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

UNITED STATES COAST GUARD
Complainant

vs.

EDDY JAY DOUGLAS HOPPER
Respondent

Docket Number 2012-0393
Enforcement Activity No. 4431930

DECISION AND ORDER

Issued: October 18, 2013

By Administrative Law Judge: Honorable Dean C. Metry

Appearances:

CWO Jay R. Willimon
and
Mr. Brian G. Knapp
Sector St Petersburg

For the Coast Guard

D. Michael Reny, Esq.
and
Patrick J. McLain, Esq.

For the Respondent

PRELIMINARY STATEMENT

The United States Coast Guard (Coast Guard) initiated this Suspension and Revocation proceeding seeking revocation of Respondent Eddy Jay Douglas Hopper's Merchant Mariner's Credential (MMC) Number 000135327. 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.

On September 5, 2012, the Coast Guard issued a Complaint charging Respondent with violating 46 U.S.C. § 7704(c), alleging one count of Use of, or addiction to the use of dangerous drugs pursuant to 46 C.F.R. § 5.35. Specifically, the Coast Guard alleged that on August 20, 2012, Respondent participated in a pre-employment drug screening and tested positive for marijuana metabolites.

On September 14, 2012, the Coast Guard filed a Motion for Approval of Settlement Agreement and Entry of Consent Order; on September 17, 2012, the undersigned issued a Consent Order approving the same. The Settlement Agreement stated Respondent agreed his MMC was revoked; however, the revocation was stayed pending Respondent's completion of the terms of the Agreement.

Per the Agreement, Respondent was required to "[p]articipate in a random, unannounced drug-testing program for a minimum period of one-year following successful completion of [a] drug rehabilitation program." The Settlement Agreement provided that if Respondent failed or refused a test, his MMC would be revoked. However, the Agreement permitted Respondent to request a hearing in the event the Coast Guard alleged a failure to complete the terms of the Agreement.

On March 21, 2013, the Coast Guard filed a Notice of Failure to Complete Settlement Agreement, indicating Respondent had tested positive for drugs. On March 28, 2013, Respondent requested a hearing and the matter was re-assigned to the undersigned.

A hearing on this matter was held on September 12-13, 2013 in Tampa, Florida. 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. Chief Warrant Officer Jay Willimon and Investigating Officer Brian Knapp represented the Coast Guard. Mr. Patrick J. McLain, Esq. and Mr. D. Michael Reny, Esq. appeared on behalf of Respondent. At the hearing, the Coast Guard presented testimony of four (4) witnesses and offered fourteen (14) exhibits, all of which were admitted into the record. Respondent presented testimony of five (5) witnesses and offered one exhibit, which was admitted into the record. The list of witnesses and exhibits is contained in **Attachment A.** Counsel for both parties elected to make oral closing arguments at the end of the hearing. (Tr. at 425-38). Both parties waived the opportunity to submit closing briefs. (Tr. at 438-39).

After careful review of the entire record, including the witness testimony, applicable statutes, regulations and case law, the undersigned finds the Coast Guard **PROVED** Respondent tested positive for drugs, and, accordingly, violated the parties' Settlement Agreement. As such, Respondent's MMC is **REVOKED.**

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.

Background

1. At all relevant times mentioned herein, Respondent was a holder of Merchant Mariner's Credential No. 000135327.

2. On September 5, 2012, the Coast Guard filed a Complaint against Respondent alleging Use of, or addiction to the use of dangerous drugs pursuant to 46 C.F.R. § 5.35. Specifically, the Coast Guard alleged Respondent took a pre-employment drug test on August 20, 2012 which yielded a positive result for marijuana metabolites.

3. On September 14, 2012, the Coast Guard filed a Motion for Approval of Settlement Agreement and Entry of Consent Order as to the charge alleged in the September 5, 2012 Complaint. (CG Ex. 9).

4. The Settlement Agreement revoked Respondent's MMC, but stayed the revocation pending Respondent's successful completion of the terms of the Agreement. (CG Ex. 9).

5. Pursuant to the Agreement, Respondent was required to "[p]articipate in a random, unannounced drug-testing program for a minimum period of one-year following successful completion of [a] drug rehabilitation program." The Agreement required Respondent to "take at least 12 random tests spread reasonably throughout the year." (CG Ex. 9).

6. The Agreement provided the twelve (12) random drugs tests would be conducted "in accordance with Department of Transportation procedures found in Title 49, Code of Federal Regulations (CFR), Part 40". (CG Ex. 9).

7. The Agreement explained that if Respondent failed or refused a drug test, his MMC would be revoked. (CG Ex. 9).

8. The undersigned issued a Consent Order approving the Settlement Agreement on September 17, 2012. (CG Ex. 8).

9. On March 21, 2013, the Coast Guard filed a Notice of Failure to Complete Settlement Agreement, indicating Respondent had tested positive for drugs. Thereafter, on March 28, 2013, Respondent requested a hearing on the matter.

The Testing Process

10. Pursuant to his Agreement with the Coast Guard, Respondent was randomly selected to submit a urine sample. (Tr. at 360).

11. On February 26, 2013, Matthew Spearman of Quest Diagnostics collected Respondent's urine specimen at Seminole Patient Service Center. (Tr. at 24, 39) (CG Ex. 3) (CG Ex. 12).

12. The Control and Custody Form (CCF) for the specimen erroneously indicates Respondent's specimen was collected on February 26, 2012. (Tr. at 151) (CG Ex. 3).

13. Mr. Spearman testified he routinely performs collections in accordance with Department of Transportation (DOT) procedures and has approximately a year and a half of experience with DOT testing. (Tr. at 35).

14. Mr. Spearman testified that he followed a urine collection checklist during the collection process. (Tr. at 47, 52-54) (CG Ex. 13).

15. Respondent certified the urine specimen was sealed in his presence. (Tr. at 86) (CG Ex. 3).

16. Mr. Spearman is currently DOT-certified, but could not recall if he met DOT training requirements on February 26, 2013. (Tr. at 98).

17. Brian Brunelli, the Laboratory Director for Quest Diagnostics, testified the chain of custody for Respondent's specimen was properly maintained. (Tr. at 116).

18. Quest Diagnostics is a Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory. (Tr. at 162-63) (CG Ex. 6).

19. Mr. Brunelli testified that Quest Diagnostics complied with all drug testing requirements in 49 C.F.R. Part 40. (Tr. at 128).

20. Quest Diagnostics has never had its certification revoked or suspended. (Tr. at 137).

21. Quest Diagnostics extracted an initial aliquot from Respondent's urine sample and tested it for drugs using an immunoassay screening procedure. Immunoassay screening is a qualitative test that yields either a positive or a negative result. (Tr. at 117-18, 123, 164).

22. Respondent's urine tested positive for cocaine metabolites. (Tr. at 123) (CG Ex. 14).

23. When cocaine is metabolized, it creates several metabolites, one of which is benzoylecgonine. (Tr. at 123).

24. Quest Diagnostics ran a confirmatory test on Respondent's sample using gas chromatography-mass spectrometry (GC-MS), a chemical extraction procedure which tests for a specific substance. (Tr. at 119, 124).

25. The confirmatory test yielded a result of 147.73 nanograms per milliliter of benzoylecgonine; the confirmatory cutoff level for benzoylecgonine is 100 nanograms per milliliter. (Tr. at 124-25, 162, 353) (CG Ex. 14).

26. Mr. Brunelli testified he was not aware of any other substance or condition that could create a false positive for cocaine metabolites when a specimen is screened using both immunoassay and GC-MS. (Tr. at 126-27).

27. Quest Diagnostics reported the results to University Services, and sent bottle B of Respondent's specimen to Clinical Reference Laboratory in Lenexa, Kansas. (Tr. at 127) (CG Ex. 14).

28. Clinical Reference Laboratory is a SAMHSA certified laboratory. (Tr. at 194) (CG Ex. 7).

29. Dr. Daniel Kolbow, a forensic toxicologist for Clinical Reference Laboratory, testified the lab received the specimen intact and maintained the chain of custody of the specimen. (Tr. at 189, 196-97, 199) (CG Ex. 5).

30. Clinical Reference Laboratory performed a confirmatory test on Respondent's specimen using GC-MS. The lab specifically tested for benzoylecgonine, the cocaine metabolite. (Tr. at 201-204).

31. The confirmatory test yielded a result of 152.2 nanograms per milliliter of benzoylecgonine. (Tr. at 208) (CG Ex. 5).

32. Dr. Anu Konakanchi, the Medical Review Officer (MRO), testified she conducted an interview with Respondent as required by 49 C.F.R. Part 40. (Tr. at 247) (CG Ex. 10).

33. Respondent denied having used cocaine. (Tr. at 277).

34. Cocaine is typically detectable in the body for up to three (3) days after use. (Tr. at 261).

35. Although Respondent indicated he was taking numerous medications, none of Respondent's medications could yield a false positive for cocaine. (Tr. at 252, 264).

36. Dr. Konakanchi determined Respondent's specimen was positive for cocaine. (Tr. at 265-66) (CG Ex. 2).

Respondent's Defense

37. Captain Craig Matthews, a friend and former co-worker of Respondent, testified Respondent is dependable, and he has never heard or seen anything to indicate Respondent uses drugs. (Tr. at 321, 323).

38. Michael Fleischhauer, a friend of Respondent's, testified he had not seen any indication of illegal drug use on the part of Respondent. (Tr. at 338).

39. Respondent's friend, Judy Tremarco, testified Respondent has always been truthful with her and is not a drug user. (Tr. at 412, 415).

40. Peter Miley, a friend and former co-worker of Respondent, described Respondent as a "standup guy" who does not use drugs. (Tr. at 422-23).

41. Respondent testified he did not use cocaine at any time close to the urinalysis. (Tr. at 360).

42. Respondent testified he entered into the Settlement Agreement with the Coast Guard as a result of his interactions with a former friend, Debbie. (Tr. at 373-74).

43. Respondent testified Debbie had given him a cigarette. After Respondent smoked the cigarette, Debbie informed Respondent it contained marijuana. (Tr. at 374).

44. Respondent testified that prior to the pre-employment drug test on August 20, 2012 he ate dinner with Debbie and her roommate. During the dinner, Respondent consumed a muffin that he later found out contained marijuana. (Tr. at 375).

45. After the muffin incident, Respondent broke off his relationship with Debbie. (Tr. at 375-76).

46. Respondent testified that on February 25, 2013, he and three (3) friends went to a pool hall known to be a biker bar. (Tr. at 389-91).

47. Respondent testified that, unbeknownst to him, Debbie was also at the pool hall along with members of a motorcycle gang. (Tr. at 390-91).

48. Respondent testified a fight ensued and Respondent and his friends ended up throwing one of the members of the motorcycle gang out of the bar. (Tr. at 393).

49. Respondent testified that, during the fight, Debbie indicated she was going to make Respondent pay. (Tr. at 394).

50. Respondent testified Debbie was in the vicinity of Respondent's food and drink. (Tr. at 394).

51. Respondent testified that while no one saw Debbie put anything into Respondent's food, he believes Debbie is vindictive. (Tr. at 400).

DISCUSSION

The purpose of Coast Guard Suspension and Revocation proceedings is to promote safety at sea. 46 U.S.C. § 7701(a). In furtherance of this goal, Administrative Law Judges have the authority to revoke a mariner's license, certificate or document for violations arising under 46 U.S.C. § 7704. See 46 C.F.R. § 5.19(b). Under 7704(c), a Coast Guard issued license, certificate or document shall be revoked if the holder of that license or certificate has been a user of or addicted to dangerous drugs, unless the holder provides satisfactory proof that the holder is cured. See also Appeal Decision 2634 (BARETTA) (2002); Appeal Decision 2535 (SWEENEY) (1992) (*rev'd on other grounds*); see also Appeal Decision 2546 (SWEENEY) (1992) (reaffirming the definition of cure established in Appeal Decision 2535 (SWEENEY)).

The Coast Guard 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 the use of dangerous drugs by merchant mariners. See 46 C.F.R. Part 16.

Additionally, the marine employer's drug testing program must be in accordance with the applicable statutes, regulations, and Appeal Decisions. See generally 49 C.F.R. Part 40 and 46 C.F.R. Part 16. If an employee fails a chemical test by testing positive for a dangerous drug, the individual is then presumed to be a user of dangerous drugs. 46 C.F.R. § 16.201(b). However, in order to establish the 46 C.F.R. § 16.201(b) presumption, the Coast Guard must prove (1) that the respondent was the person who was tested for dangerous drugs, (2) that the respondent failed the test, and (3) that the test was conducted in accordance with 46 C.F.R. Part 16. Appeal Decision 2603 (HACKSTAFF) (1998). See also Appeal Decision 2584 (SHAKESPEARE) (1997).

On September 5, 2012, the Coast Guard filed a Complaint alleging Use of, or addiction to the use of dangerous drugs pursuant to 46 C.F.R. § 5.35. Thereafter, the parties entered into a Settlement Agreement wherein Respondent agreed to complete the cure process as outlined in Appeal Decision 2535 (SWEENEY) (1992). Subsequently, the Coast Guard alleged Respondent violated the terms of the Agreement because his February 26, 2013 urinalysis tested positive for cocaine metabolites.

Burden of Proof

The Administrative Procedure Act (APA), Title 5 U.S.C. §§ 551-559, applies to Coast Guard Suspension and Revocation hearings before 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. 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. 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

The Coast Guard bears the burden of proof and must prove the allegations by a preponderance of the evidence to prevail. 33 C.F.R. §§ 20.701, 20.702(a). Generally, in a drug case based solely on urinalysis test results, a prima facie case of the use of a dangerous drug is made when the following three elements are established: 1) the respondent was the person who was tested for dangerous drugs; 2) the respondent failed the drug test; and 3) the test was conducted in accordance with 46 C.F.R. Part 16.[1] Appeal Decision 2603 (HACKSTAFF) (1998). See also Appeal Decision 2653 (ZERINGUE) (2002).

In the instant case, Respondent entered into a Settlement Agreement whereby he consented to:

> Participate in a random, unannounced drug-testing program for a minimum period of one-year following successful completion of the drug rehabilitation program. During the drug-testing program, the Respondent must take at least 12 random drug tests spread reasonably throughout the year, that are conducted in accordance with Department of Transportation procedures found in Title 49, Code of Federal Regulations (CFR), Part 40; (CG Ex. 9).

[1] 46 C.F.R. Part 16 requires, in part, that chemical testing of personnel be conducted in accordance with the procedures detailed in 49 C.F.R. Part 40.

Neither party disputes the first two requisite elements: that Respondent tested for dangerous drugs on February 26, 2013 and failed the drug test. However, the undersigned must determine whether the test was conducted in accordance with 49 C.F.R. Part 40.

The undersigned finds the laboratory testing procedures were conducted in accordance with 49 C.F.R. Part 40. Quest Diagnostics, a SAMHSA certified laboratory, initially analyzed Respondent's specimen via immunoassay and determined Respondent's urine to be positive for cocaine metabolites. (CG Ex. 6) (CG Ex. 14) (Tr. at 123). Subsequently, Quest Diagnostics performed a GC-MS test on Respondent's sample which yielded a result of 147.73 nanograms per milliliter of benzoylecgonine. (Tr. at 124) (CG Ex. 14). The confirmation test cutoff for cocaine metabolite is 100 nanograms per milliliter. (Tr. at 124-25). Accordingly, Respondent's urine sample was positive for cocaine metabolites.

Thereafter, Clinical Reference Laboratory, a SAMHSA certified laboratory, performed a GC-MS confirmatory test on bottle B of Respondent's sample. (CG Ex. 7) (Tr. at 201-04). Clinical Reference Laboratory's confirmatory test yielded a result of 152.2 nanograms per milliliter of benzoylecgonine. (CG Ex. 5) (Tr. at 208). When contacted by the MRO's office, Respondent could not provide a valid medical reason for his positive test result. (See Tr. at 252). Dr. Konakanchi, the MRO, received and verified Respondent's positive laboratory results. (CG Ex. 2). Thus, the laboratory procedures were conducted in accordance with 49 C.F.R. Part 40.

However, as to the collection procedures, the Coast Guard did not introduce any evidence indicating the collector met the requisite training requirements set forth in 49 C.F.R. § 40.31 and § 40.33. Title 49 C.F.R. § 40.31 states as follows:

> (a) Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.
> (b) A collector must meet training requirements of § 40.33. 49 C.F.R. § 40.31(a)-(b).

Title 49 C.F.R. § 40.33 provides, in part:

> You must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:
> (1) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;
> (2) "Problem" collections (e.g., situations like "shy bladder" and attempts to tamper with a specimen);
> (3) Fatal flaws, correctable flaws, and how to correct problems in collections; and
> (4) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate;
> 49 C.F.R. § 40.33(b).

The section also mandates each collector perform a specific initial proficiency demonstration, and, if necessary, error collection training. 49 C.F.R. § 40.33(c); 49 C.F.R. § 40.33(e).

When specifically questioned by the undersigned as to whether he was certified to perform DOT collections on February 26, 2013, the collector stated he could "not recall", explaining that "[his company] had just moved…[a]nd all of our, of course, paperwork and everything was up in the air, tossed around, so." (Tr. at 98). Neither party introduced any further evidence or argument on the matter. (See Tr. at 99).

Under a strict reading of the qualification requirements enumerated in 49 C.F.R. § 40.33, Respondent's February 26, 2013 urinalysis fails to qualify as a 49 C.F.R. Part 40 test. The Coast Guard failed to provide any evidence as to 49 C.F.R. § 40.33 compliance. Arguably, the failure to adduce this evidence could undermine the integrity of the testing process.[2] 49 C.F.R. § 40.31. Further, the terms of the Settlement Agreement specifically require Respondent's twelve (12) random drug screens be "conducted in accordance with Department of Transportation procedures

[2] See 65 Fed. Reg. 79462, 79471 (Dec. 19, 2000) ("The collection of urine specimens is the step in the process with the greatest potential for administrative error, and our own experience confirms the comments of persons who said that collections are a fertile source of mistakes.")

found in Title 49, Code of Federal Regulations (CFR), Part 40." (CG Ex. 9). See Appeal Decision 2535 (SWEENEY) (1992).

However, while 49 C.F.R. § 40.31 and § 40.33 mandate specific training requirements for collectors, 49 C.F.R. § 40.209(b)(3) specifically lists "[t]he collection of a specimen by a collector who is required to have been trained (see §40.33), but who has not met this requirement;" as a flaw that should not result in the cancellation of a test. 49 C.F.R. § 40.209. See also 65 Fed. Reg. 79462, 79472 (Dec. 19, 2000) ("…we specify in § 40.209 that a test is not invalidated because a collector has not fulfilled a training requirement. For example, suppose someone collects a specimen correctly but has not completed required training or retraining.").

Thus, given the specific language in 49 C.F.R. § 40.209(b)(3), the undersigned finds the regulations do not mandate test cancellation due to a collector's lack of DOT-specific training. Further, in the instant case, the collector credibly testified that he had a year and a half of experience with DOT testing procedures, and that he followed a urine collection checklist while obtaining Respondent's sample. (Tr. at 35, 47, 52-54) (CG Ex. 13). Respondent also certified the urine specimen was sealed in his presence. (Tr. at 86) (CG Ex. 3). As such, the Coast Guard has made a prima facie case of use of a dangerous drug.

Respondent's Rebuttal

At the hearing, Respondent's counsel specifically indicated Respondent was not challenging that it was his urine collected or that a cocaine metabolite was present in the urine. (Tr. at 429). Instead, Respondent argued he did not knowingly use or ingest any illicit substance. (See Tr. at 15-16). Respondent contends controlling case law dictates if drug use is not knowing, the undersigned should not find the charge proved. (Tr. at 429). See Appeal Decision 2560 (CLIFTON) (1995) (explaining a respondent may rebut the Coast Guard's prima facie case by showing drug use was "not wrongful or not knowing.").

At the hearing, Respondent testified that both his August 20, 2012 positive drug test and his February 26, 2013 positive drug test were the result of a former acquaintance surreptitiously adding marijuana and cocaine, respectively, to his food items. (Tr. at 375, 400). As to the February 26, 2013 drug test in question, Respondent suggested the vindictive former friend may have added cocaine to his food following a bar fight in a pool hall. (Tr. at 393-94, 400).

While Respondent's friends and former co-workers testified they had no knowledge of Respondent using drugs, such generalized character evidence does not rebut the Coast Guard's prima facie case. Respondent's version as to why a cocaine metabolite was present in his urine was not credible. Further, Respondent conceded that no one actually saw the alleged food adulteration take place. (Tr. at 400). Additionally, there is nothing in the record to indicate that anyone in the pool hall was aware Respondent was to submit to a random urinalysis the following day, and Respondent provided no corroborating testimony as to his version of the events. Accordingly, Respondent has failed to rebut the Coast Guard's prima facie case.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all relevant times, Respondent was a holder of Coast Guard issued Merchant Mariner's Credential Number 000135327.

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 February 26, 2013, Respondent submitted to a random urinalysis pursuant to the terms of his Settlement Agreement.

4. The February 26, 2013 drug test was conducted in accordance with 49 C.F.R. Part 40.

5. Respondent tested positive for cocaine.

6. The Coast Guard **PROVED** by a preponderance of reliable, probative, and credible evidence that Respondent violated the terms of the Settlement Agreement.

ORDER

IT IS HEREBY ORDERED that Respondent Eddy Jay Douglas Hopper's Merchant Mariner's Credential Number 000135327 is **REVOKED**.

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. A copy of 33 C.F.R. §§ 20.1001 – 20.1004 is provided as **Attachment B.**

_____

Dean C. Metry
U.S. Coast Guard Administrative Law Judge

Date: October 18, 2013

Attachment A

Coast Guard's Witnesses

1. Matthew Spearman
2. Brian Brunelli
3. Dr. Daniel Kolbow
4. Dr. Anu Konakanchi

Respondent's Witnesses

1. William Matthews
2. Michael Fleischhauer
3. Eddy Jay Douglas Hopper
4. Judith Tremarco
5. Peter Miley

Coast Guard's Exhibits

1. NOT OFFERED OR ADMITTED
2. MRO Final Report
3. Custody and Control Form
4. March 1, 2013 Letter and Attachments
5. CRL Data Package
6. Federal Register February 4, 2013
7. Federal Register March 4, 2013
8. Consent Order
9. Settlement Agreement
10. MRO Worksheet
11. Random Testing Agreement
12. Sign-in Sheet
13. Urine Collection Checklist
14. Quest Diagnostics Data Package
15. Daniel Kolbow Curriculum Vitae

Respondent's Exhibits

1. NA Meeting List

Attachment B

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.