

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

UNITED STATES COAST GUARD

Complainant

vs.

FRANK JAMES BOSLET, JR.

Respondent

Docket Number 2012-0207
Enforcement Activity No. 4284716

DECISION AND ORDER

Issued: October 23, 2012

By Administrative Law Judge: Honorable Walter J. Brudzinski

Appearances:

For Complainant

LT Jonathan D. Shumate
LT Colleen Smith
Coast Guard Sector New York
212 Coast Guard Drive
Staten Island, NY 10305

For Respondent

Ryan A Dornish, Esq.
Law Office of Ryan A. Dornish
16 Haze Way
Lopatcong, New Jersey 08865

SUMMARY

Coast Guard credential holder Frank James Boslet, Jr. was convicted of Driving Under the Influence of Alcohol (DUI), second offense. The Coast Guard initiated this administrative action against Mr. Boslet's credentials alleging this conviction violates 46 U.S.C. § 7703(3) and the circumstances warrant revocation.¹ The undersigned found the violation of 46 U.S.C. § 7703(3) proved through summary decision and now finds the facts and circumstances of this case warrant **REVOCATION**.

STATEMENT OF THE CASE

In its Complaint, the Coast Guard alleged as follows:

1. On or about May 25, 2011, Respondent was a holder of Merchant Mariner License # 1515577 and Merchant Mariner Document # 200470.
2. On May 25, 2011, Respondent was convicted in the State of Pennsylvania of Driving Under the Influence of alcohol, a violation of Title 75 of the Pennsylvania Motor Vehicle Code, Section 3802(b)(second offense), by the Court of Common Pleas of Monroe County.
3. A state conviction for operating a motor vehicle while under the influence of alcohol is an offense described in the National Driver Register Act, 49 U.S.C. 30304(a)(3)(A), and constitutes a wrongful violation of 46 U.S.C. § 7703(3).
4. As evidence in aggravation under 33 C.F.R. § 20.1315(a)(4), on January 9, 2006, Respondent was convicted in the State of New Jersey of Driving While Intoxicated in violation of New Jersey Statute 39:4-50(a), by the Greenwich Township Municipal Court.²

In his timely Answer, Respondent denied the jurisdictional allegations as well as factual allegations 2 and 4 on the grounds that his two convictions were under appeal. Respondent indicated he lacked sufficient knowledge to admit or deny factual allegation number 3 and requested a hearing which the undersigned scheduled for June 26, 2012 in New York, New York.

¹ Respondent holds a Coast Guard issued license, an endorsement, and a document which are all now referred to as Merchant Mariner's Credential(s) (MMC) and will be referenced in this decision and order as credential(s) or MMC. See 46 C.F.R. § 10.107(b).

² The New Jersey statute refers to the offense as Driving While Intoxicated. See CG Ex. 06. The applicable Pennsylvania statute refers to the offense as Driving Under the Influence. See CG. Ex.04. For the purpose of this decision and order, the terms Driving Under the Influence (DUI) and Driving While Intoxicated (DWI) are synonyms.

Respondent did not dispute the fact that he was convicted as alleged so the Coast Guard moved for Summary Decision. During a pre-hearing teleconference, the undersigned granted Summary Decision in part and denied it in part finding both convictions proved under 46 U.S.C. § 7703(3) but leaving the matter of sanction to be determined after the parties present evidence at the hearing. The undersigned also denied Mr. Boslet's request to stay the proceedings until all appeals were exhausted. Exhaustion of all appeals in National Driver Register Act convictions is not a genuine issue of material fact under 46 U.S.C. § 7703(3) requiring resolution prior to initiating these administrative proceedings which are for the purpose of promoting safety at sea. See 46 U.S.C. § 7701(a). The hearing remained scheduled for June 26, 2012.

The undersigned granted the Coast Guard's motion to supplement its witness and exhibit list and granted Respondent's motion to start the proceeding at 10:00 a.m. instead of 9:30 a.m. The undersigned also notified Respondent that he "shall bring to the hearing all licenses, certificates, or documents subject to this proceeding pursuant to 33 C.F.R. § 5.521." *Memorandum and Order of Pre-Hearing Teleconference* at 2; see also *Scheduling Order-Notice of Hearing* at 2.

The hearing took place as scheduled in New York, New York and conducted in accordance with the Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559, 46 C.F.R. Part 5, and 33 C.F.R. Part 20. Respondent was unable to produce his credentials at the opening of the hearing in accordance with 46 C.F.R. § 5.521; therefore, he completed a *Lost Credential Affidavit* as required by section 5.521 which the undersigned marked as ALJ Ex. 01. At the hearing, the Coast Guard submitted one additional exhibit and offered the testimony of one witness, Mr. Richard Hendrick, a Commissioner with the Board of Commissioners of Pilots of the State of New York (New York State Pilots Commission).³ Respondent testified on his own

³ Coast Guard Exhibits 01 through 08 were previously admitted for the purpose of ruling on the Motion for Summary Decision.

behalf and offered the testimony of two witnesses, Mr. Andrew McGovern, President of the New Jersey Sandy Hook Pilots Association, and Mr. George Canvin, Jr., Captain and Full Branch New York Sandy Hook pilot. Respondent did not submit any exhibits.

Following the in-person hearing the parties submitted post hearing briefs in accordance with 33 C.F.R. § 20.710. Respondent did not propose findings of fact or conclusions of law. The Coast Guard's proposed findings of fact and conclusions of law are transcribed and ruled upon in **Attachment B**. This matter is now ripe for decision.

BURDEN OF PROOF

The Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559, applies to Coast Guard Suspension and Revocation trial-type hearings before United States Administrative Law Judges (ALJs). See 46 U.S.C. § 7702(a). The APA authorizes sanctions if, upon consideration of the entire record as a whole, the charges are supported by reliable, probative, and substantial evidence. See 5 U.S.C. § 556(d). Under Coast Guard procedural rules and regulations, the burden of proof is on the Coast Guard to prove that the charges are supported by a preponderance of the evidence. See 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); see also, Steadman v. SEC, 450 U.S. 91, 107 (1981). 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 and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 622 (1993) (*citing, In re Winship*, 397 U.S. 358, 371-2 (1970) (Harlan J., concurring) (brackets in original)). Therefore, the Coast Guard must prove by reliable, probative, and credible evidence that Respondent more likely than not committed the violation charged.

FINDINGS OF FACT

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

1. At all relevant times, Respondent, Frank James Boslet, Jr. was a holder of Merchant Mariner License #1515577, Merchant Mariner Document # 200470, and a radar observer endorsement. See CG Ex. 01; Tr. at 156.
2. Respondent was also a holder of New York (NY) and New Jersey (NJ) state pilot's licenses. See CG Ex. 08 and 09.
3. U.S. Coast Guard licensed mariners, including state pilots, are in safety sensitive positions aboard vessels and any impairment due to alcohol is a serious risk to the safety of life or property at sea. See CG Exs. 08 and 09; Tr. at 29-30, 45, 74, 84-6.
4. A NY or NJ state pilot working in New York and New Jersey harbor may be in command of large vessels 300-800 feet in length, carrying millions of gallons of hazardous cargoes such as petroleum and dangerous chemical products, which can cause significant structural, environmental, and economic damage if a collision or spill occurs. See Tr. at 31-2, 74, 86-8.
5. On May 25, 2011, Respondent was convicted in the Commonwealth of Pennsylvania of Driving Under the Influence of Alcohol, high rate (BAC 0.10 - 0.16), second offense, in violation of Title 75 Pa. Consolidated Statutes, section 2802. See CG Exs. 02 and 04.
6. The Pennsylvania Court sentenced Respondent to serve not less than thirty (30) days nor more than six months in the Monroe County Correctional Facility; to pay a fine in the amount of \$750.00, plus costs; to attend and successfully complete the DUI Multiple Offender Program's drug and alcohol treatment requirements; and, it suspended his license for a period of twelve (12) months. See CG Ex. 03.
7. The Pennsylvania Court deferred Respondent's sentence pending the outcome of his appeal and set bail in the amount of five thousand dollars (\$5,000.00). See CG Ex. 03.

Matters in Aggravation

2006 DUI Conviction:

8. On January 9, 2006, Respondent was convicted in Municipal Court, Greenwich Township, New Jersey of Driving While Intoxicated, in violation of Title 39 New Jersey Statutes, Section 4-50(a). See CG Ex. 05 and 06.
9. On May 11, 2007, the Superior Court of New Jersey, Appellate Division, affirmed the conviction which was originally adjudicated in Municipal Court on January 9, 2006. See CG Ex. 07.
10. Respondent registered a 0.12 in two separate breathalyzer tests administered in connection with his 2006 conviction. See CG Ex. 07.
11. In 2006 Respondent sped his vehicle 62 miles per hour in a 50 miles per hour zone while intoxicated. See CG-07; Tr. at 78, 110.
12. After his 2006 DUI conviction, Respondent testified he completed a substance abuse program that included a “victim’s panel” regarding driving under the influence, yet in 2011 Respondent was again convicted of DUI. See Tr. at 121, 134-5.
13. In 2006, the New York State Pilots Commission suspended Respondent’s NY State pilot’s license for 6 months followed by 1 year probation. See CG Ex. 08; Tr. at 27, 235-7.
14. The New Jersey Maritime Pilot and Docking Pilot Commission (NJ State Pilots Commission) suspended Respondent’s NJ State pilot’s license for 1 year because of his 2006 DUI Conviction. See CG Ex. 08; Tr. at 27, 126, 134-5.

2011 DUI Conviction:

15. Respondent’s Blood Alcohol Content (BAC) on his 2011 DUI conviction was 0.10 which is classified as a “high rate of alcohol.” See CG Exs. 02, and 04.
16. The NJ State Pilots Commission suspended Respondent’s NJ State pilot’s license indefinitely pending the outcome of his 2011 DUI conviction appeal. See CG Ex. 09.

17. The NJ State Pilots Commission has a presumptive penalty of revocation upon a second DUI conviction. See Id.
18. The NY State Pilots Commission revoked Respondent's NY State pilot's license on July 5, 2011 because of the second DUI conviction and several "misrepresentations about not holding multiple driver licenses." See CG Ex. 08.

Facts Pertaining to Credibility Determinations

19. In 2006, the NY State Pilots Commission unanimously held that Respondent filed two false "Motor Vehicle Certification and Authorization Statements" with the Board for his 2005 and 2006 state maritime pilot's license renewals. See Tr. at 27, 38-9, 47, 78-9, 110; CG Ex. 08.
20. After Respondent's NY State pilot's license suspension in 2006, the NY State Pilots Commission found that he continued to sign and file false and misleading "Motor Vehicle Certification and Authorization Statements" with the NY State Pilots Commission for his license renewals through 2009. See Tr. at 27, 38-9; CG Ex. 08.
21. The NY State Pilots Commission found that Respondent lied while testifying under oath during his January 2011 hearing when he claimed he did not renew his NY driver's license. Id.
22. The NY State Pilots Commission found Respondent misused the New York addresses of the Hudson River Pilots Association apartment, the Yonkers pilot station, and pilot launch operator to falsely claim NY residence and improperly obtain his NY State driver's license, as well as his NY Lifetime Sportsman License, when in fact his actual residence was in New Jersey. See Tr. at 27, 38-9, 47, 80, 112; CG Ex. 08.
23. The NY State Pilots Commission found Respondent submitted false and misleading information on his 2009 New Jersey driver's license renewal application to the NJ State Department of Motor Vehicles claiming he did not have a valid license in another state when in fact he had a valid NY driver's license at the time. See Tr. at 27; CG Ex. 08.

24. The NY State Pilots Commission found Respondent submitted false and misleading information on his April 2010 NY driver's license renewal application to the NY State Department of Motor Vehicles claiming he did not have a valid license in another state when in fact he had a valid NJ driver's license. See Tr. at 27, 140-3; CG Ex. 08.
25. In 2011, the NY State Pilots Commission revoked Respondent's NY State pilot's license because of his deceptions, misleading statements, and two DUI convictions were "unbecoming a pilot" and rendered him "undeserving of the trust of the Board and the State of New York." See Tr. at 27-8, 38-9, 44-5; CG Ex. 08.

PRINCIPLES OF LAW

"The purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea." 46 U.S.C. § 7701(a). "The administrative actions against a license, certification or document are remedial and not penal in nature. These actions are intended to help maintain standards for competence and conduct essential to the promotion of safety at sea." 46 C.F.R. § 5.5. Under 46 C.F.R. § 5.19 (b), the Commandant of the Coast Guard "has delegated to ALJs the authority to admonish, suspend with or without probation or revoke a license, certificate or document issued to a person by the Coast Guard under any navigation or shipping law."⁴

Title 46 U.S.C. § 7703(3) states that "[a] license, certificate of registry, or merchant mariner's document issued by the Secretary, may be suspended or revoked if the holder - - 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." Title 49 U.S.C. § 30304(a)(3)(A) and (B), set forth the following offenses respectively: "operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance;" and, "a traffic

⁴ The Coast Guard now refers to licenses, certificates of registry, and documents as credentials. 74 Fed. Reg. 11,216, 11,196 (March 16, 2009).

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

ANALYSIS

Mr. Boslet’s 2011 DUI conviction constitutes an offense described in 49 U.S.C. § 30304(a)(3)(A), the National Driver Registry Act. Accordingly, the undersigned found it violated 46 U.S.C. § 7703(3). The only issue remaining is to determine the appropriate sanction.

Coast Guard regulations and appeal decisions do not provide or suggest to the Administrative Law Judge (ALJ) a specific penalty for 46 U.S.C. § 7703(3) violations based on DUIs or multiple DUIs. See Table at 46 C.F.R. § 5.569. Title 46 C.F.R. § 5.569(b), however, provides the following factors for the ALJ to consider when selecting the appropriate sanction order: the prior record of the respondent, considering the period of time between prior acts and the act or offense for which presently charged is relevant; remedial actions which have been undertaken independently by the respondent; and, evidence of mitigation or aggravation. The regulations also provide guidance to investigating officers that they may seek revocation “when the circumstances of an act or offense found proved or consideration of the respondent’s prior record indicates that permitting such person to serve . . . would be clearly a threat to the safety of life or property, or detrimental to good discipline.” 46 C.F.R. § 5.61(b). The guidance provided to the investigating officers can be helpful to the ALJ in applying the foregoing factors.

The above 46 C.F.R. § 5.569 factors to consider when selecting the appropriate sanction order are very similar to the character issues and violations of law criteria the Coast Guard considers when accepting or rejecting an applicant for Merchant Marine Credentials. Those criteria are found in the Marine Safety Manual (COMDTINST M16000.8B) Vol. III, Ch. 3, sections A, C, D, and F. The Marine Safety Manual is not binding on the ALJ but is helpful when seeking further agency interpretation of the 46 C.F.R. § 5.569 factors. This is especially so in this case because the Marine Safety Manual speaks directly to DUI convictions.

The criteria for analyzing DUI convictions from the Marine Safety Manual are as follows: “number and severity of the convictions, recency of the convictions, and evidence of rehabilitation/reform.” See Marine Safety Manual Vol. III, Ch. 3, section (F)(1) on page 3-7. These criteria are consistent with the language of 46 C.F.R. § 5.569 and help to provide a suitable analysis framework to determine an appropriate sanction. The undersigned, therefore, uses the language in the Marine Safety Manual as additional guidance when analyzing the following 46 C.F.R. § 5.569 factors: the prior record of the respondent; remedial actions independently undertaken by Respondent; and other aggravating or mitigating factors: which have been undertaken independently by the respondent; and, evidence of mitigation or aggravation.

Prior Record of Respondent

“Convictions for driving while intoxicated/driving under the influence are considered to be more than minor traffic violations and reflect unfavorably on the applicant’s suitability to be entrusted with the duties and responsibilities of the license.” Marine Safety Manual Vol. III, Ch. 3, section F on page 3-7. Respondent has been twice convicted of DUI offenses. His first conviction occurred in New Jersey in 2006. The evidence shows that the arresting officer pulled Respondent over for driving 62 miles per hour (mph) in a 50 mph zone. See CG Ex. 07. After failing three field sobriety tests, Respondent informed the officer that he had been drinking beer and registered a 0.12 on two separate breathalyzer tests. Id. The breathalyzer results subjected Respondent to a more severe penalty even though it was his first offense. See CG Ex. 06. The Court sentenced Respondent to pay fines and costs and suspended his driver’s license for seven (7) months. In separate administrative actions, Respondent’s New York and New Jersey State pilot’s licenses were suspended. See CG Exs. 08 and 09. The New York State Pilots Commission also ordered Respondent to attend an approved substance abuse program. See Tr. at 121, 134-5; CG Ex. 08 at 10.

Respondent's second conviction occurred in Pennsylvania in 2011. He was convicted of DUI second offense, "high rate of alcohol." See CG Exs. 02, 03, and 04. A blood test revealed a Blood Alcohol Content (BAC) of 0.10. See CG Ex. 08 at 2. As a result of his second conviction, the Court sentenced Respondent to serve not less than thirty (30) days nor more than six (6) months in jail and pay a fine of seven hundred fifty dollars (\$750.00) plus costs. See CG Ex. 02 at 13-14; CG Ex. 03. The Court also suspended Respondent's driver's license for twelve (12) months and ordered him to attend and successfully complete the DUI Multiple Offender Program's drug and alcohol treatment requirements. See CG Ex. 02 at 9; CG Ex. 3. The Court stayed that sentence pending exhaustion of appeals. See CG Ex. 03.

Respondent's second DUI conviction also resulted in revocation of his New York State pilot's license and an indefinite suspension of his New Jersey State pilot's license. See CG Exs. 08 and 09. If his 2011 conviction is upheld on appeal then the presumptive penalty for his New Jersey State pilot's license is revocation. See CG Ex. 09.

Respondent's convictions occurred approximately five (5) years apart. The record shows five years between convictions was significant enough for Respondent to receive serious fines, incarceration, and professional sanctions. Five years is also sufficient to show more of a behavioral pattern that poses a threat to safety at sea rather than isolated incidents of bad judgment.

Remedial Actions Independently Undertaken by Respondent

Respondent produced no evidence demonstrating rehabilitation and reform and no evidence demonstrating he is taking responsibility for his actions; therefore, there is no evidence of independent remedial action. Mr. Boslet has not yet fulfilled the drug and alcohol treatment requirements as the result of his 2011 DUI conviction because the Court stayed his sentence pending exhaustion of appeals.

Mr. Boslet describes the circumstances surrounding his 2006 arrest and conviction as follows:

I was driving a red car at the time, which is the same as another car that had outrun this Greenwich Police Department. And so immediately the officer turned around, as soon as he saw my car. And I pulled over, because I thought he was after somebody else, and he pulled in behind me and then stated that I was speeding, when I wasn't.

So, consequently, it was push to shove, and I went to court with him; he lied under oath; and he worked for the police department for less than three years and then was fired. And I now have it under post-conviction relief, to try to get it reversed.

Tr. at 120.

Mr. Boslet describes the 2011 DUI arrest and conviction as follows:

I went out to dinner, one time in a month, and upon leaving there . . . I finished dinner at about 10:00. I didn't have anything else to drink all night. I waited around until 3:00 in the morning. I was pulled over because I was the only car on the road, and the officer at the time tried to accuse me of all kinds of things, which I was acquitted of, except for the blood alcohol, which wasn't . . . wasn't addressed properly. But it's now under appeal.

Tr. at 122.

Later in his testimony, Mr. Boslet states “[w]ell, the first officer was a rookie officer and didn't last three years on the force. And the second one is only . . . under two years on the force at the time. But I think both of them had a problem talking to somebody that's older than them, and that might be what the extent of it is.” Tr. at 145. According to Mr. Boslet, he has just happened to be pulled over twice, in two different states, by two different police officers who both had the same problem with him. Moreover, he has encountered two different situations in which the persons conducting breathalyzer and blood alcohol tests did not do things properly.

See Tr. at 122; CG Ex. 07 at 3.

Mr. Boslet could not testify consistently regarding his current alcohol consumption. First, he testified “I seldom drink. About every, maybe, couple weeks, but that's about it.” Tr. at 126. And, he has “[a] couple drinks, and that's it, with dinner.” Tr. at 127. Yet when he was

explaining to the undersigned how he has taken responsibility for his actions he testified that “I’m not drinking at all, so I have taken some responsibility in trying to make sure this never happens again.” Tr. at 152. Moreover, Respondent testified he does not have a problem with alcohol. Tr. at 127, 162. Respondent’s inconsistent and self serving statements are unconvincing in the face of two DUI convictions.

Respondent further testified that after his 2006 conviction, he completed a substance abuse program. See Tr. at 121. He stated the program included classes, experts, group therapy, and a victim’s panel. See Tr. at 134-5. There is no evidence the substance abuse program helped Respondent because he was again convicted of DUI in 2011. In 2006, his driver’s license and his state pilot’s licenses were suspended, yet those suspensions did not deter him from again exhibiting the same lack of judgment.

The Coast Guard argues revocation is the most appropriate sanction because Respondent will be required to demonstrate to the clemency board he has rehabilitated himself, changed his behavior, and is once again a person to be entrusted with credentials. If the sanction were suspension, he would not be required to go through such a process. See Tr. at 170-2; see also *Complainant’s Post-Hearing Brief* at 7. The undersigned finds this argument persuasive and consistent with the purpose of suspension and revocation proceedings - promoting safety at sea. See 46 U.S.C. § 7701(a). This finding is further supported by Respondent’s lack of contrition at hearing and his own statements that he does not believe he has a problem with alcohol, even after being convicted of two DUIs. Moreover, the New York and New Jersey State Pilots Commissions have determined that Respondent is not to be entrusted with State pilot’s licenses because of his DUIs and his less than forthcoming behavior. The undersigned is therefore convinced Respondent must demonstrate rehabilitation and disassociation from alcohol to the Coast Guard’s satisfaction before he can be entrusted with credentials.

Evidence of Aggravation or Mitigation

Respondent's counsel argues "Mr. Boslet's two arrests had nothing to do with his job. They were when he was away from work. When he's on the job . . . he has an exemplary safety record. He is one of the best pilots that there is" Tr. at 173. Respondent similarly argues he is a good pilot with a clean employment record and he never uses alcohol when he is working. See Tr. at 119-120, 127, 133, 152, 155, 161-2, and 174. Witnesses also testified Mr. Boslet is a skilled and experienced pilot. See Tr. at 59, 102-3. That Respondent's arrests occurred "when he was away from work" is accorded less weight because a proved allegation under 46 U.S.C. § 7703(3) does not require a violation to occur while a mariner is "acting under the authority of his license" or otherwise "at work." It requires only that a respondent be a holder and that the violation under 49 U.S.C. § 30304(a)(3)(A) or (B) occur within the last 3 years.

Counsel for Respondent also claims "Mr. Boslet's two arrests had nothing to do with his job." Tr. at 173. That claim is misplaced. The New York State Pilots Commission believed his 2006 DUI conviction sufficiently related to his job that it ordered Respondent to attend an approved substance abuse program. Further, 46 U.S.C. § 7703(3) identifies convictions of the following offenses under 49 U.S.C. § 30304(a)(3)(A) and (B) that will subject a holder to suspension or revocation of his or her Coast Guard issued credentials: "operating a motor vehicle while under the influence or impaired by, alcohol or a controlled substance" or "a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways." By enacting 46 U.S.C. § 7703(3), Congress determined these behaviors warrant suspension or revocation because they relate to a person's suitability or fitness to hold Coast Guard issued credentials, even though the behaviors occur behind the wheel of a car and not while operating a vessel.

The Coast Guard also interprets 49 U.S.C. § 30304(a)(3)(A) and (B) in its Marine Safety Manual wherein it states "[a]lthough an individual's motor vehicle record may not be directly

related to his or her maritime career, a record of alcohol or drug related, or other motor vehicle offense(s) indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment.” Marine Safety Manual Vol. III, Ch. 3, section 3-A-3 on page 3-2. “Convictions for driving while intoxicated/driving under the influence are considered to be more than minor traffic violations and reflect unfavorably on the applicant’s **suitability to be entrusted with the duties and responsibilities of the license.**” *Id.* at 3-F on page 3-7. (Emphasis added). Respondent’s behavior resulting in two DUI convictions therefore reflects unfavorably on his suitability to be entrusted with the duties and responsibilities of a licensed credential holder.

Claims that Respondent has an exemplary safety record; is one of the best pilots; has a clean employment record; and never uses alcohol when he is working are accorded less weight because the two DUI convictions are more probative on his suitability to be entrusted with the duties and responsibilities of his credentials going forward. Further, those claims do not mitigate the concerns for safety at sea. DUI convictions indicate he may have a disregard for his own safety or the safety of others. It is important to recognize that the concept of sanction in suspension and revocation proceedings is not intended to be penal in nature. It is intended to be remedial and “to help maintain standards for competence and conduct essential to the promotion of safety at sea.” 46 C.F.R. § 5.5.

Respondent’s Coast Guard issued credentials allow him to do many things, including the safety sensitive function of piloting a large vessel. The safety concerns regarding a person with an alcohol problem piloting vessels include reaction time and having the vessel under control. See Tr. at 29-31. The vessels Respondent pilots can be as long as 800 feet and may contain hazardous cargo such as oil and liquefied gases. See Tr. at 31-2; 86-8. The need to have trusted pilots is made clear in the following testimony of Andrew Walter McGovern, President of the New Jersey Sandy Hook Pilots Association:

[W]hen you are piloting a ship, it's not like driving a car, where you're thinking maybe ten seconds ahead. You're thinking 15 minutes ahead of what's gonna - - because it takes that long for a ship to react. So, you know...obviously we don't want anyone that's either under the influence of either drugs or alcohol piloting a ship . . . [t]hat would definitely be, you know, a great danger.

Tr. at 85-6.

In view of the foregoing, Mr. Boslet's DUI convictions breach the trust placed in him that he will exercise sound judgment when acting under the authority of his credentials. This breach of trust creates an unacceptable risk to the safety of life and property at sea.

CREDIBILITY DETERMINATIONS

At the hearing there was a great deal of testimony concerning Respondent's truthfulness and trustworthiness exhibited during the New York State Pilots Commission proceedings. The Commission found that Respondent filed two false Motor Vehicle Certification and Authorization Statements for his 2005 and 2006 pilot's license renewals; the Commission also found that Respondent continued to file false and misleading Certification and Authorization Statements through 2009. See Tr. at 38-9, 135-7; CG Ex. 08 at 4-5, 10-14. The Commission's records show that Respondent represented he had only a valid New Jersey driver's license when in fact he also had a valid New York driver's license. See CG Ex. 08 at 4 and 14; Tr. at 38-9. The Commission also found that Respondent represented to the New Jersey State Pilots Commission on his NJ State pilot's license renewal documents from April 2005 through March 2009 that he had only a New Jersey driver's license when in fact he also had a valid New York driver's license during that same time period. See CG Ex. 08 at 13; Tr. at 38-9.

The Commission further found that when Respondent renewed his NY driver's license on April 7, 2010, he informed the NY Department of Motor Vehicles he did not have a valid driver's license in another state when in fact he had a valid NJ driver's license. See CG Ex. 08 at 11, 13 and 14. When Respondent was arrested for DUI in Pennsylvania on October 31, 2010, he presented a valid New Jersey driver's license. See CG Ex. 08 at 11.

The NY State Pilots Commission found that Respondent used the Hudson River Pilots Association apartment in Rensselaer, NY in 2007 as his residence when he purchased his NY resident lifetime sportsman hunting and fishing license as well as when he renewed his NY driver's license in 2010. See CG Ex. 08 at 11. The Commission further found that during this time period, Respondent maintained his residence in NJ. See CG 08 at 5.

During the 2011 New York State Pilots Commission hearing, Respondent stated he did not renew his New York driver's license, rather, he received a new one in the mail. See Tr. at 39; CG Ex. 08 at 3. The Commission determined this statement to be false because it found that Respondent applied for his NY driver's license renewal in person. See Tr. at 39; CG Ex. 08 at 14. When questioned during the instant hearing, Respondent testified he "misspoke" at the NY Pilots Commission hearing when he said New York automatically sent him a license when in fact New Jersey automatically sent him a license. See Tr. at 128. On cross-examination he could not to explain when he applied for these various licenses or when he was living in New York or New Jersey; nor could he provide any details or specifics to show that the findings of the Commission were unfounded or inaccurate. See Tr. at 147.

During the instant hearing Respondent had further instances where he "misspoke." See Tr. at 137. For example, when his attorney asked him if both New York and New Jersey pilot's licenses "were suspended or just one" as a result of his 2006 DUI conviction, Respondent stated "[j]ust New Jersey." See Tr. at 121. This statement was not true because his New York State pilot's license had been suspended for six (6) months plus probation for one (1) year. See Tr. at 135-7; CG Ex. 08. When his attorney asked him whether the Pennsylvania judge revoked his driving privileges or fined him as a result of his 2011 conviction, Respondent stated "[n]o." Tr. at 123. His attorney's next question was "[s]o you still haven't dealt with any sentencing, as far as that's concerned?" Respondent again testified "[n]o." Id. These statements are not true. As a result of his 2011 conviction the Pennsylvania judge sentenced Respondent to at least 30 days

and no more than 6 months incarceration, suspended his driver's license for one year, and assessed a fine of \$750 plus costs. See CG Exs. 02 at 9, and 03.

Respondent's Merchant Mariner Credentials consist of a license, a document, and an endorsement. When the undersigned asked him to produce his credentials at the beginning of the hearing as required by 46 C.F.R. § 5.521, Respondent produced an expired Merchant Mariner's License. Not until the undersigned specifically questioned him about the need for his current license did Respondent divulge he could not locate it. Standing alone, this may not seem like a deceitful act, but when viewed with other evidence, it tends to support a finding that Respondent is not credible. For example, Respondent did not timely report his DUI arrests (Tr. at 47-8, 121, 128-9); he misrepresented what state he held a valid driver's license in and where he was a resident (Tr. at 38-9, 44-7; CG Ex. 08); and, he was not forthcoming that both his pilot's licenses were suspended in 2006 and that he had in fact been sentenced for his 2011 conviction (Tr. at 121, 123, 135-9). When combined with the foregoing acts, submitting expired credentials shows Respondent to be untrustworthy and therefore not credible.

I find therefore, that the testimony of Coast Guard witness, Mr. Richard J. Hendrick is credible. Further, I find the testimony of Respondent's witnesses, Mr. Andrew W. McGovern and Mr. George A. Canvin, Jr., is credible. Finally, I find the testimony of Respondent, Mr. Frank J. Boslet, Jr., is not credible and therefore accord his testimony less weight.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Frank J. Boslet, Jr. and the subject matter of this hearing are properly within the jurisdiction of the U.S. Coast Guard and the Administrative Law Judge in accordance with 46 U.S.C. § 7703; 46 C.F.R. Part 5; and 33 C.F.R. Part 20.
2. Respondent's May 25, 2011 conviction of Driving Under the Influence of Alcohol is an offense described in the National Driver Register Act, 49 U.S.C. § 30303(a)(3)(A).
3. Respondent's Pennsylvania conviction of Driving Under the Influence of Alcohol was within 3 years preceding this suspension and revocation proceeding.

4. A conviction under the National Driver Register Act within the 3 year period preceding the initiation of this suspension and revocation proceeding constitutes a violation of 46 U.S.C. § 7703(3).
5. Respondent's Merchant Mariner Credentials are subject to suspension and revocation.
6. Respondent's Pennsylvania conviction is his second conviction for Driving Under the Influence of Alcohol since 2006.
7. Respondent's behavior resulting in two DUI convictions reflects unfavorably on his suitability to be entrusted with the duties and responsibilities of a licensed credential holder.
8. Mr. Boslet's convictions breach the trust placed in him that he will exercise sound judgment when acting under the authority of his credentials.
9. This breach of trust creates an unacceptable threat to the safety of life or property at sea and is detrimental to good discipline in the merchant marine.

DECISION

After careful review of the entire record taken as a whole, including witness testimony, applicable statutes, regulations, and case law, I find the Coast Guard **PROVED** by a preponderance of reliable, probative, and credible evidence that the appropriate sanction for Respondent, Frank James Boslet, Jr.'s violation of 46 U.S.C. §7703(3) is **REVOCATION**.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED that all of Respondent Frank James Boslet, Jr.'s Coast Guard issued credentials are **REVOKED**.

IT IS FURTHER ORDERED that if Respondent finds his lost credentials, he is to return same to the Investigating Officer immediately in accordance with the *Lost Credential Affidavit* he executed on June 26, 2012.

PLEASE TAKE NOTICE that service of this Decision and Order 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, attached hereto as **Attachment C**.

Walter J. Brudzinski
Administrative Law Judge
United States Coast Guard

Date: October 23, 2012

ATTACHMENT A

WITNESSES AND EXHIBITS:

Witnesses:

For the Coast Guard:

1. Mr. Richard Joseph Hendrick, Commissioner, New York State Pilots Commission.

For Respondent:

1. Mr. Andrew Walter McGovern, President, New Jersey Sandy Hook Pilots Association
2. Mr. George A. Canvin, Jr., Captain, Full Branch New York Sandy Hook Pilot
3. Respondent, Frank James Boslet, Jr., testified on his own behalf

ALJ Exhibit:

ALJ-01: U.S. Coast Guard “Lost Credential Affidavit” for Coast Guard Enforcement Activity Number 4284716.

Coast Guard Exhibits:

CG-01: U.S. Coast Guard Merchant Mariner Licensing and Documentation System (MMLD) document listing Respondent’s Merchant Marine License number and Merchant Mariner Document number (1 page).

CG-02: Certified Disposition of Respondent’s 2011 Driving Under the Influence (DUI) Conviction from the Court of Common Pleas of Monroe County, PA (14 pages).

CG-03: Certified Sentence Order for Respondent’s 2011 DUI Conviction from the Court of Common Pleas of Monroe County, PA (4 pages).

CG-04: Copy of Pennsylvania Consolidated Statutes, Annotated: 75 Pa. Cons. Stat. Ann § 3802 (Driving Under Influence of Alcohol or Controlled Substance) (4 pages).

CG-05: Certified Disposition of Respondent’s 2006 Driving While Intoxicated (DWI) Conviction from Greenwich Township Municipal Court, NJ (3 pages).

CG-06: Copy of New Jersey Statutes, Annotated: N.J. Stat. Ann. § 39:4-50 (Driving While Intoxicated) (7 pages).

CG-07: *New Jersey v. Boslet*, 2007 WL 1373820 (N.J. Super Ct. App. Div. May 11, 2007) (affirming Respondent’s January 9, 2006 DWI conviction) (4 pages).

CG-08: Sanction, Opinion, & Order by the Board of Commissioners of Pilots of the State of New York revoking Respondent's New York State Hudson River Pilot License, 5 July 2011 (16 pages).

CG-09: "Resolution and Order" from The New Jersey Maritime Pilot & Docking Pilot Commission suspending Respondent's New Jersey Maritime Pilot license until a final decision with regard to his appeal of the May 25, 2011 DUI conviction (3 pages).

Respondent Exhibits:

Respondent did not offer any exhibits into evidence.

ATTACHMENT B

Respondent did not submit proposed findings of fact. Respondent provided further argument in his post-hearing brief.

COAST GUARD'S PROPOSED FINDINGS OF FACT

1. Respondent's 2006 Driving While Intoxicated (DWI) conviction was not merely for operating a motor vehicle while intoxicated. Rather, in addition to drinking alcohol and operating a motor vehicle, he sped the vehicle 62 miles per hour (MPH) in a 50 MPH zone while intoxicated, further increasing the danger to himself and others. (Ex. CG-07; Tr. 78, 110).

ACCEPTED AND INCORPORATED.

2. In 2006, the Board of Commissioners of Pilots of the State of New York (NY) unanimously held that Respondent filed two false Motor Vehicle Certification and Authorization Statements with the Board for his 2005 and 2006 state maritime pilot license renewals. (Ex. CG-08; Tr. 27, 38-39, 47, 78-79, 110).

ACCEPTED AND INCORPORATED to the extent that this was the testimony of Commissioner Hendrick and the finding of the NY State Pilots Commission in 2006.

3. In 2006, Respondent's NY maritime state pilot's license was suspended for 6 months followed by 1 year probation for his 2006 DUI conviction and false filings with the Commission. (Ex. CG-08; Tr. 27, 135-137).

ACCEPTED AND INCORPORATED.

4. Respondent was required by the Board of Commissioners of Pilots of the State of New York to attend a substance abuse program for his 2006 DUI conviction, yet he proceeded to commit a second crime of DUI in 2010, leading to his 2011 DUI conviction. (Ex. CG-08; Tr. 27, 126, 134-135).

ACCEPTED AND INCORPORATED.

5. Even after Respondent's NY state maritime pilot's license suspension in 2006, he continued to sign and file false and misleading "Motor Vehicle Certification and Authorization Statements" with the NY Pilot Commission for his license renewals through 2009. (Ex. CG-08; Tr. 27, 38-39).

ACCEPTED AND INCORPORATED. This was the testimony of Commissioner Hendrick and the finding of the NY State Pilots Commission during Respondent's 2011 hearing.

6. In 2006, the New Jersey (NJ) Maritime Pilot and Docking Pilot Commission suspended Respondent's NJ Maritime Pilot License for 1 year for his 2006 DUI Conviction. (Ex. CG-08, CG-09; Tr. 27, 121).

ACCEPTED AND INCORPORATED

7. Respondent lied while testifying under oath to the Board of Commissioners of Pilots of NY during his January 2011 board hearing, when he claimed he did not renew his NY driver's license. (Ex. CG-08; Tr. 27, 38-39).

ACCEPTED AND INCORPORATED. This was the testimony of Commissioner Hendrick and the findings of the NY State Pilots Commission during Respondent's 2011 hearing.

8. Respondent misused the New York addresses of the Hudson River Pilots Association apartment, Yonkers pilot station, and pilot station launch operator, in order to falsely claim NY residence and improperly obtain his NY State Driver's license, and his NY Lifetime Sportsman license, even though his actual residence the entire time was in New Jersey. (Ex. CG-08; Tr. 27, 38-39, 47, 80, 112).

ACCEPTED AND INCORPORATED. This was the testimony of Commissioner Hendrick and the findings of the NY State Pilots Commission during Respondent's 2011 hearing.

9. Respondent submitted false and misleading information on his 2009 New Jersey driver's license renewal application to the New Jersey (NJ) State Department of Motor Vehicles claiming he did not have a valid license in another state, even though he did have a valid NY driver's license at the time. (Ex. CG-08; Tr. 27).

ACCEPTED AND INCORPORATED. This was the testimony of Commissioner Hendrick and the findings of the NY State Pilots Commission during Respondent's 2011 hearing.

10. Respondent submitted false and misleading information on his April 2010 NY driver's license renewal application to the NY State Dept of Motor Vehicles claiming he did not have a valid license in another state, even though he did have a valid NJ driver's license. (Ex. CG-08; Tr. 27, 140-143).

ACCEPTED AND INCORPORATED. This was the testimony of Commissioner Hendrick and the findings of the NY State Pilots Commission during Respondent's 2011 hearing.

11. In 2011, the Board of Commissioners of Pilots of the State of New York revoked Respondent's NY State Pilot's License because Respondent's deceptions and misleading statements and his two convictions for DUI were "unbecoming a pilot" and rendered him "undeserving of the trust of the Board and the State of New York." (Ex. CG-08; Tr. 27-28, 38-39, 44-45).

ACCEPTED AND INCORPORATED.

12. Respondent was made aware by the NJ Maritime Pilot and Docking Pilot Commission that NJ law specifically provides for a presumptive penalty of revocation of a state pilot license if a New Jersey Maritime Pilot receives a second DUI conviction. (Ex. CG-09; Tr. 65-66, 113, 134).

ACCEPTED AND INCORPORATED.

13. Due to Respondent's two DUI convictions, the NJ Maritime Pilot and Docking Pilot Commission suspended Respondent's NJ maritime state pilot's license indefinitely until his second DUI conviction has been fully appealed. (Ex. CG-08, CG-09; Tr. 27, 133).

ACCEPTED AND INCORPORATED.

14. If Respondent's second DUI conviction is upheld by the Pennsylvania courts, then his New Jersey State pilot license will almost certainly be revoked. (See Ex. CG-09; Tr. 66-67, 113, 133-134; 154).

ACCEPTED AND INCORPORATED.

15. U.S. Coast Guard licensed mariners, including state pilots, are in a safety sensitive position aboard vessels. Any mariner in command of a vessel that might be impaired due to alcohol consumption is a serious risk to the safety of life or property. (See Ex. CG-08, CG-09; Tr. 29-30, 45, 74, 84-85, 86).

ACCEPTED AND INCORPORATED.

16. A NY or NJ state pilot working in New York and New Jersey harbor may be in command of large vessels 300-800 feet in length, carrying millions of gallons of hazardous cargoes such as petroleum and dangerous chemical products, which can cause significant structural, environmental, and economic damage if a collision or spill occurs. (Tr. 31-32, 74, 86-88).

ACCEPTED AND INCORPORATED.

17. Respondent has not attempted to seek rehabilitation or remediate the behaviors that led to his two DUI/DWI convictions. (Ex. CG-08; Tr. 33, 150-151, 162-163).

ACCEPTED AND INCORPORATED.

COAST GUARD'S PROPOSED CONCLUSIONS OF LAW

1. Table 5.569, the Suggested Range of an Appropriate Order, found in 46 CFR § 5.569 does not provide specific guidance as to the appropriate order in a DUI conviction case, let alone a multiple DUI/DWI conviction case.

ACCEPTED AND INCORPORATED.

2. Multiple DUIs, and especially multiple DUIs in combination with other aggravating factors, are grounds for revocation. (*See Decision and Order (TEMPLET)* (February 3, 2000, docket 00-0035, ALJ McElligott presiding) (revoking mariner's credential who had received three DUI convictions and who had submitted fraudulent information on his application to renew his license); *Decision and Order (BOTTONE)* (September 22, 2009, docket 2009-0329, ALJ Brudzinski presiding) (finding "the circumstances surrounding Respondent's apprehension and arrest for drunk driving on count two and the fact that Respondent fraudulently submitted his CG-791B reapplication in count three would justify Revocation on each count independently," and indicating a single DUI conviction by itself is sufficient cause for a sanction of revocation); *see also* 46 CFR § 5.61(b); 46 USC 7703(3)).

ACCEPTED AND INCORPORATED to the extent that the facts of this case, including Mr. Boslet's two DUI convictions, warrant a sanction of revocation.

3. Multiple aggravating factors exist in this case, which warrant revocation of Respondent's merchant mariner credentials.

ACCEPTED AND INCORPORATED

ATTACHMENT C

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS CODE OF FEDERAL REGULATIONS

PART 20 RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR FORMAL ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD

SUBPART J – APPEALS

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.