

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

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Complainant

vs.

TALLIFERRO SHANNANTHONY BUTLER

Respondent

Docket Number 2010-0236
Enforcement Activity No. 3199299

DECISION AND ORDER

Issued: November 15, 2011

By Administrative Law Judge: Honorable Michael J Devine

Appearances:

**LT PATRICK J. GRIZZLE
Sector Charleston**

For the Coast Guard

TALLIFERRO SHANNANTHONY BUTLER, Pro se

For the Respondent

This Order is issued in accordance with 33 CFR 20.902(c), which authorizes the issuance of an initial oral decision. The United States Coast Guard initiated this administrative action seeking revocation of the Merchant Mariner's Credential issued to Talliferro Butler, the respondent in this case. The Complaint dated May 26, 2010 alleged that Respondent, a holder of Coast Guard issued credentials, violated 46 U.S.C. 7704 and 46 CFR 5.35 (use of or addiction to

dangerous drugs) on October 11, 2007 by presenting himself for random drug testing as required by his employer; that his specimen was collected and resulted in a positive test for cocaine metabolites.

On June 8, 2010, Respondent filed an Answer in which he admitted the jurisdictional allegations and requested settlement discussions. On July 29, 2010 the parties submitted a Motion for Approval of a Settlement Agreement which was approved by a Consent Order on July 29, 2010. In the settlement agreement Respondent admitted both the jurisdictional and factual allegations including that he is the holder of MMD 182882, and to the factual allegations regarding participating in a random drug test and that the drug test results were positive for cocaine metabolites.

On August 4, 2011 the Coast Guard submitted a Notice of Failure to Complete Settlement asserting that Respondent tested positive for marijuana from a urinalysis initiated on June 14, 2011 thereby violating the terms of the agreement and providing notice that the sanction of revocation stayed by the settlement agreement would be executed unless Respondent requested a hearing in keeping with the terms of the settlement agreement. Respondent submitted a request for a hearing on August 9, 2011. The Settlement Agreement provides that “[i]f the Respondent requests a hearing before an ALJ under the provisions of paragraph 4c, then the revocation will be stayed until the ALJ issues a final order. **“The ALJ’s ruling on this request and any subsequent hearing will be final.”** Respondent timely requested a hearing on his alleged breach of the Settlement Agreement, therefore, the undersigned scheduled a hearing to obtain sufficient information regarding the alleged failure to complete settlement and must review the record to determine whether Respondent has successfully completed all elements or was making positive progress towards completion of all elements of the drug rehabilitation program. In keeping with the terms of the settlement agreement the hearing was limited to the question of whether Respondent violated the terms of the settlement agreement.

The evidentiary hearing was held in Charleston, South Carolina on November 9, 2011. The hearing was conducted in accordance with Administrative Procedure Act, amended and codified at 5 U.S.C. 551-59, Coast Guard Administrative Procedure statute codified at 46 U.S.C. 7702, and the procedural regulations codified at 33 CFR Part 20.

At the hearing, LT Patrick Grizzle, Investigating Officer, and Ensign Walter Hutchins entered an appearance on behalf of the Coast Guard. Respondent also appeared at the hearing on his own behalf (*pro se*).

After an opening statement the Coast Guard presented ten (10) exhibits which were admitted into evidence and three witnesses were presented. The Coast Guard presented a written Motion for a Decision & Order of Revocation which was entered as Court Exhibit I. The Coast Guard Motion was denied for the reasons stated in the record. Official Notice was taken that Coast Guard Exhibits 2, 3, and 5, were already contained in the administrative record and those exhibits were withdrawn and not offered into evidence. Coast Guard Exhibit 12 was never offered and was withdrawn by the agency. Both jurisdictional facts and the facts alleged in the Complaint were admitted by the settlement agreement of July 29, 2010. Respondent presented his own sworn testimony and also presented four (4) exhibits (A through D) which were admitted into evidence. Respondent did not offer any other matters into evidence.

At the conclusion of the hearing, both parties waived post-hearing briefs in keeping with 33 CFR 20.710 and a bench decision was issued orally finding the jurisdictional and factual allegations in this case proved by a preponderance of reliable, probative, and credible evidence. An Order directing revocation of Respondent's MMD was issued. The findings of fact and conclusions of law may be summarized as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Talliferro Shannanthony Butler and the subject matter of this proceeding is within the jurisdiction of the Coast Guard vested under the authority of 46 U.S.C. Chapter 77.
2. Pursuant to the original complaint and settlement agreement a consent order approving the settlement agreement was issued on July 29, 2010. Respondent submitted to a random drug test.
3. Respondent admitted he is the holder of MMD 182882 and admitted to all of the jurisdictional and factual allegations in the original complaint. Jurisdiction is based on the fact that he was the holder of a MMD and performing activities under the authority of his credentials. Jurisdiction for this suspension and revocation proceeding exists under 46 CFR 5.57 and was not disputed at the hearing.
4. Department of Transportation procedures were followed by the collector who obtained a specimen from Respondent on June 14, 2011.
5. Respondent's original specimen collected on June 14, 2011 was forwarded for testing and resulted in a positive test result for marijuana metabolites.
6. The MRO (Dr. Byron Williams) reviewed the results with Respondent and determined no valid excuse or medical explanation for the positive test result.
7. The positive test result was verified in accordance with 49 CFR Part 40.
8. Respondent testified that he does not use dangerous drugs, contended that he apparently consumed marijuana in a salad and provided character evidence through documents.
9. In keeping with Appeal Decision 2657 (BARNETT) (2006), a prima facie case of use of a dangerous drug was shown in this case because three elements are found proved:

- (1) a party was tested for use of a dangerous drug; (2) the test results showed a positive result for a dangerous drug; and (3) the drug test was conducted in accordance with Department of Transportation procedures in 49 CFR Part 40.
10. There is no valid medical explanation for the positive test result and Respondent's evidence is not persuasive. The undersigned finds that Respondent failed to provide sufficient evidence to rebut the presumption that he is a user of dangerous drugs that arises under 46 CFR 16.201.
11. Based on the record as a whole, the Coast Guard has proved by a preponderance of reliable and credible evidence that Respondent failed a random drug test for dangerous drugs (marijuana) and thereby violated the settlement agreement.
12. The positive test results from the June 2011 test constitutes a violation of paragraphs 3 and 7 of the settlement agreement.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED THAT in keeping with the terms of the settlement agreement the stayed revocation of Respondent's Merchant Mariner's Document and all other Coast Guard licenses, certificates and documents issued to Respondent Talliferro Shannanthony Butler may be executed. The Merchant Mariner's Document and all other Coast Guard licenses, certificates and documents issued to Respondent Talliferro Shannanthony Butler are **REVOKED**. Respondent's Merchant Mariner credentials have been surrendered to the U.S. Coast Guard Sector Charleston Office, 196 Tradd Street, Charleston, South Carolina 29401 and shall be processed appropriately. Respondent must immediately surrender any other Coast

Guard issued credentials to the Coast Guard, Sector Charleston. If you knowingly continue to use your Merchant Mariner credentials, you may be subject to criminal prosecution.

PLEASE TAKE NOTICE that, within three (3) years or less, Mr. Butler may file a motion to reopen this matter and seek modification of the order of revocation upon a showing that the order of revocation is no longer valid and the issuance of a new license, certificate, or document is compatible with the requirement of good discipline and safety at sea. The revocation order may be modified upon a showing that the individual:

- (1) Has successfully completed a bona fide drug abuse rehabilitation program;
- (2) Has demonstrated complete non-association with dangerous drugs for a minimum of one year following completion of the drug rehabilitation program; and
- (3) Is actively participating in a bona fide drug abuse monitoring program.

See generally 33 CFR 20.904; 46 CFR 5.901. The drug abuse monitoring program must incorporate random, unannounced testing during that year. Appeal Decision 2535 (SWEENEY).

PLEASE TAKE FURTHER NOTICE that Service of this Order on the parties and/or parties' representatives serves as notice of a **Final Decision**. In keeping with 33 CFR 20.502(c) and Paragraph 4 of the settlement agreement the undersigned ALJ's ruling on this respondent's request for review of the determination is final. However, the parties are given notice that they may be able to petition for review by the Commandant in keeping with 33 CFR 20.902(a).

Michael J Devine
US Coast Guard Administrative Law Judge

Date:

ATTACHMENT A – WITNESS AND EXHIBITS LISTS

WITNESS LIST

Coast Guard Witnesses

CG Witness 1	Mr. Richard Hathaway (collector)
CG Witness 2	Mr. Mitch Lebard (Assistant Director Medtox Lab)
CG Witness 3	Dr. Byron Williams, MRO

Respondent Witnesses

Resp. Witness 1	Respondent Talliferro Shannanthony Butler
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EXHIBIT LIST

Coast Guard Exhibits

CG Ex. 1	Copy of U.S. Merchant Mariner Document 182882
CG Ex. 2	Settlement Agreement dated July 29, 2010 (Withdrawn) Official Notice taken in keeping with 33 CFR20.806 that this matter was already contained in the administrative record.
CG Ex. 3	Consent Order dated July 29, 2010 (Withdrawn) Official Notice taken in keeping with 33 CFR 20.806 that this matter was already contained in the administrative record.
CG Ex. 4	Notice of June 14, 2011 test results
CG Ex. 5	Notice of Failure to Complete Settlement Agreement dated August 4, 2011 (Withdrawn) Official Notice taken in keeping with 33 CFR 20.806 that this matter was already contained in the administrative record.
CG Ex. 6	Federal Chain of Custody form from June 14, 2011 showing positive results (collector copy)
CG Ex. 7	Federal Chain of Custody form from June 14, 2011 showing positive results (Facility copy)

CG Ex. 8	Medtox Lab report form
CG Ex. 9	Medtox Lab Data Package
CG Ex. 10	Federal Chain of Custody form from June 14, 2011 showing positive results (MRO copy)
CG Ex. 11	MRO report/worksheet
CG Ex. 12	Statement of Investigating officer – Withdrawn and not offered by Agency at hearing.
CG Ex. 13	MRO certification
CG Ex. 14	Richard Hathaway certificate of collector training

Respondent Exhibits

Resp. Ex. A	Letter from Judge Myron Anderson, dated November, 2011
Resp. Ex. B	Letter from Joe T, dated November 4, 2011
Resp. Ex. C	Letter from John A. Hudnall, dated October 29, 2011
Resp. Ex. D	Letter from Michael Scott Eubank, undated

Court Exhibit

Court Ex. I	CG Motion for a Decision & Order of Revocation
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