

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

UNITED STATES COAST GUARD
Complainant

vs.

ELENO BLAS VALDEZ

Respondent

Docket Number 2011-0009
Enforcement Activity No. 3921599

DECISION AND ORDER

Issued: July 28, 2011

By Administrative Law Judge:
Honorable George J. Jordan

Appearances:

PO Jennifer M. Thomas
Sector Guam
For the Coast Guard

ELENO BLAS VALDEZ, Pro se
For the Respondent

PRELIMINARY STATEMENT

This administrative proceeding concerns the suspension or revocation of Eleno Blas Valdez's (Respondent) Merchant Mariner's License pursuant to 46 U.S.C. § 7701 et seq. and United States Coast Guard (Coast Guard) regulations found at 46 C.F.R. Part 5. This proceeding is conducted under the Administrative Procedure Act (5 U.S.C. § 551 et seq.) and the Rules of Practice, Procedure, and Evidence for Administrative Proceedings of the Coast Guard found at 33 C.F.R. Part 20.

The Coast Guard initiated this proceeding by filing a Complaint seeking to revoke Respondent's Coast Guard issued credentials for Conviction of a Dangerous Drug Law Violation. Specifically, the Coast Guard alleges that on December 6, 2010, Respondent was convicted of Illegal Possession of Crystal Methamphetamine, a violation of Title 6 Subsection 2142(a)¹ of the Commonwealth Criminal Code and a dangerous drug law of the State of Mariana Islands. Respondent filed an Answer admitting to both jurisdiction and the allegations contained in the Complaint, but asking to be heard on the sanction.

On January 10, 2011, the Chief Administrative Law Judge (ALJ) assigned this case to the undersigned for adjudication. On February 9, 2011, the parties participated in a prehearing telephone conference during which time preliminary matters were discussed and a hearing date was set. The hearing took place at Garapan, Saipan, in the Commonwealth of the Northern

¹ The Complaint erroneously indicates that Respondent was convicted of 2141(a) of the Commonwealth Criminal Code. However, considering that both 2141(a) and 2142(a) are dangerous drug laws, and because it is clear from the record that both parties operated under the assumption that Respondent was convicted under 2142(a), this error is not fatal. (See Tr. at 5-6). Further, it is clear that Respondent had actual notice of the allegations against him and litigated these very allegations. Appeal Decisions 1792 (PHILLIPS) and 2422 (GIBBONS), citing Kuhn v. Civil Aeronautics Board, 183 F.2d 839 (D.C. Cir. 1950). A recent Commandant Decision on Appeal further reiterated that an ALJ has the authority to amend pleadings to conform to proof. See Appeal Decision 2687 (HANSEN) (2010). In HANSEN, the Commandant held that even where the specific regulatory cite of the violation found proved was not alleged in the complaint, Respondent nonetheless had adequate notice for due process purposes because the substance of the alleged violation was identified. Id.

Mariana Islands (CNMI) on April 27, 2011. 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.

Petty Officer MST1 Jennifer Thomas and Chief Warrant Officer Timothy Hahn represented the Coast Guard at the hearing. Respondent appeared *pro se*. Three (3) witnesses, including Respondent, testified at the hearing. The Coast Guard offered twenty-four (24) exhibits, all of which were admitted into the record. Respondent offered no exhibits. The list of witnesses and exhibits is contained in **APPENDIX II**.

Since Respondent has admitted to the jurisdictional and factual allegations, there is sufficient evidence to support a finding that the allegations are proved. Appeal Decision 2563 (EMERY) (1995). The sole objection is to the proposed sanction. Accordingly, the primary subject of this proceeding is the issuance of an appropriate sanction.

FINDINGS OF FACT

1. At all relevant times mentioned herein, Respondent was the holder of a Coast Guard Issued Merchant Mariner's License authorizing him to serve as Master of Steam or Motor Vessel of not more than 100 Gross Registered Tons in near coastal waters and further authorized to conduct commercial assistance towing. (CG Ex. 8).
2. Respondent was the subject of a Coast Guard Administrative Proceeding alleging drug use in 2003. (CG Ex. 19).
3. In 2003, Respondent entered into a Settlement Agreement with the Coast Guard. (CG Ex. 19, CG Ex. 8, Tr. at 58-59).
4. Respondent successfully completed the terms of the Settlement Agreement following an extension of the time to complete settlement, and his license was returned on October 30, 2006. (CG Ex. 20, Tr. at 59, 61).
5. Respondent received a renewal and upgrade of his license on May 22, 2007. (CG Ex. 12).

6. Respondent was originally arrested for trafficking due to a controlled buy conducted a CNMI Department of Public Safety (DPS) Narcotics Unit on August 2, 2010. A cooperating source purchased \$200 worth of crystal methamphetamine from Respondent. (CG Ex. 15).
7. After his arrest, Respondent became a Cooperating Defendant (CD) for the CNMI DPS. Respondent provided useful information to the CNMI DPS. (CG Ex. 16, CG Ex. 17, CG Ex. 18, Tr. at 31-32).
8. Detective Sean White is an agent for the CNMI customs service and was assigned as a narcotics agent for the drug enforcement task force as the controlling agent in this case. However, other detectives and officers were involved in the original arrest and subsequent surveillance. (Tr. at 12, 14).
9. On August 20, 2010, a CNMI DPS surveillance unit observed Respondent possibly smoking crystal methamphetamine. The DPS suspected drug use and a violation of the terms of Respondent's CD agreement and requested and received an arrest warrant for Respondent. (CG Ex. 13, CG Ex. 10, Tr. at 16-19).
10. Respondent was arrested on September 11, 2010. A search incident to arrest found two (2) marijuana cigarettes in a candy container in a pouch in Respondent's possession. (CG Ex. 14, Tr. at 24).
11. Respondent was originally charged with Trafficking a Controlled Substance (crystal methamphetamine) and three (3) counts of Illegal Possession of a Controlled Substance (crystal methamphetamine and marijuana). (CG Ex. 5, See Tr. at 5-6).
12. Subsequently, these charges were reduced, and, on December 6, 2010, Respondent was convicted of one (1) count of Illegal Possession of a Controlled Substance, crystal methamphetamine, in violation of Title 6 Subsection 2142(a) of the Commonwealth Criminal Code. (CG Ex. 6, See Tr. at 5-6, 28-29).
13. The conviction was the result of a plea agreement with the Assistant Attorney General of the Commonwealth of the Northern Mariana Islands. (CG Ex. 6).
14. The agreement was extended due to Respondent's cooperation with law enforcement. (Tr. at 28-29).
15. Respondent was tested for drugs after the arrest. No positive drug result was placed in the record. (Tr. at 33, 64-66).
16. The sentence did not include any requirements for drug testing or rehabilitation. (CG Ex. 6).
17. Detective White does not consider Respondent to be a serious trafficker and stated that Respondent provided information that led to a more serious drug dealer. (Tr. at 31-32).

CONCLUSIONS OF LAW

1. Pursuant to 46 U.S.C. § 112, as used in Title 46 of the U.S. Code, “the term ‘State’ means a State of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.”
2. Under 46 U.S.C. § 7704(b), if a holder of a Coast Guard issued credential, 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, that credential shall be suspended or revoked.
3. Title 6 Subsection 2142(a) of the Commonwealth Criminal Code of the Commonwealth of the Northern Mariana Islands is a dangerous drug law of a State under 46 U.S.C. § 7704(b).

DISCUSSION

JURISDICTION

While all facts alleged in the complaint were admitted, it has been held that the burden of establishing jurisdiction nonetheless remains. See 33 C.F.R. § 20.310(c); See also Appeal Decision 2656 (JORDAN) (stating that, irrespective of Respondent's admission of charged offense, appeal must be granted where jurisdiction is not established).

46 U.S.C. § 7704 makes it clear that, to establish jurisdiction in a conviction of a dangerous drug law case, the conviction must have occurred while the mariner was a holder of a merchant mariner credential. The record clearly establishes that Respondent was the holder of such a credential at the time of his conviction. Accordingly, jurisdiction is established.

SANCTION

Prior to 1984, the statute concerning Drug Use and Drug Convictions, 46 U.S.C. § 239(b), stated that the Coast Guard may revoke merchant mariner credentials in such cases. Coast Guard policy and pertinent regulations mandated revocation. However, the National Transportation Safety Board (NTSB) found that while the regulations mandated revocation on the part of an ALJ, revocation was discretionary on the part of the Commandant. As a result, the

statute was amended in 1984. 46 U.S.C. § 7704 mandated revocation in all drug use and conviction cases except in drug use cases where cure was established. Coast Guard regulations at 46 C.F.R. § 5.59(b) required revocation as the mandatory order in conviction cases.

Subsequently, Appeal Decision 2335 (SWEENEY) and its progeny established a regime for establishing cure. A disconnect was seen because cure was not available in cases where a mariner was convicted of possession of personal use amounts of drugs.

A legislative fix was proposed, and the result was the Coast Guard and Maritime Transportation Act of 2004 (“Coast Guard Authorization Act”). The new law now provides for suspension or revocation if a holder of a license, certificate of registry, or merchant mariner’s document is convicted of violating a dangerous drug law of the United States or of a State. A review of the Conference Report accompanying the Coast Guard Authorization Act illustrates that the Congressional intent of 46 U.S.C. § 7704(b) was to allow the ALJ to approve settlement agreements when drug convictions cases involve minor drug offenses. See H.R. CONF. REP. NO. 108-617, at 78.

A recent Appeal Decision and several ALJ Decisions have authorized suspension-only orders for drug conviction cases without the need for a settlement agreement (See Appeal Decision 2678 (SAVOIE) (2008); But see Appeal Decision 2674 (KOVALESKI) (2008)). The Commandant stated that “Congress has not dictated a desired or preferred sanction for conviction of a dangerous drug law; rather Congress has merely authorized either sanction.” Appeal Decision 2678 (SAVOIE). 46 U.S.C. § 7704(b). The Savoie decision specifically found that 46 C.F.R. § 5.59(b) was now inconsistent with the statute. However, other ALJ Decisions since Savoie have ordered revocation or allowed settlements.

I note that the ALJ Decision in the Savoie case specifically found that there was no evidence that the mariner was a drug user or had a substance abuse problem in weighing the factors that led to a four (4) month suspension. See USCG v. Savoie, SR-2005-15 (USCG ALJ

Dec.). See also USCG v. Rich, SR-2009-13 (USCG ALJ Dec.) (Revocation appropriate where Respondent did not provide any evidence of any remedial action undertaken by him which might mitigate the imposed sanction in a case involving NDRA and Drug Convictions).

In this instant case, Respondent stated that he no longer uses drugs and that he passed a September 11, 2010 drug test. (Tr. at 64-66). There is no evidence in the record to indicate current drug use. However, there is evidence of association with drug users and possession of drugs and paraphernalia. (See Tr. at 62-63). While these allegations are not before me directly, they may be taken into account for consideration of an appropriate sanction.

While USCG regulations concerning the appropriate order in conviction cases in 46 C.F.R. § 5.59(b) were invalidated by Savoie and the agency has not yet published new rules, the Marine Safety Manual has set out policy for such cases at Section B.9.b. Proposed Order for Drug Conviction Cases, Commandant Instruction M16000.10A Marine Safety Manual, Volume V, Investigations and Enforcement). The Manual states in relevant part:

The appropriate order in dangerous drug law violation cases is usually revocation. IOs shall ensure the following provisions are met before recommending a sanction of less than revocation or offering a settlement agreement.

- It has been more than 3 years since the conviction or the conviction is the only drug law violation in the previous 3 years.
- The conviction involved personal use amounts (simple possession, etc.) rather than trafficking/attempt to distribute.

If either of the first 2 provisions is not met, the proposed order shall be revocation. If the conviction meets the first 2 provisions but the mariner has not established cure, a settlement agreement may be offered to allow the mariner to establish cure. See section E for more guidance on settlement agreements. If the mariner meets all the above provisions IOs may propose a 12 month suspension remitted on 2 years probation with the condition of the probation being that the mariner is not convicted of a drug law violation during the period of probation.

The proposed order in this matter is consistent with this policy. Here, the conviction involved illegal possession of a controlled substance; however, this case clearly involved the sale of controlled substances. Accordingly, the proposed order of revocation is seemingly appropriate.

However, the conviction in Savoie was similar. In Savoie, the respondent purchased crack cocaine “to obtain spending money.” Further, while the respondent claimed he did not use drugs, he had previously completed a Sweeney drug rehabilitation program. Accordingly, I must consider the implications of the Savoie decision in this matter. First, I note that the Marine Safety Manual policy discussed above provides guidance only; I am not bound by the policy contained therein and I still have broad discretion in these cases. Under Savoie, an ALJ is “statutorily authorized to consider suspension (in lieu of revocation) as an appropriate sanction in this proceeding.”

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. “Congress enacted 46 U.S.C. § 7704 with the express purpose of removing those individuals possessing or using drugs from service in the United States merchant marine. House Report No. 338, 98th Cong., 1st Sess. 177 (1983).” Appeal Decision 2638 (PASQUARELLA). However, in addition to the promotion of safety of life at sea, the welfare of individual seamen is also of paramount concern to the Coast Guard in issuing decisions in this area. See Appeal Decision 2570 (HARRIS) (1995).

In determining an appropriate sanction, I have considered the following factors: (1) Remedial actions which have been undertaken independently by Respondent; (2) The prior record of Respondent, considering the period of time between prior acts and the act or offense for which presently charged is relevant; and (3) Evidence of mitigation or aggravation. See 46 C.F.R. § 5.569.

Local law enforcement does not view Respondent to be a “big time” drug dealer. (Tr. at 32). They also recognized his assistance in charging a more serious drug dealer in Saipan. (Tr. at 31). Additionally, the sentence in his criminal case does not have any requirements for drug testing or rehabilitation.

Previously, Respondent completed drug rehabilitation under Sweeney. Section E.4.a. of Commandant Instruction M16000.10A Marine Safety Manual, Volume V, Investigations and Enforcement contains policy concerning settlement agreements involving drug use and rehabilitation. If a mariner has previously successfully completed the cure requirements, the mariner may be offered a settlement to prove cure again, if it has been at least three (3) years from the completion of the cure requirements and a Substance Abuse Professional (SAP), meeting the requirements of 49 C.F.R. § 40.281 or a Medical Review Officer (MRO), meeting the requirements of 49 C.F.R. § 40.121, has determined that the mariner is still a viable candidate for cure.

Having considered the Savoie decision and the current statutory authorization to consider suspension in these cases, I find that, given that there is no evidence of current use, a sanction less than revocation may be appropriate. However, such a sanction is appropriate only under strict conditions that demonstrate that Respondent is currently drug-free and minimize the chance that Respondent will use or sell drugs in the future or associate with known drug dealers or users.

However, the sanction must also be severe enough to enforce the strong public policy concerns for a drug-free transportation system. While there is no hard evidence of drug use after 2003 in the record, there is evidence of (1) possession of dangerous drugs, (2) continued association with drug users and (3) possible use. Accordingly, as part of any sanction there must be a current drug evaluation. If the substance abuse professional determines that Respondent is drug-free and a low risk for use, then there will be a suspension with conditions. If not, there will be an order of revocation. Since more than three (3) years have passed since Respondent’s last

rehabilitation program, if there is a revocation, a new rehabilitation program will be allowed if, in the opinion of the SAP, Respondent is a viable candidate for cure.

The Vice-Commandant concisely laid out the requirements for establishing cure in Appeal Decision 2667 (THOMPSON) (2007) as follows:

In Coast Guard suspension and revocation proceedings, the burden of establishing “cure” is on the Respondent. *See Appeal Decisions 2638 (PASQUARELLA) and 2526 (WILCOX)*. Prior Commandant Decisions on Appeal make clear that to establish cure under 46 U.S.C. § 7704(c), a mariner must: (1) successfully complete a bona fide drug abuse rehabilitation program, and (2) demonstrate a complete non-association with drugs for a minimum of one year following the successful completion of the drug abuse program. *See Appeal Decisions 2638 (PASQUARELLA) and 2546 (SWEENEY)*. In addition, pursuant to 46 C.F.R. § 16.201(f), “[b]efore an individual who has failed a required chemical test . . . may return to work aboard a vessel, the MRO must determine that the individual is drug-free and the risk of subsequent use of dangerous drugs by that person is sufficiently low to justify his or her return to work.” Finally, because a mariner is not authorized to sail under the authority of his or her credential until all of the requirements of cure are satisfied, the Coast Guard must retain a mariner’s credential during the cure process. *See Appeal Decisions 2638 (PASQUARELLA) and 2634 (BARETTA); Commandant Decision on Review #18 (CLAY)*.

Since there is no MRO, a SAP agreeable to both Respondent and the Coast Guard may be substituted. However, the revocation will not be stayed. If Respondent completes the program, then he may request a modification of the order of revocation under 33 C.F.R. § 20.904(f). Pursuant to 33 C.F.R § 20.904(f), three (3) years or less after an S&R proceeding has resulted in revocation of a mariner mariner’s credential, a “respondent may file a motion for reopening of the proceeding to modify the order of revocation with the ALJ Docketing Center.” However the operative part of such a motion is under subparagraph (1) “Any motion to reopen the record must clearly state why the basis for the order of revocation is no longer valid and how the issuance of a new license, certificate, or document is compatible with the requirement of good discipline and safety at sea.” To do this, Respondent must file a motion with exhibits that demonstrate that he

meets the requirements for “cure” as set forth above.

ORDER

WHEREFORE:

IT IS HEREBY ORDERED that the Allegations in the Complaint are found **PROVED by ADMISSION**; and

IT IS HEREBY FURTHER ORDERED that Respondent’s Mariner’s License is **REVOKED**. The order of **REVOCATION** is **STAYED** under the following conditions:

1. Respondent has previously deposited his credential with the Coast Guard on February 11, 2011 and the deposit will continue throughout the stay.
2. Within three (3) months from this date of this order, Respondent is evaluated by a Substance Abuse Professional (SAP).
 - a. If the SAP determines that Respondent is drug-free and the risk of subsequent use of dangerous drugs by Respondent is sufficiently low to justify his return to work, then a sanction of twelve (12) months suspension is ordered.
 - i. The time that Respondent’s credential has been on deposit will be credited to that suspension.
 - ii. If Respondent is *arrested* for any drug related crime including association with known drug users, during this suspension then his credential will be revoked upon the filing of a motion.
 - iii. Following return of Respondent’s credential there will be an additional period of probation for twelve (12) months. As an added condition of probation, if Respondent is *arrested* for any

drug related crime, including association with known drug users, during his probation then his credential will be revoked upon the filing of a motion.

- iv. Otherwise, the standard conditions for probation apply. For non-drug or alcohol violations, the sanction for violation of probation will be an additional twelve (12) months suspension. For drug or alcohol violations, the sanction for violation of probation will be revocation.
- b. If the SAP determines that Respondent is not drug-free or that the risk of subsequent use of dangerous drugs is not sufficiently low to justify his return to work, but determines that Respondent is a viable candidate for rehabilitation, then the stay will be lifted and Respondent's credential will be REVOKED.
- i. Since more than three (3) years have passed since the completion of a drug rehabilitation program, if Respondent completes a rehabilitation program that meets the following requirements then I will entertain a motion to modify this order under 33 C.F.R. § 20.904(f).
 - ii. In Coast Guard suspension and revocation proceedings, the burden of establishing "cure" is on Respondent.
 - iii. Respondent must: (1) successfully complete a bona fide drug abuse rehabilitation program, and (2) demonstrate a complete non-association with drugs for a minimum of one (1) year following the successful completion of the drug abuse program.

- iv. Before Respondent may return to work aboard a vessel, the SAP must determine that the individual is drug-free and the risk of his subsequent use of dangerous drugs is sufficiently low to justify his return to work.
 - v. The Coast Guard will retain Respondent's credential during the cure process.
 - vi. Respondent may file a motion for reopening of the proceeding to modify the order of revocation with the ALJ Docketing Center under 33 C.F.R. § 20.904(f).
 - vii. The motion to reopen must motion contain exhibits that demonstrate that Respondent meets the requirements for "cure" as set forth above including a return to work letter from the SAP.
 - viii. Respondent must file the motion within three (3) years or less after the order of revocation.
- c. If the SAP determines that Respondent is not drug-free or that the risk of subsequent use of dangerous drugs is not sufficiently low to justify his return to work, then the stay will be lifted and Respondent's credential will be REVOKED.
- i. If Respondent believes that basis for the order of revocation is no longer valid and how the issuance of a new license, certificate, or document is compatible with the requirement of good discipline and safety at sea, then Respondent may file a motion to reopen within three (3) years of this order under 33 C.F.R. § 20.904(f).
 - ii. Alternately, Respondent may request the issuance of new credential under 46 C.F.R. § 5.901.

SO ORDERED.

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

George J. Jordan
US Coast Guard Administrative Law Judge

Date:

APPENDIX I: NOTICE OF APPEAL RIGHTS

33 CFR 20.1001 General.

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

33 CFR 20.1002 Records on appeal.

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

33 CFR 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
 - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --
 - (i) Basis for the appeal;
 - (ii) Reasons supporting the appeal; and
 - (iii) Relief requested in the appeal.
 - (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
 - (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If

the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.

(c) No party may file more than one appellate brief or reply brief, unless --

(1) The party has petitioned the Commandant in writing; and

(2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.

(d) The Commandant may accept an amicus curiae brief from any person in an appeal of an ALJ's decision.

33 CFR 20.1004 Decisions on appeal.

(a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.

(b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.

APPENDIX II: WITNESS AND EXHIBIT LIST

COAST GUARD WITNESSES

1. Detective Sean White
2. Mr. Nicholas Sali

RESPONDENT'S WITNESS

1. Mr. Eleno Blas Valdez

COAST GUARD EXHIBITS

- CG Ex. 1 Vessel Certificate of Number of vessel operated by Respondent at time of arrest on September 11, 2010.
- CG Ex. 2 Kan Pacific Saipan (KPS), Ltd. business license.
- CG Ex. 3 Kan Pacific Saipan (KPS), Ltd. booking log.
- CG Ex. 4 Yoichi Tokunaga witness statement regarding Respondent's arrest on September 11, 2010.
- CG Ex. 5 Superior Court for the Northern Mariana Islands Plea Agreement for case 10-0174C, Defendant Eleno B. Valdez.
- CG Ex. 6 Superior Court of the Commonwealth of Northern Mariana Islands Judgment of Conviction and Commitment Order for Defendant Eleno Blas Valdez case #10-0174C.
- CG Ex. 7 U.S. Coast Guard Motion to Extend Cure Period for Respondent for violation of a dangerous drug law initiated in 2003 and completed in October 2006.
- CG Ex. 8 Copy of Respondent's MMLD Serial # 1176249, Issue Number 2.
- CG Ex. 9 Superior Court of the Commonwealth of the Northern Mariana Islands, Criminal Case No. 10-0174C INFORMATION of Defendant Eleno Blas Valdez.
- CG Ex. 10 Superior Court for the Commonwealth of the Northern Mariana Islands: AFFIDAVIT OF PROBABLE CAUSE IN SUPPORT OF THE ISSUANCE OF AN ARREST WARRANT.
- CG Ex. 11 Superior Court for the Commonwealth of the Northern Mariana Islands: ARREST WARRANT.
- CG Ex. 12 Copy of Respondent's USCG Merchant Mariner License application submitted to the National Maritime Center in 2007, correspondences and copy of renewal, MML #1176249, Issue Number 2.
- CG Ex. 13 Commonwealth of the Northern Mariana Islands (CNMI), Department of Public Safety Surveillance Report of Respondent's activity on August 20, 2010.
- CG Ex. 14 CNMI, DPS Narcotics Activity Resolution Coalition Report DPS Case #10-007909 of Respondent's arrest dated September 11, 2010.
- CG Ex. 15 CNMI, DPS Surveillance Report of Respondent's illegal possession and trafficking of a controlled substance on August 2, 2010.
- CG Ex. 16 Signed copy of Respondent's DPS CONFIDENTIAL QUESTIONAIRES dated August 3, 2010.
- CG Ex. 17 Signed copy of Respondent's "Your Constitutional Rights" dated August 3, 2010.
- CG Ex. 18 Signed copy of Respondent's Special Consent Form dated August 3, 2010.

- CG Ex. 19 Copy of COMPLAINT, ANSWER and MOTION for APPROVAL OF SA; CG Case Number 1908019; VALDEZ S&R 2003.
- CG Ex. 20 Copy of correspondence and filed Notice of Completion of SA for S&R 2003.
- CG Ex. 21 Copy of Respondent's positive random drug test taken on August 21, 2003.
- CG Ex. 22 Copy of Tropical Leisure Sports, Inc. Account and Checking list.
- CG Ex. 23 Copy of Tropical Leisure Sports, Inc.'s Time In/Time Out Log sheet for August 2003.
- CG Ex. 24 Copy of Tropical Leisure Sports, Inc. Passenger and Payment log sheet for August 2003.