, qualified, licensed and a certified Medical Doctor. (Tr. at 124; CG Ex. 05b, 05c).
17. On or about July 19, 2010, Dr. Drew reviewed and verified the results generated by Advanced Toxicology Network laboratory from testing performed on urine specimen number 112526314. Dr. Drew determined that the testing procedures had resulted in a "positive" finding on urine specimen number 112526314. (Tr. at 109-112, 122-123, 133).
18. On or about July 19, 2010, Dr. Drew interviewed Respondent Randy Joe Green by telephone to discuss the test results that Dr. Drew had received and reviewed from Advanced Toxicology Network regarding urine specimen number 112526314. (Tr. at 131).

19. During his interview with Dr. Drew, Respondent Randy Joe Green did not offer an explanation why his urine specimen had tested positive for the marijuana metabolite nor did he request a re-test of a split sample of his urine specimen. (Tr. at 132-134; CG Ex. 5).

20. On or about July 19, 2010, Dr. Drew completed the appropriate sections of the CCF. (CG Ex. 04b).

III. DISCUSSION

Suspension and Revocation proceedings are remedial, not penal in nature and are “intended to help maintain the standards of competence and conduct essential to the promotion of safety at sea.” 46 C.F.R. §5.5. The Commandant delegated to Administrative Law Judges (ALJs) 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 C.F.R. §5.19. In the instant matter, the Coast Guard charged Respondent under 46 U.S.C. §7704(a) and 46 C.F.R. §5.35 alleging his use of, or addiction to the use of, dangerous drugs. Consequently, the Coast Guard seeks revocation of Respondent’s Merchant Mariner’s License.

It is important to note that 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 2640 (PASSARO)* (2003). Also, 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. *Appeal Decision 2639 (HAUCK)* (2003).

A. Burden and Standard of Proof

1. Generally

The Coast Guard bears the burden of proving the allegations of the Complaint by a preponderance of the evidence. 33 C.F.R. §20.701-02. *See Appeal Decision Nos. 2468 (LEWIN)* (1988); *2477 (TOMBARI)* (1988); *See also Dept. of Labor v. Greenwich Collieries,*

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 the Respondent committed the violations alleged in the Complaint. 33 C.F.R. §20.701-702(a). See Herman & MacLean v. Huddleston, 459 U.S. 375, 390 (1983). 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, 764-65 (1984). These proceedings are conducted under the provisions in 33 C.F.R. Part 20, 46 C.F.R. Part 5, and the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et. seq.*

2. Drug Cases

The instant case was brought, *inter alia*, under the provisions of 49 C.F.R. Part 40. The law is well settled that in order “to prove use of a dangerous drug, the Coast Guard must establish a *prima facie* case of drug use by the mariner.” See Appeal Decision Nos. 2662 (VOORHEIS) (2007); 2592 (MASON) (1997); 2589 (MEYER) (1997); 2584 (SHAKESPEARE) (1996); 2583 (WRIGHT) (1995); 2529 (WILLIAMS) (1991); 2379 (DRUM) (1985); and 2282 (LITTLEFIELD) (1982).

Furthermore, when the Coast Guard’s case is based solely upon urinalysis test results, a *prima facie* case can be made if and only if the Coast Guard initially establishes three required elements by a preponderance of the evidence. See Appeal Decision No. 2662 (VOORHEIS) (2007).

If the Coast Guard proves its *prima facie* case, a presumption then arises that the Respondent used dangerous drugs and the burden of rebuttal then shifts to the Respondent. Appeal Decisions Nos. 2603 (HACKSTAFF) (1998); 2589 (MEYER) (1997); 2592 (MASON) (1997); 2584 (SHAKESPEARE) (1996); and 2379 (DRUM) (1985). If the Respondent does not produce any persuasive evidence in rebuttal, the ALJ may find the allegation of dangerous drug

use proved on the basis of this presumption alone. See Appeal Decision Nos. 2603 (HACKSTAFF) (1998), 2662 (VOORHEIS) (2007); 33 C.F.R. § 20.703.

A fortiori, if the Coast Guard does not prove a prima facie case of illegal drug use, no presumption arises – and Respondent is relieved of his burden of rebuttal.

The instant case is based solely upon the results of a random urinalysis test. The Coast Guard proved the three required elements of a prima facie drug case by a preponderance of the evidence. Accordingly, the Coast Guard can rely upon the presumption that the Respondent used or was addicted to dangerous drugs.

After careful consideration of the testimony at the hearing and of the entire record, the court finds that the Coast Guard established by a preponderance of the evidence that Respondent used, or was addicted to the use of, dangerous drugs; accordingly, the charge is found **PROVED**.

B. Use of, or Addiction to the use of, Dangerous Drugs

As recited supra, to establish a prima facie case based solely on a urinalysis test, 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 C.F.R. Part 40. Appeal Decisions Nos. 2662 (VOORHEIS) (2007); 2603 (HACKSTAFF) (1998); 2592 (MASON) (1997); 2589 (MEYER) (1997); 2598 (CATTON) (1996); 2584 (SHAKESPEARE) (1996); and 2583 (WRIGHT) (1995). Each of the three elements is discussed in turn, as each relates to Respondent herein.

1. Element One: The Respondent Was the Individual Who Was Tested for a Dangerous Drug

Proof of the first element “involves proof of the identity of the person providing the specimen; proof of a link between the respondent and the sample number . . . which is assigned to the sample and which identifies the sample throughout the chain of custody and testing

process; and proof of the testing of the sample.” Appeal Decision Nos. 2662 (VOORHIES) (2007); 2603 (HACKSTAFF) (1998).

Here, the uncontroverted proof established that on or about July 15, 2010, Respondent reported to his place of employment, American Electrical Power River Operations (AEP), near Paducah, Kentucky and was immediately thereafter notified of his selection for random drug testing. (Tr. at 26). In his Answer, Respondent admitted that the process used by AEP to select its employees for testing was, indeed, random.

Clifford Ray Williamson (Williamson), an employee of West Kentucky Drug Screen, testified that he had worked as a urinalysis specimen collector at West Kentucky Drug Screen since 2007. (Tr. at 16). The record reveals that Williamson received a training certificate for Department of Transportation urinalysis collection training in 2007. (Tr. at 14; CG Ex. 07). His certificate was current on July 15, 2010.

On July 15, 2010, Williamson made positive identification of Respondent and thereafter collected a urine specimen from Respondent. (Tr. at 20-35). Williams subsequently ensured that Respondent’s urine specimen was assigned a unique specimen identification number: 112526314. The urine specimen collection procedures utilized by Williamson and West Kentucky Drug Screen relative to urine specimen number 112526314 were conducted in accordance with Department of Transportation regulations codified at 49 C.F.R. Part 40. After Respondent’s urine specimen was collected, it was thereupon sent via FedEx to the Advanced Toxicology Network laboratory (lab) where it was received for testing on July 16, 2010. (Tr. at 70; CG Ex. 04a, 09a).

Thus, the Coast Guard proved by a preponderance of the evidence that the Respondent was the person who was tested for a dangerous drug on July 15, 2010.

2. Element Two: Test Results Show That a Party Has Tested Positive for the Presence of a Dangerous Drug

Here, the Coast Guard offered sufficient evidence that a urine sample provided by Respondent and identified by the unique identification number 112526314 tested positive for the marijuana metabolite.

Specifically, the uncontroverted proof established that Advanced Toxicology Network, of Memphis, Tennessee, is a Department of Transportation “approved” laboratory; meaning that facility has met the federally-mandated standards to engage in urine drug testing for federal agencies. (CG Ex. 08).

Kathy Atkins, a certifying scientist employed by Advanced Toxicology Network, testified that on July 16, 2010, a urine specimen bearing the unique identification number 112526314, was tested for the presence of drugs . (Tr. at 73-83; CG Ex. 06). Atkins testified that the urine specimen bearing the unique identification number 112526314 tested positive for the presence of the marijuana metabolite. Atkins testified that the sample bearing the unique identification number 112526314 was subject to both an initial and a confirmatory testing procedure. Atkins testified that the initial screening of the sample, by immunoassay, revealed that specimen number 112526314 contained fifty-nine point one nanograms per milliliter, well in excess of the fifty nanograms per milliliter cutoff level established by the Department of Transportation. Atkins further testified that confirmatory testing, via gas chromatography/mass spectrometry, revealed that specimen number 112526314 contained twenty-six nanograms per milliliter, which is in excess of the fifteen nanograms per milliliter cutoff level established by the Department of Transportation. (Tr. at 75-78).

The testing procedures utilized by Advanced Toxicology Network laboratory and performed on urine specimen number 112526314 were conducted in accord with Department of Transportation regulations codified at 49 C.F.R. Part 40.

Thus, the Coast Guard has met its burden of proof to establish by a preponderance of the evidence relative to the second element: that the Respondent's urine specimen tested positive for the presence of a dangerous drug.

3. Element Three: The Drug Test Was Conducted in Accordance with 49 C.F.R. Part 40

It was the Coast Guard's responsibility to prove that the urine specimen testing procedures were accomplished in compliance with the rules set forth in 49 C.F.R. Part 40.

Here, the Coast Guard met its burden of proof. Ms. Atkins' testimony, together with Coast Guard Exhibit 06, sufficiently establish that the testing performed on Respondent's urine specimen was conducted in accordance with the provisions of 49 C.F.R. Part 40. Although Respondent did highlight some irregularities in the "paperwork" associated with the testing procedures, none of those anomalies constitute a "fatal flaw" in the testing procedure or an interruption of the chain of custody.

For these reasons, the court concludes that the Coast Guard proved by a preponderance of the evidence that the drug test(s), here, were conducted in accordance with 49 C.F.R. Part 40.

C. Collateral Issues

As indicated supra, Respondent did highlight some irregularities in the "paperwork" associated with the testing procedures. Specifically, Respondent pointed out that the CCF (CG Ex. 4a,b,c) incorrectly lists "West KY Drug Screen, 1700 KY Ave, STE 114, Paducah, KY 42001" as the "Collection Site Address." In reality, the Respondent's specimen was collected at his place of employment, AEP River Operations.

Respondent also correctly pointed out that Atkins failed to print her full first, Middle Initial and Last Name on the CCF (CG Ex 06d) and that she made a unique personal mark, in lieu of her actual initials, throughout the Advanced Toxicology Network litigation report (CG Ex. 6).

Further, Respondent notes that 46 C.F.R. §16.201 requires the mariner's employer to "report the test results in writing to the" Coast Guard. (Resp. Ex. E). Respondent noted that his employer sent an electronic mail, or e-mail, containing such notification to the Coast Guard in lieu of a "writing." (Resp. Ex. A). The court regards an electronic mail, or e-mail, to comport with the requirements of 46 C.F.R. §16.201.

It is well-settled Coast Guard law that "minor technical violations" of the regulations do not violate due process unless the infraction breaches the chain of custody or violates the specimen's integrity. Appeal Decisions 2633 (MERRILL) (2002); 2603 (HACKSTAFF) (1998).

Respondent cited a number of flaws in the "paperwork." None of them, however, constitute "fatal flaws." These are no more than insignificant minor technical errors. Such errors, although suggestive of a miniscule inattention to detail, do not rise to a level which offends due process by a breach in the chain-of-custody or violates the specimen's integrity. Thus, such errors are non-fatal flaws. See, e.g., 49 C.F.R. §40.83(c)(3) and §40.83(d).

IV. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Randy Joe Green holds a Coast Guard-issued Merchant Mariner's License.
2. Pursuant to his employer's random urinalysis, Respondent Randy Joe Green provided a urine sample to West Kentucky Drug Screen on or about July 15, 2010.
3. Respondent Randy Joe Green's urine sample, bearing unique specimen number 112526314, was collected by West Kentucky Drug Screen in accordance with Department of Transportation regulations codified at 49 C.F.R. Part 40.
4. Respondent Randy Joe Green's urine specimen, bearing the unique specimen number 112526314, was tested by Advanced Toxicology Network laboratory, a Department of Transportation-approved facility for the testing of human urine for the presence of drugs.
5. Respondent Randy Joe Green's urine sample, bearing unique the unique specimen number 112526314, was tested by Advanced Toxicology Network in accordance with Department of Transportation regulations codified at 49 C.F.R. Part 40.

6. Respondent Randy Joe Green's urine specimen tested positive for the presence of the marijuana metabolite.
7. Respondent Randy Joe Green's urine specimen was subject to an initial screening, by immunoassay. That initial test revealed specimen number 112526314 contained fifty-nine point one nanograms per milliliter; in excess of the fifty nanograms per milliliter cutoff level established by the Department of Transportation. Confirmatory testing, using gas chromatography/mass spectrometry, revealed that specimen number 112526314 contained twenty-six nanograms per milliliter, which is in excess of the fifteen nanograms per milliliter cutoff level established by the Department of Transportation.
8. Results from testing on Respondent Randy Joe Green's urine specimen, number 112526314, were forwarded to Dr. Daniel Drew, the Medical Review Officer, for review and confirmation.
9. Dr. Daniel Drew is certified by the Department of Transportation as a qualified Medical Review Officer.
10. Dr. Daniel Drew confirmed the positive results of the laboratory testing conducted by Advanced Toxicology Network.
11. On or about July 19, 2010, Dr. Daniel Drew conducted a telephone interview with Respondent Randy Joe Green. Therein, Respondent Randy Joe Green did not request a re-test of his urine specimen nor did he offer an explanation of why his urine had tested positive to the presence of the marijuana metabolite in his body.

V. CONCLUSION

After careful consideration of the testimony and documentary evidence offered at the hearing, and of the entire record, the court finds that the Coast Guard met its burden to establish 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 C.F.R. Part 40. Hence, a presumption of illegal drug use is established. Respondent, in turn, offered no evidence sufficient to rebut this presumption. Thus, the allegations contained in the Coast Guard's Amended Complaint are **PROVED**.

WHEREFORE,

VI. ORDER

IT IS HEREBY ORDERED, that Respondent's Coast Guard-issued Merchant Mariner's License is **REVOKED**. Respondent is hereby directed to surrender his Merchant Mariner's License to the United States Coast Guard Marine Safety Unit, 225 Tully Street, Paducah, Kentucky, 42003 immediately.

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

A handwritten signature in blue ink that reads "Bruce T. Smith".

Bruce Tucker Smith
Administrative Law Judge
United States Coast Guard

Date: January 04, 2011

VII. ATTACHMENT A: LIST OF WITNESSES & EXHIBITS

Coast Guard Exhibits (Not seriatim)

1. Respondent's license
2. Radar observer certificate
07. Williamson certificate
- 04a. CCF
- 04b. CCF Copy 2
- 04c. CCF Copy 3
05. Confidential positive report
- 05a. MRO punch list
- 05b. Dr. Drew's cv
- 05c. Dr. Drew's Certificate
06. Litigation packet
08. Fed. Register. Vol. 75, No. 129 p. 39023
09. List of approved Department of Transportation laboratories

Respondent Exhibits

- A. Keogh e-mail
- B. Quest diagnostics sample CCF
- C. AEP employee handbook
- D. CFR extract
- E. CFR extract

ALJ Exhibits

none

Coast Guard's Witnesses

Clifford Ray Williamson
Katherine Atkins
Daniel C. Drew, M.D.

Respondent Witnesses

none

VIII. ATTACHMENT B: SUBPART J, APPEALS

33 C.F.R. 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 C.F.R. 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 C.F.R. 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 C.F.R. 7.45.

33 C.F.R. 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 C.F.R. 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.