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

UNITED STATES COAST GUARD
Complainant

vs.

WILLIAM TEE COFFY

Respondent

Docket Number 2012-0275
Enforcement Activity No. 4313205

DECISION AND ORDER

Issued: January 07, 2013

By Administrative Law Judge: Honorable Michael J Devine

Appearances:

LT GREGORY J. KNOLL
LT JESSICA L. BOHN
LT ERIC L. SUMPTER

Sector Hampton Roads

For the Coast Guard

WILLIAM TEE COFFY, *Pro Se*

For Respondent

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PRELIMINARY STATEMENT

The United State Coast Guard initiated an administrative action seeking revocation of Merchant Mariner's Document Number 000010771 issued to William Tee Coffy (hereinafter "Respondent"). This action is brought pursuant to the authority contained in 46 U.S.C. 7704(c) and its underlying regulations codified at 46 C.F.R. Part 5, and 33 C.F.R. Part 20.

The Coast Guard issued a Complaint on May 21, 2012, charging Respondent with use of or addiction to the use of dangerous drugs. Specifically, the Coast Guard alleges Respondent took a random drug test on May 3, 2012, and that test yielded a positive result of cocaine metabolites. On July 10, 2012 the Coast Guard filed a Motion for a Default Order requesting that a default order be issued because the Respondent had not yet filed an Answer to their Complaint. However, Respondent submitted an Answer on July 16, 2012. Although the Motion for Default could have been considered,[1] it was deemed moot and further action was taken to address this matter on the merits. In his Answer Respondent admitted all jurisdictional and factual allegations contained in the Complaint, but requested to be heard on the proposed order and he requested settlement discussions. On August 13, 2012 the Coast Guard submitted a Motion for Summary Decision contending that there were no genuine issues of material fact based on Respondent's Answer. On September 5, 2012 the Court issued an Order denying the Coast Guard Motion for Summary Decision. The ruling in Appeal Decision 2697 (GREEN) (2011) provides that reasonable latitude is to be given *pro se* litigants. Respondent's Answer was somewhat ambiguous because he checked multiple blocks on the Answer form, but he requested a hearing and was entitled to have an opportunity to raise affirmative defenses or present evidence to rebut the Coast Guard's *prima facie* case. While a finding in favor of the

[1] E.g. Appeal Decision 2682 (REEVES) (2008)

Coast Guard may be possible if a Respondent fails to rebut a *prima facie* case,[2] an Answer that admits to facts that a urinalysis was conducted and that the results were positive but does not admit use of a dangerous drug is not sufficient to eliminate all genuine issues of material fact. Respondent's Answer does not preclude requiring the Coast Guard to present a *prima facie* case at a hearing and then allowing Respondent to contest matters presented including cross examination of witnesses and the opportunity to present a case in rebuttal with evidence and to raise any affirmative defenses. Title 46 U.S.C. 7702 provides that mariners are entitled to an opportunity for a hearing under the procedures of the Administrative Procedures Act, 5 U.S.C. 551-559 to contest such matters.

The hearing commenced on October 23, 2012, at 9:30 AM in Norfolk, VA. The hearing was conducted in accordance with the Administrative Procedure Act (APA) as amended and codified at 5 U.S.C. 551-59, and Coast Guard procedural regulations set forth in 46 C.F.R. Part 5 and 33 C.F.R. Part 20. The Coast Guard moved for admission of fourteen (14) exhibits, thirteen (13) of which were admitted, and presented testimony of six (6) witnesses. Mr. John Gallagher was initially called as a witness, but since his prospective testimony was rebuttal evidence his testimony at that point was premature. Later on in the proceedings after the Coast Guard had presented its case in chief and the Respondent had presented matters in rebuttal Mr. Gallagher was unavailable to testify when the United States Coast Guard tried to reach him later in the day. Tr. at 182-84. The Coast Guard requested admission of Exhibit CG-13 in lieu of Mr. Gallagher's testimony but Respondent did not agree to the admission of Exhibit CG-13 and stated he had wanted to cross examine the witness. Since this document and Mr. Gallagher's prospective testimony is not relevant to the urinalysis testing that is the focus of this matter and is marginally relevant to anything at best, its probative value if any, is outweighed by other considerations and it is not admitted in keeping with Federal Rule of Evidence 403 and 33 C.F.R. 20.802(b).

[2] See Appeal Decision 2584 (SHAKESPEARE) (1997) and Tr. at 10-12.

Respondent moved for admission of two (2) exhibits at the hearing. Exhibit A was accepted at the hearing and a ruling on Exhibit B was deferred since it did not appear relevant. During the hearing it was ruled that the record would be kept open for a week after the hearing to allow Respondent an opportunity to submit additional documents subject to objection by the Coast Guard. Tr. at 172-190. Respondent subsequently submitted additional materials which have been admitted as Respondent Exhibits C through M. The Coast Guard objection to these exhibits is included in the record. The Court's ruling is explained below. Respondent also presented his own testimony at the hearing. The list of witnesses and exhibits is contained in Attachment A.

The Court also issued an Order on October 25, 2012 specifically addressing the opportunity for Respondent to supplement the record. Respondent submitted a letter with "Supplementary Documents" dated October 26, 2012 and a "Motion to Exclude" dated October 26, 2012, both of which were received in the ALJ Office on November 1, 2012. The Coast Guard Investigating Officer submitted a Response in Opposition to Respondent's Post-Hearing pleadings on November 2, 2012. The Coast Guard objected to Respondent's post-hearing Motion that appears to seek to change his Answer (CG-2639A form) submitted on or about July 16, 2012 on several grounds. The Court finds that Respondent's post-hearing Motion to exclude his Answer is both untimely and meritless. Respondent's testimony at the hearing did not dispute either the jurisdictional allegations or the facts that he participated in a random drug test on May 8, 2012 which resulted in a report of a positive drug test. Whether Investigating Officer James Staton discussed administrative clemency with Respondent is not relevant to the merits of this case. Respondent was provided an opportunity to fully contest this matter at the hearing held on October 23, 2012. Respondent's Motion to Exclude Document CG-2639A is **DENIED.**

Respondent also submitted a pleading titled "Supplementary Documents Pertaining to Hearing Conducted on 10/23/2012 Details as Follows" The additional documents attached to that pleading from Respondent will be considered as Respondent Exhibits follows: (C) Federal

Drug Testing and Control Form (hereinafter DTCCF) dated 1/25/2012 Copy 5 Donor Copy; (D) DOT/USCG Periodic Drug Testing Form (CG-719P) with date specimen collected 7/18/2011 indicated cancelled invalid – unusually low creatinine & specific gravity; (E) University Services MRO Final Report dated reported 07/22/2011 – indicating results for pre-employment test specimen collected on 7/18/2011 as cancelled invalid and noting that a test should recollected by direct observation; (F) Federal Drug Testing Custody and Control Form dated 7/22/2011 Copy 5 Donor Copy; (G) Fax Cover Sheet from Respondent with date of October 26, 2012; (H) MRO Final Report dated 7/25/2011 indicating that pre-employment test specimen collected on 7/22/2011 and tested by Quest Diagnostics was negative; (I) MRO Final Report to Seafarer's Health & Benefit dated 1/27/2012 indicating that pre-employment test specimen collected on 1/25/2012 was negative – diluted; (J) Federal Drug Testing and Control Form – Copy 5 Donor Copy dated 7/18/2011; (K) DOT/USCG Periodic Drug Testing Form (CG-719P) with date specimen collected 1/25/2012 indicated negative – dilute specimen; (L) MRO Final Report to Seafarer's Health & Benefit dated 1/27/2012 indicating that pre-employment test specimen collected on 1/25/2012 was negative – diluted. That Report also noted that "You may but are not required to, recollect immediately ONCE. NO DIRECT OBSERVATIONS. See 40.197 or call us. 2nd result is the result of record." (This appears to be a duplicate of (E)) – there is no evidence that another specimen was collected following this report; and (M) Letter dated May 18, 2012 from University Services noted that per Respondent's request a split specimen test was ordered for the specimen collected on May 3, 2012.

The Coast Guard objected to these materials as somehow reopening discovery. The Coast Guard misunderstood the Court's ruling. During the hearing the Court rejected Respondent's questions that attempted to ask for materials during the hearing because he failed to ask for discovery in the time provided in the scheduling order and would unduly delay the hearing. Tr. at 172-75. However in keeping with GREEN supra, the Court gave Respondent an

opportunity to obtain and offer his own medical or other records of previous urinalysis that he contended supported his argument. Tr. at 175, 190. Consequently, the Court's Order did not reopen discovery. It allowed Respondent to supplement the record and for Coast Guard to raise objections to any additional materials offered. Respondent's materials are allowed and included in the record. Each additional Document is added as a Respondent Exhibit beginning with Exhibit C. However, these materials from previous pre-employment tests do not support Respondent's arguments that there is something wrong with either Quest or the other labs that have provided testing services. The previous test results submitted by Respondent were pre-employment tests which in some cases indicated that specimens that did not have a positive result were reported as negative in keeping with the regulations. Past negative results are not directly relevant to the issue of the May 3, 2012 test. Specimens that have unusually low creatinine and low specific gravity, and a dilute specimen indicate that there is a possibility of the donor intentionally drinking a lot of fluids. See testimony of Brian Brunelli Tr. at 116-17. Although Respondent has been permitted to submit these materials to the record, these materials and Respondent's argument are not persuasive evidence of any problem with laboratory procedures. I find that they do not provide any valid basis to rebut the *prima facie* case of the Coast Guard based on the May 3, 2012 urinalysis. Cf. Appeals Decision 2635 (SINCLAIR) (2002).

Respondent submitted a post hearing brief on November 29, 2012. This post hearing brief did not contain enumerated Findings of Fact or Conclusions of Law, therefore, individual rulings on Respondent's Findings of Fact or Conclusions of Law are not made. However, all the facts and issues raised in Respondent's post hearing brief have been addressed throughout the body of this Decision. The Coast Guard submitted its brief and proposed findings of fact and conclusions of law on November 30, 2012. Rulings on the proposed findings and conclusions are found in Attachment B. The record is closed and the case is now ripe for a decision.

After careful review of the entire record taken as a whole, including witness testimony, applicable statutes, regulations and case law, I find the charged violation of use of or addition to dangerous drugs **PROVED**.

FINDINGS OF FACT

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

1. Respondent William Tee Coffy and the subject matter of this proceeding are within the jurisdiction of the Coast Guard vested under the authority of 46 U.S.C. Chapter 77.
2. At all relevant times mentioned herein and specifically on or about May 3, 2012, Respondent was a holder of Merchant Mariner's Document Number 000010771 issued by the United States Coast Guard. At the hearing Respondent did not dispute the jurisdictional allegations of the Complaint. Tr. at 164-81.
3. MAERSK Line, Limited employed Respondent in May 3, 2012 aboard their vessel the MAERSK VIRGINIA. Respondent submitted to a random drug test conducted in accordance with 46 C.F.R. Part 16. Respondent engaged in official matters relating to his Merchant Mariner credentials by reporting for drug testing. CG Ex. 2, 3, 4 and Tr. at 28, 30, 60-70; 46 C.F.R. 5.57.
4. On May 3, 2012, Respondent participated in a random drug test at Substance Abuse Testing of Savannah. CG Ex. 2 and Tr. at 55.
5. Department of Transportation procedures were followed by the collector who obtained a specimen from Respondent on May 3, 2012. Tr. at 56-70.
6. Based on the testimony of the Lab Director and the Medical Review Officer, the positive test result was verified in accordance with 49 C.F.R. Part 40. CG Ex. 6, 7, 8 and Tr. at 84-108.

7. Respondent's sample was received by Quest Diagnostics and it was logged into their computer system with an internal tracking number which is unique. Tr. at 100.
8. Quest Diagnostics is certified by the national laboratory program and the Department of Health and Human Services to perform testing under federal regulations. Tr. at 92; CG Ex. 8.
9. The chain of custody for Respondent's specimen was intact and without flaws. Tr. at 108; CG Ex. 7.
10. The cocaine metabolite level identified in Respondent's sample was 194 nanograms per milliliter. According to the Department of Health and Human Services' regulations, any metabolite concentration greater or equal to 100 nanograms per milliliter is considered a positive test. CG Ex. 7; Tr. at 107; 75 Fed. Reg, 49862 (August 16, 2010).
11. The Medical Review Officer (MRO) verified the positive drug test taken by Respondent on May 8, 2012 and again verified it on May 18, 2012 after the test for the split specimen was returned. CG Ex. 11 and Tr. at 129-45.
12. The MRO interviewed Respondent on May 8, 2012 and determined there was no valid excuse or medical explanation for Respondent's positive drug test. Tr. at 138-39.
13. Respondent denied using cocaine. Tr. at 168-70.
14. Respondent requested that the split sample be tested by a second laboratory. Tr. at 140.
15. Respondent's split specimen was tested by a Department of Transportation approved lab, Clinical Reference Laboratory in Lenexa, Kansas, which confirmed the presence of a cocaine metabolite in Respondent's urine. CG Ex. 11 page 2 and Tr. at 151-52. Clinical Reference Lab, the confirming test laboratory, is certified by the national laboratory program and the Department of Health and Human Services to perform testing under federal regulations. CG Ex. 8; CG Ex. 11 page 2.

16. The Coast Guard presented a prima facie case of use of a dangerous drug in this matter. A *prima facie* case of dangerous drug use based on urinalysis test results is presented when (1) a party is tested for use of a dangerous drug; (2) the test results show a positive result for a dangerous drug; and (3) the drug test is conducted in accordance with Department of Transportation procedures in 49 CFR Part 16. Appeal Decision 2584 (SHAKESPEARE) (1997).
17. There is no valid medical explanation for the positive test result for a dangerous drug. Tr. at 134-41.
18. Respondent failed to provide sufficient relevant and persuasive evidence to rebut the presumption he is a user of dangerous drugs.
19. Based on the record as a whole, the Coast Guard has proved by a preponderance of reliable and credible evidence that Respondent is a user of dangerous drugs under 46 U.S.C. 7704(c) and the underlying regulations.

DISCUSSION

The purpose of Coast Guard Suspension and Revocation proceedings is to promote safety at sea. See 46 U.S.C. 7701. Title 46 C.F.R. 5.19 gives Administrative Law Judges authority to suspend or revoke a license or certificate in a hearing for violations arising under 46 U.S.C. 7704. Under 46 U.S.C. 7704(c), a Coast Guard issued license or certificate shall be revoked if the holder of that license or certificate has been a user of or addicted to a dangerous drug, unless the holder provides satisfactory proof that the holder is cured. See generally Appeal Decision 2634 (BARRETTA) (2002); Appeal Decision 2535 (SWEENEY) (1992) (*rev'd on other grounds*)(definition of cure established).

The chemical drug testing laws and regulations require maritime employers to conduct pre-employment, periodic, random, serious marine incident, and reasonable cause drug testing to minimize use of dangerous drugs by merchant mariners. See 46 C.F.R. Part 16 and 49 C.F.R. Part 40. If an employee fails a chemical test by testing positive for a dangerous drug and the test is demonstrated to be in compliance with the requirements of 46 C.F.R. Part 16, the individual is then presumed to be a user of dangerous drugs. See 46 C.F.R. §16.201(b); Appeal Decision 2584 (SHAKESPEARE) (1997).

The Coast Guard charged Respondent with use of or addiction to dangerous drugs based on the Respondent's drug test results that were positive for cocaine metabolites from a random drug test taken on May 3, 2012. The Coast Guard seeks revocation of Respondent's license in accordance with 46 C.F.R. 5.569. For the reasons stated below, I find the Coast Guard has **PROVED** the charged violation that Respondent is a user of or addicted to the use of a dangerous drug based on the evidence in the record as a whole.

Burden of Proof

The Administrative Procedure Act (APA), Title 5 U.S.C. 551-559, applies to Coast Guard Suspension and Revocation trial-type hearings before United States Administrative Law Judges. 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. Securities and Exchange Commission, 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, 371-72 (1970) (Harlan, J., concurring) (brackets in original)). Therefore, the Coast Guard Investigating Officer must prove by credible, reliable, probative, and substantial evidence that Respondent more likely than not committed the violation charged.

Prima Facie Case of Use of a Dangerous Drug

As stated above, the Coast Guard bears the burden of proof. Where the sole basis of proof for the charged violation is a positive urinalysis test, the Coast Guard must establish a *prima facie* case in order to prove that a merchant mariner is a user of or addicted to dangerous drugs. See Appeal Decision 2584 (SHAKESPEARE) (1997)[3]; 46 C.F.R. 16.201.

[3]"However, where the Coast Guard seeks to rely upon the regulatory presumption, all the terms which form the predicates for the presumption must be established according to the same standard of proof. That is to say, the

A *prima facie* case of the use of a dangerous drug is made when the following three elements are established: 1) Respondent was the person who was tested for dangerous drugs; 2) Respondent failed the drug test; and 3) the test was conducted in accordance with 46 C.F.R. Part 16. Appeal Decision 2603 (HACKSTAFF) (1998). See also Appeal Decision 2653 (ZERINGUE) (2002); Appeal Decision 2584 (SHAKESPEARE) (1997).

Once the Coast Guard establishes a *prima facie* case that Respondent is a user of or addicted to dangerous drugs, the Respondent may then present evidence to rebut the presumption of the positive drug test result. If Respondent fails to rebut the evidence presented by the Coast Guard, the ALJ may find the charges proved based upon the presumption alone. Appeal Decision 2592 (MASON) (1997).

i. Respondent was the Person Tested for Dangerous Drugs

Respondent's Answer and the evidence at hearing shows that Respondent submitted a urinalysis test sample to Quest Diagnostics and Substance Abuse Testing of Savannah on May 3, 2012. CG Ex. 4 and Tr. at 62. The DTCCF also verifies that Respondent submitted to a drug test. CG Ex. 4, 7, and 11. Ms. Julianna Hyman testified to the specific procedures she followed when conducted the collection of the urinalysis specimens on May 3, 2012 for the MAERSK VIRGINIA including Respondent's urine specimen and testified that the procedures were followed in accordance to 49 C.F.R. 40. Tr. at 63-70. Ms. Hyman was a certified urinalysis collector with approximately a year and a half of experience. CG Ex. 5 and Tr. at 56-70. There has been no evidence presented which contradicts the evidence that shows the collection of Respondent's specimen and its custody and control and shipment to the testing facility (Quest Diagnostics) and maintenance and testing at that facility was done in compliance with 46 C.F.R. Part 16 and 49 C.F.R. Part 40.

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elements of the case must be shown by substantial evidence of a reliable and probative nature." Appeal Decision 2603 (HACKSTAFF) (1998).

ii. The Laboratory Found that Specimen 6760349 Yielded a Positive Drug Test Result

Quest Diagnostics tested Respondent's specimen for dangerous drugs and returned a positive result for cocaine metabolite (Benzoylecgonine) at a level of 194 ng/ml. (CG Ex. 7; CG Ex. 14). Quest Diagnostics is certified by the national laboratory program and the Department of Health and Human Services to perform testing under federal regulations. Tr. at 92; 75 Fed. Reg, 49862 (August 16, 2010). The Coast Guard presented the testimony of Mr. Brunelli, the lab director to explain the receipt and processing of specimens at Quest Diagnostics in general and the process for Respondent's test results. The Coast Guard also offered CG Ex. 6 through 12 and CG Ex. 14 in support of the laboratory testing meeting all DOT requirements including Mr. Brunelli's testimony where he explained that he oversees the entire testing facility and ensures that the individuals are trained in the standard operating procedures of the facility and are capable of carrying out that job. Tr. at 89-90. Respondent's split specimen was tested by a second Department of Transportation approved lab, Clinical Reference Laboratory in Lenexa, Kansas, which confirmed the presence of a cocaine metabolite in Respondent's urine. CG Ex. 11 page 2 and Tr. at 139-60. The MRO, Dr. Arthur Hayes, received the results from the laboratories and ultimately verified the test as positive for cocaine metabolite. CG Ex. 11 and Tr. at 139-60.

iii. Drug Test Must be Conducted in Accordance with 46 C.F.R. Part 16

The final element specifically requires drug tests ordered pursuant to 46 C.F.R. Part 16 be conducted in accordance with the procedures detailed in 49 C.F.R. Part 40. 46 C.F.R. §16.201(a). The drug testing in question thus must meet the requirements of both 46 C.F.R. Part 16 and 49 C.F.R. Part 40. "In the interest of justice and the integrity of the entire drug testing system, it is important" that these procedures are followed to maintain the system. Appeal Decision 2631 (SENGEL) (2002).

The selection of an individual for random testing must be conducted by a scientifically valid method. 46 C.F.R. 16.230(c). Ms. Angie DeJesus-Cardona, the manager of vessel

operations in charge of the random selection program for American Maritime Safety (AMS), testified that AMS uses RandomWare which is a computer based random number generator that is matched with vessel and crewmember information. Information is entered into the system and selections are made from a pool of companies. For each random selection, all individuals and vessels are equally subject to random selection. CG Ex. 2 and Tr. at 28. On March 30, 2012 the RandomWare program randomly selected, among other vessels, the MAERSK VIRGINIA for chemical testing. CG Ex. 2 and Tr. at 30.

The United States Coast Guard has established each of the three factors necessary for a *prima facie* case by a preponderance of the evidence. They are entitled to the presumption that Respondent is a user of dangerous drugs.

iv. Respondent's Evidence was not persuasive and not sufficient to rebut the *prima facie* case presented by the Coast Guard.

Respondent, in his brief, argues a number of points regarding deficiencies in the selection and testing procedures for his urinalysis test.

Respondent first argues that there is a discrepancy in the chain of custody because Ms. Hyman testified she took twenty-two (22) specimens when according to CG Ex. 14 there were twenty-three (23) specimens that were sent. This is inaccurate because there are only twenty-two (22) different individuals named in CG Ex. 14, The first two forms are duplicates with Respondent's name and information listed on the first two forms so there were not twenty-three (23) specimens sent, but twenty-two (22).

Next the Respondent argues that Mr. Brunelli did not actually conduct the tests so his lack of firsthand knowledge calls into question the authenticity of the test results. Authenticity of the laboratory documentation exchanged in discovery is deemed authenticated since Respondent did not raise any objections. 33 C.F.R. 20.807(b). This argument also does not raise a valid objection to the admissibility of Mr. Brunelli's testimony but is considered in regard to

weight of the testimony. The record shows that Mr. Brunelli is the lab director; he oversees the entire testing facility and ensures that the individuals are trained in the standard operating procedures of the facility and are capable of carrying out that job. Tr. at 89-90. Mr. Brunelli testified that he ensures the compliance of the facility with the applicable regulations and although he did not specifically test Respondent's sample he is knowledgeable in the framework in which the sample was tested. Acceptance of the evidence and assigning it appropriate weight is the province of the ALJ and this type of evidence may be found sufficient. See Appeal Decision 2657 (BARNETT) (2006). See also Gallagher v. NTSB, 953 F.2d 1214 (10th Cir. 1992). The Coast Guard could have called additional witnesses but chose not to. The Coast Guard bears the burden of proof throughout these proceedings and bears the risk that the evidence presented may not be sufficient.[4] 33 C.F.R. 20.702. Respondent could also have requested further discovery and could have requested subpoenas for witnesses for his own presentation. The Court has provided Respondent substantial leeway in this matter. The Motion for Default was not granted when Respondent failed to submit an Answer on time and he has been allowed to supplement the record. However, the Court is bound to follow the applicable law and regulations and Respondent's failure to request other witnesses or evidence does not affect the evidence presented by the Coast Guard.

The Respondent questioned the delay between the random selection of the MAERSK VIRGINIA for testing on March 30, 2012, and the subsequent testing conducted on May 3, 2012. Specifically the Respondent questioned Ms. Angie DeJesus-Cardona why the testing was not done at the first port of call. The witness testified regarding the method and process for random selection but did not have specific knowledge regarding the timing of the urinalysis collection once the company was notified of the selection. Tr. at 33-34. Whether the testing might have

[4] A full laboratory documentation package should have been presented by the Coast Guard for the record but the documentary evidence combined with the testimony of the Government's witnesses is considered sufficient in this

been done sooner does not contradict the Ms. DeJesus-Cardona's testimony that demonstrates the random selection method was valid and once selected, the entire crew of the MAERSK VIRGINIA was tested. I find that the evidence regarding the selection of the MAERSK VIRGINIA was sufficient to demonstrate a valid random selection and the testing was conducted in compliance with the regulations in 46 C.F.R. Part 16.

Respondent also testified on his own behalf. During his testimony he stated a concern that he had test results come back indicating "diluted" in the past and he testified that he has not used cocaine. Tr. at 165-70. As noted above in keeping with GREEN supra, the Court gave Respondent an opportunity to obtain and offer his own medical or other records of previous urinalysis that he contended supported his argument. Tr. at 173-75, 190. Respondent's materials are allowed and included in the record. The additional materials are entered as Respondent Exhibits C through M. However, these materials from previous pre-employment tests do not support Respondent's arguments that there is something wrong with the testing conducted by Quest Diagnostics or the other labs that have provided testing services. The previous test results submitted by Respondent were pre-employment tests which in some cases indicated that specimens that did not have a positive result were reported as negative in keeping with the regulations. Past negative results are not directly relevant to the issue of the May 3, 2012 test. The evidence of previous tests that indicated Respondent's specimens had unusually low creatinine and low specific gravity, and a dilute specimen indicate that there is a possibility that the donor was intentionally drinking a lot of fluids. See testimony of Brian Brunelli Tr. at 116-17. Although Respondent has been permitted to submit these materials to the record these materials and Respondent's argument are not persuasive evidence of any problem with the laboratory testing process and the pre-employment tests have no impact on the issue of the random selection process in this case. I find that Respondent's evidence of prior test results does

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matter.

not provide any valid basis to rebut the *prima facie* case of the Coast Guard based on the May 3, 2012 urinalysis. Evidence of past negative drug tests are not relevant to the present case. Even subsequent negative tests may be considered irrelevant. See generally Appeals Decision 2635 (SINCLAIR) (2002). Respondent's cross examination of witnesses did not demonstrate any matters that would constitute a fatal flaw in the urinalysis testing. The evidence Respondent presented on his own behalf is not persuasive and not sufficient to rebut the evidence of the positive test result.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all relevant times, Respondent was a holder of Coast Guard issued Merchant Mariner's License No. 000010771.
2. Respondent and the subject matter of this hearing are properly within the jurisdiction vested in the Coast Guard under 46 U.S.C. 7704(c); 46 C.F.R. Parts 5 and 16; 33 C.F.R. Part 20; and the APA codified at 5 U.S.C. 551-59.
3. On May 3, 2012 Respondent participated in a random drug test.
4. Respondent's Custody and Control Form shows Respondent's urine sample yielded a positive result for cocaine metabolite.
5. The Coast Guard provided sufficient evidence that Respondent's positive drug test met all of the elements of a *prima facie* case in order to apply the rebuttable regulatory presumption that he is a user of dangerous drugs. 46 C.F.R. § 16.201(b).
6. Respondent failed to present persuasive or relevant evidence sufficient to rebut the presumption he is a user of dangerous drugs that arises under 46 C.F.R. § 16.201 based on the proof of a *prima facie* case by the Coast Guard because of the positive drug test.

7. Accordingly, the Coast Guard has **PROVEN** by a preponderance of reliable, probative, and credible evidence that on or about May 3, 2012 Respondent was a user of or addicted to dangerous drugs.

SANCTION

The authority to impose sanctions at the conclusion of a case is exclusive to the ALJ. Appeal Decision 2362 (ARNOLD) (1984). Title 49 CFR 5.569 provides the Table of Suggested Range of Appropriate Orders (Table) for various offenses. The purpose of this Table is to provide guidance to the ALJ and promote uniformity in orders rendered. Appeal Decision 2628 (VILAS) (2002), *aff'd* by NTSB Docket ME-174.

When the Coast Guard proves that a mariner has used or is addicted to dangerous drugs, revocation of all Coast Guard issued licenses, documents, or other credentials is the appropriate sanction unless cure is proven. See 46 U.S.C. 7704(c); 46 CFR 5.569; Appeal Decision 2535 (SWEENEY) (1992).

Here, the Coast Guard has proven by a preponderance of reliable, probative and credible evidence that Respondent was a user of or addicted to dangerous drugs. Therefore, the appropriate sanction is **REVOCATION**.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED that Merchant Mariner's Document Number 000010771, and all other valid licenses, documents, and endorsements issued by the Coast Guard to Respondent William Tee Coffy are **REVOKED**.

PLEASE TAKE NOTICE that, within three (3) years or less, Mr. Coffy 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) (1992).

PLEASE TAKE FURTHER 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. (Attachment C).

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Michael J. Devine
U.S. Coast Guard Administrative Law Judge

Date: January 07, 2013

ATTACHMENT A - WITNESS AND EXHIBIT LISTS

WITNESS LIST

Coast Guard Witnesses

1	Angie DeJesus-Cardona
2	Dennis Houghton
3	Julianna Hyman
4	John Gallagher
5	Brian Brunelli
6	Dr. Arthur Hayes

Respondent Witness

1	William Tee Coffy

EXHIBIT LIST

Coast Guard Exhibits

CG Ex. 1	MMLD Details for William Tee Coffy
CG Ex. 2	Email from Angie DeJesus Detailing AMS's Random Selection Process
CG Ex. 3	Letter dated May 16, 2012 notifying the Coast Guard that William Tee Coffy Tested Positive for a Random Chemical Test
CG Ex. 4	Federal Drug Testing Custody and Control Form – Julianna Hyman's Copy
CG Ex. 5	Julianna Hyman's Certificate of Recognition for Urine and Alternate Specimen Collections
CG Ex. 6	Curriculum Vitae for Brian A. Brunelli
CG Ex. 7	Federal Drug Testing Custody and Control Form – Quest Diagnostic's Copy
CG Ex. 8	77 Fed. Reg, 26022, 26023 (May 2, 2012).
CG Ex. 9	Dr. Arthur Hayes's Certificate Designating Him a Certified Medical Review Officer
CG Ex. 10	Curriculum Vitae for Arthur C. Hayes, MD, FACEP

CG Ex. 11 Federal Drug Testing Custody and Control Form – Dr. Arthur Hayes's Copy

CG Ex. 12 Medical Review Officer Final Report

CG Ex. 13 Email from John Gallagher Explaining William Tee Coffy's Discharge from Seafarers Addictions Rehabilitation Center on September, 13, 2012. (Based on Respondent objection this Exhibit is **not admitted**).

CG Ex. 14 Drug Test Results for All Crewmembers of the MAERSK VIRGINIA

Respondent Exhibits

RESP Ex. A May 8, 2012 Discharge Letter from the MAERSK VIRGINIA

RESP Ex. B May 10, 2012 Cover Sheet, Fax Confirmation Sheet, and Letter from William Tee Coffy to University Services Requesting a Split Specimen – This Exhibit was not accepted as evidence during the hearing but a final ruling was deferred until later. TR at 155-157. It is admitted into evidence but weight assigned, if any, is a matter for the Court.

RESP Ex. C Federal Drug Testing and Control Form dated 01/25/2012 Copy 5 Donor Copy

RESP Ex. D DOT/USCG Periodic Drug Testing Form (CG-719P) with date specimen collected 7/182011 indicated cancelled invalid – unusually low creatinine & specific gravity

RESP Ex. E University Services MRO Final Report dated reported 07/22/2011 – indicating results for pre-employment test specimen collected on 07/18/2011 as cancelled invalid and noting that a test should recollected by direct observation

RESP Ex. F Federal Drug Testing Custody and Control Form dated 07/22/2011 Copy 5 Donor Copy

RESP Ex. G Fax Cover Sheet from Respondent with date of October 26, 2012

RESP Ex. H MRO Final Report dated 07/25/2011 indicating that pre-employment test specimen collected on 07/22/2011 and tested by Quest Diagnostics was negative

RESP Ex. I MRO Final Report to Seafarer's Health & Benefit dated 01/27/2012 indicating that pre-employment test specimen collected on 01/25/2012 was negative – diluted.

RESP Ex. J Federal Drug Testing and Control Form – Copy 5 Donor Copy dated 07/18/2011

RESP Ex. K DOT/USCG Periodic Drug Testing Form (CG-719P) with date specimen collected 1/25/2012 indicated negative – dilute specimen

RESP Ex. L MRO Final Report to Seafarer's Health & Benefit dated 01/27/2012 indicating that pre-employment test specimen collected on 01/25/2012 was negative – diluted. It also noted that you may but are not required to recollect immediately once. (This appears to be a duplicate of (E)).

RESP Ex. M Letter dated May 18, 2012 from University Services noted that per Respondent's request a split specimen test was ordered for the specimen collected on May 3, 2012.

ATTACHMENT B

The United States Coast Guard's

Proposed Findings of Fact and Conclusions of Law

1. The Respondent, William Tee Coffy, and the subject matter of this proceeding are within the jurisdiction of the U.S. Coast Guard vested under the authority of 46 U.S.C. Chapter 77.

   ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

2. On 3 May 2012, the Respondent, a crewmember onboard the MAERSK VIRGINIA acting under the authority of MMC 000010771, submitted to a random drug test conducted in accordance with 46 C.F.R. Part 16. The Respondent engaged in official matters relating to his MMC by reporting for drug testing.

   ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

3. The Respondent admitted he is, and has been during all times relevant hereto, the holder of MMC 000010771. Therefore, since he was the holder of an MMC and performing activities under the authority of his credentials, jurisdiction for this suspension and revocation proceeding exists under 46 C.F.R. 5.57 and was not disputed at the hearing.

   ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

4. The entire crew of the MAERSK VIRGINIA, including the Respondent, was randomly selected by a scientifically valid, computer-based random number generator to undergo chemical testing. The Respondent was selected for chemical testing simply by virtue of the fact that he was a MAERSK VIRGINIA crewmember. The MAERSK VIRGINIA, and any crewmember assigned to it, had no greater chance of being selected than any other vessel or individual.

   ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

5. The Respondent's urine specimen was collected by a trained and experienced human urine specimen collector. Prior to providing the specimen, the Respondent placed his signature on a Federal Drug Testing Custody and Control Form along with his date of birth, date of the test and telephone number. The Respondent's specimen was assigned Specimen ID Number 6760349, a unique identifying number specific to his urine specimen. The collector followed all applicable Department of Transportation procedures set forth in 49 C.F.R. Part 40 in collecting the urine specimens of all MAERSK VIRGINIA crewmembers on 3 May 2012, including that of the Respondent.

   ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

6. The collector placed the urine specimens of the Respondent and the other MAERSK VIRGINIA crewmembers into a lock box to which only she and specified Quest Diagnostics personnel had access. A courier employed by Quest Diagnostics picked up the samples and transported them directly to the Quest facility in Tucker, Georgia on 4 May 2012 for testing. Quest Diagnostics is a laboratory certified by SAMHSA and approved by the Department of Transportation to conduct chemical testing.

   ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

7. The Respondent's urine specimen (Specimen ID Number 6760349) tested positive for cocaine metabolites. All other urine specimens collected from MAERSK VIRGINIA crewmembers on 3 May 2012 tested negative for dangerous drugs.

   ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

8. At the Respondent's request, a split specimen was forwarded to a second SAMHSA certified, Department of Transportation approved laboratory, Clinical Reference Laboratory in Lenexa, Kansas. The ensuing split specimen analysis reconfirmed the Respondent's positive test result for cocaine metabolites.

ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

9. The MRO reviewed the results from both labs and personally interviewed the Respondent. Based on his thorough review of the documentation forwarded to him by the labs and his interview with the Respondent, the MRO found no credible medical or other excuse for the Respondent's urine sample to have tested positive for cocaine metabolites. The MRO also credibly found no flaws or irregularities in the laboratory documentation he reviewed.

   NEITHER ACCEPTED NOR REJECTED; the weight of any evidence including testimony during the hearing is to be determined by the Court. Some of the evidence may be accepted, some may be rejected and some may be considered immaterial.

10. Based on the testimony of the lab director and the MRO, the positive test results were verified in accordance with 49 C.F.R. Part 40.

    NEITHER ACCEPTED NOR REJECTED; the weight of any evidence including testimony during the hearing is to be determined by the Court. Some of the evidence may be accepted, some may be rejected and some may be considered immaterial.

11. In keeping with Appeal Decisions 2697 (GREEN) (2011) and 2584 (SHAKESPEARE) (1997), a prima facie case of dangerous drug use, based on a urinalysis test, results when (1) a party undergoes a test for use of a dangerous drug; (2) the test results show a positive result for a dangerous drug; and (3) the drug test is conducted in accordance with 46 C.F.R. Part 16. That includes following the Department of Transportation procedures in 49 C.F.R. Part 40.

    ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

12. The Respondent's random drug test satisfied all applicable requirements under 46 C.F.R. Part 16 and 49 C.F.R. Part 40. The Coast Guard presented a prima facie case of use of a dangerous drug in this matter.

ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

13. There is no valid medical explanation for the positive test result. The Respondent failed to provide sufficient evidence to rebut the presumption that he is a user of dangerous drugs that arises under 46 C.F.R. 16.201.

    ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

14. Based on the record as a whole, the Coast Guard has proved by a preponderance of credible, substantial, reliable and probative evidence that the Respondent is a user of dangerous drugs under 46 U.S.C. 7704(c) and the underlying regulations.

    ACCEPTED AND INCORPORATED, as provided in the Decision and Order.

15. Based on the unrebutted finding that the Respondent is a user of dangerous drugs, the only sanction available to the Administrative Law Judge in this matter is revocation under 46 U.S.C. 7704(c).

    ACCEPTED AND INCORPORATED, revocation was determined to be the appropriate sanction as provided in the Decision and Order.

ATTACHMENT C

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;
(j) Reasons supporting the appeal; and
(k) 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.