

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

UNITED STATES COAST GUARD

Complainant

vs.

STEPHEN DAVID DETAR,

Respondent

Docket Number 2012-0524
Enforcement Activity No. 4484754

DECISION AND ORDER

Issued: June 21, 2013

By Chief Administrative Law Judge: Honorable Walter J. Brudzinski

Appearances:

**LT Robert W. Canoy, Jr.
Judge Advocate
Coast Guard First District, Boston, MA**

and

**PO1 Christopher D. Bains
Marine Casualty Investigator, Sector Boston
For the Coast Guard**

**STEPHEN DAVID DETAR, *Pro se*
For the Respondent**

SUMMARY

The Coast Guard initiated these proceedings alleging Respondent violated 46 U.S.C. § 7704(c) and 46 C.F.R. § 5.35. The Coast Guard's evidence shows Respondent took a urinalysis drug test as directed by his employer. The test was conducted in accordance with 49 C.F.R. Part 40 but was not in compliance with 46 C.F.R. Part 16. Respondent's urine specimen tested positive for cocaine. Further, Respondent admitted use of drugs at or around the time of the drug test to the Medical Review Officer and at hearing. Respondent does not contest the positive drug test result; rather, he presented evidence showing he completed a substance abuse program and asks the undersigned to stay the revocation pending his completion of the cure process. The undersigned finds that while the Coast Guard is not entitled to the regulatory presumption, the preponderance of the evidence shows Respondent is a user of dangerous drugs. The undersigned therefore finds the Coast Guard's case **PROVED** and ordered Respondent's Merchant Mariner's Credential **REVOKED**. Based on Respondent's history of drug use and conduct surrounding a previous attempt at cure, the undersigned finds the evidence produced at hearing insufficient to warrant a stay of the revocation. Respondent's request for a stay is therefore **DENIED**.

STATEMENT OF THE CASE

Pleadings

In its Complaint of November 30, 2012, the Coast Guard charged Respondent with one count of Use of, or Addiction to the Use of Dangerous Drugs in violation of 46 U.S.C. § 7704(c) and 46 C.F.R. § 5.35. The Coast Guard alleged as follows:

1. On October 26, 2012 the Respondent took a drug test.
2. A urine sample was collected by Greg Carter of Concentra Medical Center in Philadelphia, PA.
3. The Respondent signed a Federal Drug Testing Custody and Control Form.
4. The urine specimen was analyzed by Quest Diagnostics using procedures approved by the Department of Transportation.

5. The specimen subsequently was verified positive for Cocaine Metabolites, as determined by the Medical Review Officer, Suzanne Steele.
6. In aggravation: On February 24, 2010, Respondent admitted to “use of, or addiction to the use of dangerous drugs,” to wit: Cocaine.
7. In aggravation: On April 30, 2012, Respondent successfully completed the terms of a Settlement Agreement for “Use of, or addiction to the use of dangerous drugs,” and his MMC was returned.
See Complaint at 2.

In his Answer, Respondent admitted to allegations 1 through 6. Respondent admitted allegation 7 was “partially correct” in that “respondent agrees that on April 30, 2012 it was confirmed in writing that he had successfully completed the terms of a Settlement Agreement for ‘Use of, or addiction to the use of dangerous drugs,’ and his MMC was returned.” However, Respondent disagreed with allegation 7 because “the respondent never completed the outlined requirements for completion of the aforementioned cure process due to the absence of enforcement of the agreement. As such, the respondent did not attend the Alcoholics Anonymous meetings and did not enter the 12 step program as was stated.” See Answer at 3-4.

Pre-Hearing Motions

The Coast Guard moved for Summary Decision claiming no genuine issue of material fact existed regarding use of dangerous drugs. The undersigned determined a genuine issue of material fact did exist and denied the Coast Guard’s motion in an order dated February 26, 2013. Based on the undersigned’s denial of summary decision, Respondent moved to dismiss the Complaint which the undersigned denied on March 4, 2013. The Coast Guard subsequently sought clarification of the order denying summary decision which the undersigned interpreted as a motion for reconsideration. The undersigned then issued an Order clarifying the Order Denying Summary Decision dated March 6, 2013.

Prior to hearing, Respondent moved for a continuance and to combine the instant case with a previous Coast Guard case in which Respondent had entered into a settlement agreement

after a positive drug test. The undersigned denied Respondent's motions but referred the matter regarding Respondent's previous case to the ALJ Docketing Center for appropriate action. The instant case then proceeded to hearing as scheduled.

In Person Hearing

The undersigned conducted the hearing on March 19, 2013 in Boston, Massachusetts in accordance with the Administrative Procedure Act (APA) at 5 U.S.C. 551-559 and the regulations at 46 C.F.R. Part 5 and 33 C.F.R. Part 20. At the beginning of the hearing, Respondent tendered his credential to the undersigned pursuant to 46 C.F.R. § 5.521(a). The Coast Guard introduced testimony of five (5) witnesses and offered fourteen (14) exhibits into evidence.¹ Respondent introduced the testimony of two (2) witnesses, including himself, and offered five (5) exhibits which were admitted into evidence as Exhibits A through F. The witness and exhibit list is contained in **Attachment A**.

After Respondent testified in the Coast Guard's case in chief, the Investigating Officer moved for decision that Respondent is a user of dangerous drugs. The undersigned denied the oral motion because the record was undeveloped regarding the drug test at issue and Respondent's admissions of drug use.

Post Hearing Briefs

After the hearing, the parties had the opportunity to submit post hearing briefs specifically to address the issue of whether the ALJ should stay the hearing until Respondent completed the cure process. The Coast Guard filed a post hearing brief concerning the case generally, and the issue of staying the hearing specifically. The Coast Guard included proposed findings of fact and conclusions of law which are ruled upon in **Attachment B**. Respondent did not timely file a post hearing brief with proposed findings of fact and conclusions of law.

After the record closed and the time for post-hearing briefs and reply briefs passed, Respondent sent three email communications. The first, sent on May 7, 2013, purported to respond to the Coast Guard's post-hearing brief in which he made further argument that, among other things, Reality House is a federally funded veterans' assistance program; and, he spent four months of his sobriety "at the reality house and concentrating on my recovery through AA and a sponsor." Respondent did not submit any records or evidence to support his claims.

Respondent's second email, dated June 3, 2013, requested the undersigned "find the coast guard in contempt" because it is "intentionally withholding vital information" and he feels he is being "singled out, and punished unfairly." Respondent's statements are unclear but it appears Respondent is saying his new employer apparently requested that he work on a tug boat and he took that position. It appears that position would require a Merchant Mariner's Credential. When Respondent informed the Coast Guard of his situation "to find out if this was a sensitive position" he was directed to Dr. Steele and "forced to leave the boat." To the extent that this is a properly laid motion for contempt, that motion is denied because the undersigned does not have contempt power and because Respondent has not clearly articulated his arguments.

Respondent's third email, dated June 5, 2013, requests a dismissal, but was not properly filed with the ALJ Docketing Center nor was it served on the Coast Guard. Respondent seems to assert that he cannot demonstrate substantial involvement in the cure process because the MRO's office "will only work threw [sic] the USCG." Respondent's arguments are extremely incoherent and it is unclear what he is asking for and why. To the extent that this is a properly laid Motion to Dismiss, that motion is denied because Respondent's unsworn, untimely statements are insufficient to show the undersigned that Respondent is entitled to a dismissal as a

¹ The Coast Guard had initially proposed fifteen (15) exhibits but did not offer Exhibit CG 10 into evidence. The exhibits were not renumbered. Therefore, Coast Guard Exhibits 1 – 9 and 11 – 15 were entered into the record totaling 14 exhibits. The undersigned took official notice of the HHS list of approved laboratories, ALJ-1.

matter of fact or law. Respondent's contentions are concerning events that have taken place after the close of the record and have no impact on the outcome of this case.

ISSUES

This case presents two issues:

1. Has the Coast Guard proved "use of, or addiction to the use of dangerous drugs" by a preponderance of the evidence?
2. If yes, should the ALJ stay the revocation to allow Respondent time to complete the cure process?

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.

Facts Concerning Jurisdiction

1. At all relevant times Respondent was a holder of a Coast Guard issued Merchant Mariner's Document (MMD) #201522. See *Coast Guard's Complaint* at 1, ¶ 1; *Respondent's Answer* at 1; Tr. at 39; and Ex. 9.²
2. On October 26, 2012, Respondent was an employee of Great Lakes Dredge and Dock Company (Company) working under his MMD. See Tr. at 25, and 50.

Facts Concerning Whether the Coast Guard Proved "Use of a Dangerous Drug"

3. On October 26, 2012, Respondent submitted a urine sample in accordance with a Company ordered drug screening. See Ex. 4; Tr. at 50-1.
4. The Company ordered drug screening is not a drug test mandated by 46 C.F.R. Part 16. See Exs. 1 and 2; Tr. at 51-5.
5. Greg Carter is a certified specimen collector trained in the standards and procedures of 49 C.F.R. Part 40. See Ex. 3; Tr. at 73-5.

² Citations referencing the transcript are as follows: (Tr. at ___); Coast Guard Exhibits are identified by number as follows (Ex. 1, Ex. 2, etc...); Respondent's Exhibits are identified by letter as follows: (Ex. A, Ex. B, etc...).

6. On October 26, 2012, Greg Carter collected Respondent's urine specimen, ID number 6440200. See Ex. 4; Tr. at 75-81.
7. On October 26, 2012, Respondent signed the Federal Drug Testing Custody and Control Form (CCF) for specimen ID number 6440200. See Exs. 4 and 15.
8. Greg Carter sent Respondent's urine specimen to Quest Diagnostics in Norristown, PA. See Tr. at 81.
9. Quest Diagnostics in Norristown, PA received Respondent's urine specimen, ID number 6440200, with all seals intact. See Tr. at 98-99.
10. At all relevant times, Quest Diagnostics in Norristown, PA is a laboratory certified to analyze DOT drug screenings. See Tr. at 89-91; ALJ-1.
11. David Wallner is a qualified certifying scientist for Quest Diagnostics in Norristown, PA trained in the procedures and regulations set forth in 49 C.F.R. Part 40. See Tr. at 88-9.
12. Quest Diagnostics analyzed Respondent's urine specimen, ID number 6440200, using immunoassay as the initial screening test and Gas Chromatography/Mass Spectrometry (GC/MS) as a confirmation test. See Ex. 6; Tr. at 100-103.
13. Quest Diagnostics determined Respondent's urine specimen, ID number 6440200, tested positive for cocaine metabolites at 209 ng/ml. See Tr. at 103; Ex. 6 at 6.
14. The confirmatory cutoff level for cocaine metabolites is 100 ng/ml. See Ex. 6 at 6; Tr. at 103, 104 and 106.
15. Dr. Suzanne Steele is a certified Medical Review Officer (MRO) with University Services trained in the standards and procedures of 49 C.F.R. Part 40. See Ex. 13; Tr. at 114-6.
16. Dr. Steele contacted Respondent concerning the results of his October 26, 2012 drug test. See Ex. 12; Tr. at 122-3.
17. During the interview with Dr. Steele, Respondent admitted to using cocaine

approximately one week before the October 26, 2012 drug test. See Ex. 12; Tr. at 124-5 and 175.

18. Dr. Steele verified Respondent's drug test as positive for cocaine metabolites. See Exs. 5 and 11; Tr. at 126-7.

Facts Concerning Whether the ALJ Should Stay the Revocation

19. In February 2010, Respondent entered into a settlement agreement with the Coast Guard following a positive drug test. See Ex. 7 at 2; Tr. at 136-9.

20. As a result of this settlement agreement, Respondent's MMD #201522 was revoked, but the revocation was stayed to allow him to complete a drug rehabilitation program. See Ex. 7 at 3.

21. The Coast Guard subsequently determined that Respondent successfully completed the requirements of the February 2010 settlement agreement. See Exs. 8 and 15; Tr. at 144-8, and 151-2.

22. On April 30, 2012, the Coast Guard returned Respondent's MMD #201522 to him. See Ex. 8; Tr. at 147-8, and 150.

23. On November 21, 2012, approximately one month after the drug test at issue in this case, Respondent entered drug rehabilitation at Reality House with a diagnosis of cocaine abuse. See Ex. 14; Ex. E; Tr. at 35-37.

24. On December 31, 2012, Reality House released Respondent with a diagnosis of cocaine abuse in partial remission. See Ex. 14; Ex. E; Tr. at 35-37.

BURDEN OF PROOF

The Administrative Procedure Act, 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.

ANALYSIS

“The purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea.” 46 U.S.C. § 7701(a). 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.”³ The administrative actions against a mariner’s credentials “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. It is within this context that the undersigned addresses the two issues in this case.

A. Has the Coast Guard Proved “Use of, or Addiction to the Use of Dangerous Drugs?”

Title 46 U.S.C. § 7704(c) states “if it is shown that a holder [of an MMC] has been a user

³ The Coast Guard now refers to licenses, certificates of registry, and documents as credentials. 74 Fed. Reg. 11,216, 11,196 (March 16, 2009).

of, or addicted to, a dangerous drug, the license, certificate of registry, or merchant mariner's document shall be revoked unless the holder provides satisfactory proof that the holder is cured." Coast Guard regulations and case law provide a presumption that a mariner is a user of dangerous drugs if the following criteria are met: 1) that Respondent was tested for a dangerous drug; 2) that Respondent tested positive for a dangerous drug; and, 3) that the test was conducted in accordance with 46 C.F.R. Part 16. See Appeal Decision 2697 (GREEN) (2011); see also 46 C.F.R. § 16.201(b). Part 16 requires compliance with the provisions in that Part as well as compliance with the provisions of 49 C.F.R. Part 40 concerning Department of Transportation drug tests. This regulatory presumption, however, is not the Coast Guard's only means to prove that Respondent is a user of dangerous drugs.

In his Motion to Dismiss, Respondent argued that because the Coast Guard did not present any evidence or allegation that the test was in accordance with Part 16, he should prevail. Respondent re-raised this issue at hearing. See Tr. at 23 and 60-1. In the instant case, the Coast Guard does not seek to prove Respondent's use of a dangerous drug solely based on a positive urinalysis drug test. The Coast Guard concedes that the drug test at issue did not comply with the provisions of 46 C.F.R. Part 16 even though it was conducted in accordance with 49 C.F.R. Part 40. The Coast Guard, therefore, is not entitled to the regulatory presumption but still has an opportunity to prove use of a dangerous drug.

The Coast Guard presented evidence and testimony that Respondent provided a urine specimen for a drug test which was positive for cocaine metabolites. Respondent's employer ordered the drug test at issue but not for the reasons listed in Subpart B of 46 C.F.R. Part 16; however, the specimen was collected, analyzed and verified in accordance with the standards and procedures of 49 C.F.R. Part 40. The positive test result therefore has strong indicia of reliability. Further, the Coast Guard did not rely solely on the positive drug test result. It provided evidence and testimony that Respondent admitted using cocaine approximately one

week prior to the drug test. See Tr. at 124, 175-6; Ex. 12.

Respondent provided no evidence or testimony to show that the test result is unreliable. Nor does he provide any alternative explanation as to why his sample would test positive. Further, Respondent admits to drug use over the last several years including at or around the time of the drug test at issue in this case. See Tr. at 169-70.

The undersigned therefore finds by the preponderance of the evidence Respondent is a user of dangerous drugs. The evidence demonstrates that Respondent tested positive on a reliable drug test and the reason for that positive test was use of cocaine.

B. Should the ALJ Stay the Revocation to Allow Completion of the Cure Process?

“An ALJ **may** grant a continuance to the hearing if the Respondent has demonstrated substantial involvement in the cure process by proof of enrollment in an acceptable rehabilitation program.” Appeal Decision 2634 (BARRETTA) (2002) (emphasis added), (citing, Appeal Decision 2546 (SWEENEY) (1992)). The emphasized language above demonstrates the ALJ’s discretion to grant or deny a request to continue the hearing to allow Respondent additional time to complete the cure process. The “cure process” as detailed in SWEENEY requires that: 1) the Respondent must have successfully completed a bonafide drug abuse rehabilitation program designed to eliminate physical and psychological dependence; and, 2) the Respondent must have successfully demonstrated a complete non-association with drugs for a minimum period of one year following successful completion of the rehabilitation program. See Appeal Decision 2535 (SWEENEY) (1992). Further, Coast Guard regulations require an MRO “to verify that the mariner is drug-free and that the risk of subsequent use of dangerous drugs by that mariner is sufficiently low to justify his return to work... .” Appeal Decision 2634 (BARRETTA) (citing 46 C.F.R. § 16.201(f)).

Respondent submitted evidence demonstrating he attended and completed a drug rehab program at Reality House from November 21, 2012 to December 31, 2012. See Ex. E and Ex.

14. The Coast Guard argues Respondent made no showing that Reality House is a “bonafide” program. In Appeal Decision 2535 (SWEENEY), the Commandant defined a “bonafide” program as “a program certified by a government agency, such as a state drug/alcohol abuse administration, or in the alternative, certified by an accepted independent professional association, such as the Joint Commission on Accreditation of Health Care Organizations (JCAHO).” Respondent’s evidence describes Reality House as “a substance abuse outpatient treatment program” but provides no further details. In his May 7, 2013 email, he claims Reality House is a “veterans assistance program federally funded” but provides no supporting documentation other than his unsworn statement. No one from Reality House testified at hearing and Respondent submitted no evidence to suggest that it meets the criteria of a “bonafide” program as articulated in SWEENEY.

Furthermore, Respondent’s history demonstrates to the undersigned that staying the revocation in these circumstances is not appropriate. Respondent tested positive on a drug test in February 2010. See Tr. at 137. That positive test resulted in a settlement agreement between the Coast Guard and Respondent to allow him to go through the cure process and regain his credential. See Exs. 7 and 8; Tr. at 137-48. Respondent submitted documents and materials sufficient to fulfill his duties under the settlement agreement. See Tr. at 144-7. The Coast Guard returned Respondent’s MMD on April 30, 2012.

During the instant hearing, Respondent admits to using drugs while going through the cure process following his 2010 settlement agreement. See Tr. at 169. In fact, Respondent admits he “had been using drugs for quite a while” prior to his 2010 positive drug test. See Tr. at 168. Respondent further admits that he continued to use drugs after the Coast Guard returned his license returned in April 2012. See Tr. at 169-70, 175.

While completing a drug rehabilitation program is commendable, the undersigned cannot ignore Respondent’s admitted drug use during the last time he engaged in the cure process.

Similarly, the undersigned cannot ignore the short time between Respondent's two positive drug tests. Respondent testified that he has been drug free since he went to Reality House; however, there is no further evidence of Respondent's disassociation from drugs. Respondent was released from Reality House on December 31, 2012 yet he did not submit any information as to what, if anything, he has been doing to proceed with the cure process such as participate in random, unannounced drug tests. Respondent seems to argue in his June 5, 2013 email that the Coast Guard and Dr. Steele are now somehow preventing him from participating in random unannounced drug tests. This argument, even if true, is irrelevant. The undersigned looks at what the Respondent did to involve himself in the cure process prior to the hearing, not after. Respondent did not argue he was prevented from participating in drug tests prior to the hearing; in fact, Respondent submits no evidence he even attempted to participate in drug testing following his release from Reality House.

Moreover, Respondent argues at the hearing that: 1) the cure process he went through after his 2010 settlement agreement "was flawed;" 2) he frequently called LT Sullivan during his post settlement agreement cure process and told her that he "needed a therapist" and he was "having a lot of problems" but she told him "she can't help me with that. That's not her responsibility;" and, 3) prior to his 2012 positive drug test, he attempted to get time off work to deal with his personal problems including his drug problem but was denied. See Tr. at 153-7, 167-71, and 175-8. These arguments all deflect responsibility rather than accept it. Finally, near the end of the hearing, Respondent stated as follows:

It's going to make it easier for Stephen Detar if the hearing is stayed, that way the Coast Guard involvement makes it easier for companies to resolve it. It will be irrefutable. I already have like, as I've stated, the first settlement agreement, it was completed, yes. I did get the license back, but I wasn't a hundred percent in it either, but it was still returned. If you get a hundred percent from me clearly this time they are going to be watching themselves. It's going to be right.
See Tr. at 186.

Respondent continues to demonstrate he does not fully comprehend that completing the cure process is his responsibility, not the Coast Guard's. Therefore, staying the Revocation would neither benefit him or the Coast Guard, nor would it promote safety at sea. Whether Respondent completes the cure process rests solely upon Respondent.

After considering and weighing all the evidence and testimony, the undersigned finds that safety at sea is best protected by requiring Respondent to prove that he is cured of his drug use to the Coast Guard through the clemency process. This course of action requires Respondent to satisfy the criteria to prove cure on his own. The undersigned therefore denies Respondent's request to stay the revocation.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Stephen David Detar 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. § 7704; 46 C.F.R. Part 5; and 33 C.F.R. Part 20.
2. Greg Carter collected Respondent's urine sample in substantial compliance with 49 C.F.R. Part 40.
3. Quest Diagnostic Laboratory in Norristown, PA and David Wallner handled and analyzed Respondent's urine sample in substantial compliance with 49 C.F.R. Part 40.
4. Dr. Suzanne Steele, MRO conducted her verification of Respondent's urine specimen in substantial compliance with 49 C.F.R. Part 40.
5. Respondent's urine sample tested positive for cocaine metabolites.
6. Cocaine is a "dangerous drug" as contemplated by 46 U.S.C. § 7704(c) and 46 C.F.R. § 5.35.
7. Respondent's positive drug test and admissions of drug use sufficiently amount to a violation of 46 U.S.C. § 7704(c) and 46 C.F.R. § 5.35.
8. Respondent is a "user of dangerous drugs" and his credentials must be revoked.

9. Respondent's evidence showing completion of a substance abuse rehabilitation program, in the totality of circumstances, is insufficient to warrant a stay of the revocation.

DECISION

After careful review of the entire record, 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 Respondent, Stephen David Detar, is a user of dangerous drugs in violation of 46 U.S.C. § 7704(c) and 46 C.F.R. § 5.35.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED that Merchant Mariner's Credential issued by the Coast Guard to Stephen David Detar, is **REVOKED**. The undersigned tendered Respondent's credential to the Coast Guard Investigating Officer at the hearing's conclusion.

IT IS FURTHER ORDERED that Respondent's request to stay the revocation pending his completion of the cure process is **DENIED**.

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**.

PLEASE TAKE FURTHER NOTICE that the regulations concerning administrative clemency following revocation of a credential due to use of dangerous drugs are located at 46 C.F.R. § 5.901(a) and (d).

Hon. Walter J. Brudzinski
Chief Administrative Law Judge
United States Coast Guard

Date: June 21, 2013

ATTACHMENT A

WITNESSES AND EXHIBITS

Coast Guard's Witnesses:

1. Stephen David Detar – Respondent
2. John Francis “Jack” Graham – Human Resources Manager at Great Lakes Dredge and Dock Company
3. Gregory John Carter – Medical Assistant at Concentra Urgent Care – Urine Specimen Collector
4. David M. Wallner – Lead Certifying Scientist at Quest Diagnostic
5. Dr. Suzanne Steele, M.D. – Medical Review Officer at University Services

Respondent's Witnesses:

1. Maricela Bowers – Employee at Great Lakes Dredge and Dock Company
2. Stephen David Detar – Respondent, testified on his own behalf.

Coast Guard's Exhibits:

- Exhibit 1: Great Lakes Dredge and Dock Company drug and alcohol policy (10 pages).
- Exhibit 2: Great Lakes Dredge and Dock Company employee safety handbook receipt form (1 page).
- Exhibit 3: Drug Screen Collector Qualification Training, Certificate of Completion for Greg Carter (1 page).
- Exhibit 4: Federal Drug Testing Custody and Control Form, Collector's Copy (1 page).
- Exhibit 5: Medical Review Officer, Final Report (1 page).
- Exhibit 6: Documentation Package concerning Respondent's drug test analysis from Quest Diagnostics (66 pages).
- Exhibit 7: Motion for Approval of Settlement Agreement between U.S. Coast Guard and Stephen D. Detar dated February 8, 2010 (5 pages).
- Exhibit 8: Notice of Completion of Settlement Agreement between U.S. Coast Guard and Stephen D. Detar dated April 30, 2012 (1 page).
- Exhibit 9: Copy of Merchant Mariner's Document issued to Stephen David Detar (1 page).

Exhibit 10: There is no Exhibit 10. The proposed Exhibit 10 was not offered or admitted into evidence. However, because the Coast Guard Exhibits were not remarked at hearing a place holder will be entered into the record to avoid confusion.

Exhibit 11: Federal Drug Testing Custody and Control Form, Medical Review Officer Copy (1 page).

Exhibit 12: Medical Review Officer Worksheet (2 pages).

Exhibit 13: Medical Review Officer Certification Document for Suzanne L. Steele, M.D. (1 page).

Exhibit 14: Letter from Reality House, Inc. to Scott Winters [sic] concerning Stephen Detar dated December 31, 2012 (1 page) (this exhibit is identical to Respondent Exhibit E).

Exhibit 15: Respondent's Answer (4 pages).

Respondent's Exhibits:

Exhibit A: Letter from Jack Graham of Great Lakes Dredge and Dock Company dated October 15, 2012 (1 page).

Exhibit B: Letter from Stacey C. Conroy to Lieutenant Christina D. Sullivan dated February 18, 2010 (1 page).

Exhibit C: Letter of Recommendation for Stephen Detar from Scott A. Winter, President and Business Manager of the International Union of Operating Engineers, Local 25, Marine Division dated January 3, 2013 (2 pages).

Exhibit D: Letter to Stephen Detar from Robert Bruner of the National SAP Network dated January 14, 2013 (1 page).

Exhibit E: Letter from Reality House, Inc. to Scott Winters [sic] concerning Stephen Detar dated December 31, 2012 (1 page) (this exhibit is identical to Coast Guard Exhibit 14).

Exhibit F: Non-Injury Work Status Report from Concentra Medical Centers regarding "Regulated UDS Collect Random" drug test for Respondent dated October 26, 2012 (1 page).

ALJ's Exhibits

ALJ-1: Official notice of the current list of laboratories approved by the Department of Health and Human Services (2 pages).

ATTACHMENT B

Coast Guard Proposed Findings of Fact

1. The Respondent entered into a settlement agreement for the use of dangerous drugs in February 2010. [Exhibit CG-07; Hearing Transcript (TR) at 138.]
ACCEPTED AND INCORPORATED.

2. The Respondent had his MMD # 201522 returned on April 30, 2012, after completing all requirements of the settlement agreement. [Exhibit CG-08; TR at 147-148.]
ACCEPTED AND INCORPORATED.

3. The Respondent admitted under oath that he should not have had his MMD returned to him in April 2012 because he was not cured and was still using drugs at that time. [TR at 37-38.]
ACCEPTED AND INCORPORATED.

4. The Respondent entered Drug Rehabilitation at Reality House on November 21, 2012, with a diagnosis of cocaine abuse and was released on December 31, 2012, with a diagnosis of cocaine abuse in partial remission. [Exhibit CG-14; TR at 35-37.]
ACCEPTED AND INCORPORATED.

5. On October 26, 2012, the Respondent was an employee of Great Lakes Dredge and Dock working under his MMD # 201522. [TR at 25.]
ACCEPTED AND INCORPORATED.

6. On October 26, 2012, the Respondent submitted a urine sample in accordance with a Company ordered drug screening. [Exhibit CG-04; TR at 50-51.]
ACCEPTED AND INCORPORATED.

7. Mr. Carter is a qualified drug collector and trained in 49 C.F.R. Part 40 standards. [Exhibit CG-03; TR at 73].
ACCEPTED AND INCORPORATED.

8. On October 26, 2012, Mr. Detar's urine sample was collected and handled in accordance with 49 C.F.R. Part 40. [Exhibit CG-04; TR at 82.]
ACCEPTED AND INCORPORATED.

9. Mr. Wallner is a qualified certifying scientist trained in procedures and regulations set forth in 49 C.F.R. Part 40. [TR at 89.]
ACCEPTED AND INCORPORATED.

10. Quest Diagnostics was a certified laboratory in the Federal Register during October 2012. [TR at 91.]
ACCEPTED AND INCORPORATED.

11. The Respondent's urine sample was analyzed at Quest Diagnostics in accordance with 49 C.F.R. Part 40. [Exhibit CG-06; TR at 91-111.]
ACCEPTED AND INCORPORATED.

12. The Respondent's sample tested positive for cocaine metabolites at a level of 209 ng/ml. The cutoff for cocaine is 100 ng/ml. [Exhibit CG-06; TR at 103.]

ACCEPTED AND INCORPORATED.

13. On October 29, 2012, Quest Diagnostics Laboratory certified the urine sample positive for cocaine metabolites. [Exhibit CG-06; TR at 104-106.]

ACCEPTED AND INCORPORATED.

14. Dr. Steele is a certified Medical Review Officer trained in the requirements of 49 C.F.R. Part 40. [Exhibit CG-13; TR at 114-115.]

ACCEPTED AND INCORPORATED.

15. Dr. Steele verified the Respondent's sample as positive for cocaine metabolites. [Exhibits CG-05; CG-11; TR at 113-115.]

ACCEPTED AND INCORPORATED.

16. Dr. Steele spoke with the Respondent on October 30, 2012 and the Respondent admitted using cocaine the week prior to taking the drug test. [Exhibit CG-12; TR at 124.]

ACCEPTED AND INCORPORATED.

17. LT Sullivan, USCG was the investigator in charge of the Respondent's case from February 2010 – April 2012. [TR at 137-147.]

ACCEPTED AND INCORPORATED.

18. Based on the information relayed to LT Sullivan, in April 2012 the Respondent had completed all requirements of the settlement agreement he had entered into with the U.S. Coast Guard. [Exhibit CG-08; TR at 147-148.]

ACCEPTED AND INCORPORATED.

19. The Respondent did not inform LT Sullivan on April 30, 2012 that he was not cured or that he should not have his MMD returned. [TR at 150.]

ACCEPTED AND INCORPORATED.

Coast Guard Proposed Conclusions of Law

1. Cocaine is a "dangerous drug" as contemplated by 46 U.S.C. § 7704(c).

ACCEPTED AND INCORPORATED.

2. While the holder of a Coast Guard Document, Respondent was the user of dangerous drug (cocaine).

ACCEPTED AND INCORPORATED.

3. As Respondent is a proven user of dangerous drugs, his MMD must be revoked.

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

§ 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.

§ 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.

§ 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.

§ 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.