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

UNITED STATES COAST GUARD
Complainant

vs.

EDDIE FRANKLIN YOUMAN
Respondent

Docket Number 2013-0345
Enforcement Activity No. 4714049

DECISION AND ORDER

Issued: April 09, 2014

By Administrative Law Judge: Honorable Dean C. Metry

Appearances:

LT John D. Nee &
CWO Greg E. Cable
Sector Jacksonville

For the Coast Guard

Thomas A. Boyd, Jr., Esq.

For the Respondent

PRELIMINARY STATEMENT

The United States Coast Guard (Coast Guard) initiated this Suspension and Revocation proceeding seeking revocation of Respondent Eddie Franklin Youman's Merchant Mariner's Credential (MMC) Number 000168571. 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 13, 2013, 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 July 18, 2013, Respondent participated in a post-accident drug screening and tested positive for cocaine metabolites.

A hearing on this matter was held on February 11, 2014 in Jacksonville, 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. Lieutenant John Nee and Chief Warrant Officer Greg Cable represented the Coast Guard. Mr. Thomas Boyd, Jr., Esq. appeared on behalf of Respondent.

At the hearing, the Coast Guard presented testimony of three (3) witnesses and offered eleven (11) exhibits, all of which were admitted into the record. Respondent did not present any witnesses or offer any exhibits into the record. The list of witnesses and exhibits is contained in **Attachment A**. On March 18, 2014, the Coast Guard filed a Post-Hearing Brief. On March 31, 2014, Respondent filed a written Closing Argument.

After careful review of the entire record, including the witness testimony, applicable statutes, regulations, and case law, the undersigned finds the Coast Guard **PROVED** one count of Use of, or addiction to the use of dangerous drugs pursuant to 46 C.F.R. § 5.35. Accordingly,

Respondent's MMC is **REVOKED**. 46 U.S.C. 7704(c); 46 C.F.R. 5.569; Appeal Decision 2535 (SWEENEY) (1992).

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.

The Injury

1. At all relevant times mentioned herein, Respondent was a holder of Merchant Mariner Credential No. 000168571.

2. On July 18, 2013, while the M/V RESOLVE was docking near Galveston, Texas, the Captain of the vessel, William Rapone, received a call on the radio indicating Respondent, the bosun, had fallen down. (Tr. at 14-15) (CG Ex. 1).

3. Shortly after receiving the radio call, Captain Rapone spoke with Respondent, in-person, on the bridge-way, and inquired as to whether Respondent was injured. Respondent indicated he was okay, and did a "little jog or dance" in place to demonstrate he was not hurt. (Tr. at 15, 18, 52).

4. Captain Rapone testified that other than doing a little dance to demonstrate he was fine, Respondent's behavior did not appear out of the ordinary. (Tr. 52).

5. After the Captain left the bridge, he spoke with members of the crew who had witnessed the incident, and determined the incident was more serious than Respondent had indicated. As such, he made a phone call to the medical service used by the M/V RESOLVE; the medical service indicated they wanted to evaluate Respondent on shore. (Tr. at 16-17).

6. Captain Rapone called the Coast Guard to inform them of the incident and initiated alcohol and drug testing of Respondent. (Tr. at 17-19, 24) (CG Ex. 1, CG Ex. 2).

7. Captain Rapone reported the incident to the Coast Guard after determining Respondent could not be treated on the vessel and required medical treatment beyond first aid. (Tr. at 18-19, 24-25) (CG Ex. 1, CG Ex. 6).

8. Respondent was ultimately diagnosed with a non-displaced ankle fracture due as a result of his right ankle getting caught in the bight of a tug line messenger. (CG Ex. 1).

The Collection Process

9. Captain Rapone has been a Department of Transportation (DOT) certified urine collector since July 2012, and has completed approximately fifteen (15) urine specimen collections. (Tr. at 28-29, 71) (CG Ex. 4).

10. On July 18, 2013 at approximately 11:05AM, Captain Rapone collected Respondent's urine specimen in the hospital space of the M/V RESOLVE; the specimen was collected within thirty-two (32) hours of the Respondent's injury. (Tr. at 30, 33, 35, 40) (CG Ex. 2, CG Ex. 5).

11. The hospital space aboard the M/V RESOLVE is controlled; only the Captain and the medical officer have keys. (Tr. at 42, 64, 77).

12. Respondent produced a sufficient amount of specimen; the specimen appeared normal and was within the proper temperature range. (Tr. at 32).

13. Captain Rapone sealed the two urine vials containing Respondent's specimen and had Respondent initial them. He then packed the bottles in a pouch provided and placed the pouch inside a box with a completed Custody and Control Form. (Tr. at 32-33, 35, 37-38) (CG Ex. 5).

14. As there were no valid shipping labels aboard the vessel, the specimen remained in the hospital space until July 24, 2013, when, while docked in Baltimore, the Captain provided the box containing the specimen to an agent from Wilhelmsen Ship Service. (Tr. at 45-46, 48-49, 57, 63-64, 76).

The Testing Process

15. Anne Roberts, a Lab Manager/Responsible Person for Quest Diagnostics (Quest), testified Quest received Respondent's specimen on July 25, 2013, with the bottle seals intact. (Tr. at 89-91, 143, 150) (CG Ex. 8).

16. Quest Diagnostics extracted an aliquot from Bottle A of Respondent's specimen and conducted initial testing on a properly calibrated Olympus machine. As Bottle A yielded a non-negative result, it was sent for confirmatory testing. (Tr. at 93-94, 109) (CG Ex. 8).

17. Mickey Grover, the verifying scientist, confirmed the initial testing results after having examined the machine calibration and chain of custody documentation. (Tr. at 110-11) (CG Ex. 8).

18. A second aliquot was taken from Bottle A of Respondent's specimen for Gas Chromatography/Mass Spectrometry (GC/MS) testing. (Tr. at 109-110) (CG Ex. 8).

19. The confirmatory test yielded a result of 236.73 nanograms per milliliter (ng/ml) of benzoylecgonine, a cocaine metabolite; the cutoff is 100 nanograms per milliliter. (Tr. at 121-22, 183-84) (CG Ex. 8). 49 C.F.R. § 40.87(a).

20. Ms. Roberts testified there is no over-the-counter substance that can cause a positive for benzoylecgonine. (Tr. at 158).

21. Ms. Roberts testified that cocaine is generally out of the system within seventy-two (72) hours; Dr. Jerome Cooper, the Medical Review Officer (MRO), testified cocaine usually stays in a person's system for two to four days depending on various factors such as the person's metabolism, weight, exercise habits, and hydration. (Tr. at 156, 184-85, 205).

22. At all relevant times herein, Quest was a Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory. (Tr. at 119) (CG Ex. 13). 78 Fed. Reg. 39757 (July 2, 2013).

23. Anne Roberts testified Quest Laboratory conducted the testing in accordance with 49 C.F.R. Part 40. (Tr. at 119).

24. Mickey Grover signed the Control and Custody Form, certifying Respondent's sample as positive for cocaine and faxed the form to the MRO for review. (Tr. at 116) (CG Ex. 8).

25. Dr. Jerome Cooper, a certified MRO, testified he called Respondent, who could not provide an explanation for the positive test. (Tr. at 177, 187-89) (CG Ex. 9, CG Ex. 11, CG Ex. 13).

26. Respondent was not taking any medications that could have resulted in a false positive for cocaine. (Tr. at 190).

27. Dr. Cooper testified heat and time should not impact the validity of a urine sample. (Tr. at 193-94, 199-202, 211-12).

28. Dr. Cooper certified Respondent's sample as positive for cocaine. (Tr. at 186, 191) (CG Ex. 10, CG Ex. 12).

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. 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 13, 2013, 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. Specifically, the Complaint alleges that Respondent took a post-accident drug test which yielded a positive result for cocaine metabolites.[1] 46 C.F.R. § 16.240.

Title 46 C.F.R. § 16.240 states as follows: "[t]he marine employer shall ensure that all persons directly involved in a serious marine incident are chemically tested for evidence of dangerous drugs and alcohol in accordance with the requirements of 46 CFR 4.06." Title 46 C.F.R. § 4.06, in turn, provides that "[d]rug testing must be conducted on each individual

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[1] Although Respondent did not raise this, the undersigned notes the Complaint alleges Respondent took a "post-accident" drug test instead of a "serious marine incident" drug test. 46 C.F.R. § 16.240. The undersigned finds this linguistic distinction immaterial. See Appeal Decision 2585 (COULON) (1997) (explaining administrative proceedings require only notice pleadings).

engaged or employed on board the vessel who is directly involved in the [serious marine incident]." 46 C.F.R. § 4.06(b)(1). The regulations explain the definition of "serious marine incident" includes:

> An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties; 46 C.F.R. § 4.03-2.

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.[2] Appeal Decision 2603 (HACKSTAFF) (1998). See also Appeal Decision 2653 (ZERINGUE) (2002).

In the instant case, the Coast Guard demonstrated Respondent's drug test was conducted in accordance with 46 C.F.R. § 16.240. At the hearing, Captain Rapone credibly testified he reported Respondent's injury to the Coast Guard after determining Respondent could not be treated on the vessel and required medical treatment beyond first aid. (Tr. at 18-19, 24-25) (CG Ex. 1, CG Ex. 6). Accordingly, Respondent's injury constituted a serious marine incident for which drug testing was required. 46 C.F.R. § 4.03-2; 46 C.F.R. § 4.06(b)(1). Thus, Respondent was properly ordered to submit to the drug test.

The Coast Guard also demonstrated Respondent's specimen was both collected and tested in accordance with 49 C.F.R. Part 40. Captain Rapone, who collected the specimen aboard the M/V RESOLVE, has been a Department of Transportation (DOT) certified urine collector since July 2012. (Tr. at 28-29, 71) (CG Ex. 4). Captain Rapone credibly testified that he sealed the two urine vials containing Respondent's specimen, had Respondent initial them, and then packed the bottles in the pouch provided. (Tr. at 32-33, 35, 37-38) (CG Ex. 5). While the vessel was docked in Baltimore, Maryland, Captain Rapone provided the box containing

[2] 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.

Respondent's urine sample to an agent from Wilhelmsen Ship Service for transfer to Quest Diagnostics (Quest). (Tr. at 45-46, 48-49, 57, 63-64, 76).

Anne Roberts, the Lab Manager/Responsible Person testified Quest received Respondent's specimen on July 25, 2013, with the bottle seals intact. (Tr. at 89-91, 143, 150) (CG Ex. 8). Ms. Roberts explained the testing process, and testified the drug screening was conducted in accordance with 49 C.F.R. Part 40. (Tr. at 119). Quest is a Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory. 78 Fed. Reg. 39757 (July 2, 2013).

Ms. Roberts explained the Documentation Package provided by Quest, noting Quest first extracted an aliquot from Bottle A of Respondent's specimen for initial testing. (Tr. at 93-94, 109) (CG Ex. 8). As the test yielded a non-negative result, the specimen was sent for confirmatory GC/MS testing. (Tr. at 109-110) (CG Ex. 8). The confirmatory test, conducted on a second aliquot from Bottle A of Respondent's urine specimen, yielded a result of 236.73 nanograms per milliliter of benzoylecgonine, a cocaine metabolite; the regulatory cutoff is 100 nanograms per milliliter. (Tr. at 121-22, 183-84) (CG Ex. 8). 49 C.F.R. § 40.87(a).

The laboratory certified Respondent's sample as positive for cocaine on the Custody and Control form, then faxed the form and results to the Medical Review Officer (MRO), Dr. Jerome Cooper. (Tr. at 116) (CG Ex. 8). Dr. Cooper, a certified MRO, credibly testified he called Respondent, who was unable to provide any explanation for the positive test results. Although Respondent indicated he was taking pain medication, Dr. Cooper explained the pain medication could not have resulted in a positive test for cocaine. (Tr. at 190). Dr. Cooper further testified he advised Respondent of his right to request a re-test within seventy-two (72) hours. (Tr. at 189-190). Accordingly, Dr. Cooper certified Respondent's sample as positive for cocaine. (See Tr. at 191) (CG Ex. 12).

The undersigned finds the Coast Guard demonstrated that Respondent was tested for dangerous drugs in accordance with 49 C.F.R. Part 40 and 46 C.F.R. Part 16, and tested positive for use of a dangerous drug. Appeal Decision 2603 (HACKSTAFF) (1998). See also Appeal Decision 2653 (ZERINGUE) (2002). As such, Respondent is presumed to be a user of dangerous drugs. 46 C.F.R. § 16.201(b). Respondent may rebut this presumption by producing evidence that (1) calls into question any element of the prima facie case, (2) indicates an alternative medical explanation for the positive test result, or (3) indicates Respondent's drug use was not wrongful or not knowing. Appeal Decision 2560 (CLIFTON) (1995).

Respondent's Rebuttal

Although Respondent did not call any witnesses or introduce any exhibits into evidence, at the hearing and via Closing Brief, Respondent presented a series of arguments suggesting the Coast Guard failed to prove its case.

First, Respondent asserts that "[t]he Coast Guard put no evidence on that Mr. Youman was addicted to any drug. The only evidence the US Coast Guard put on was that Mr. Youman had cocaine metabolites in his system after breaking two bones in his right leg on July 18, 2013." Respondent further argues the amount of the cocaine detected in his system, 236 ng/ml, was low. Respondent noted some of the witnesses testified they had seen cocaine levels upwards of 100,000 ng/ml. To this end, he suggests "[t]here is no testing that can be done to determine if a person has taken cocaine one time or is an addict."

These arguments are without merit. The controlling case law does not require the Coast Guard to demonstrate habitual use, drug-induced behavior, or high volume usage of a dangerous drug; rather, the Coast Guard need only demonstrate use of a dangerous drug, which it may do through the proper introduction of urinalysis results. Appeal Decision 2603 (HACKSTAFF) (1998). See 46 C.F.R. § 5.35 ("Use of, or addiction to the use of dangerous drugs"). Further, the applicable regulations, 49 C.F.R. Part 40, clearly provide that the confirmatory cutoff level for

the cocaine metabolite is 100 ng/ml. 49 C.F.R. § 40.87(a). Respondent's test indisputably yielded a result greater than the confirmatory cutoff level.

Respondent next argues his specimen was left unrefrigerated for seven days, and suggests "[t]he testimony was clear that the samples would degrade over time and that bacteria would grow in the urine." However, at the hearing, Dr. Cooper, a certified MRO, testified heat and time should not impact the validity of a urine sample. (Tr. at 193-94, 199-202, 211-12). Further, there is nothing in the record to suggest heat, time, or bacteria could cause metabolized cocaine to appear in human urine.

Respondent also argues Anne Roberts and Dr. Cooper "weren't really experts in the ultimate question in this case." Respondent suggests Ms. Roberts was not a toxicologist, and Dr. Cooper "spent a total of five minutes working on the case, and had no means of backing up his opinion that the test should be okay even if the sample was left unrefrigerated for seven days." Respondent also argues that Dr. Cooper's responses "were vague at best," and that neither he nor Ms. Roberts "is able to actually prove what they have been asked to testify to." Respondent suggests "the old axiom that 10 guilty men should go free before one innocent man is convicted, holds true in this case."

Respondent's general assertion that Dr. Cooper was "vague" and did not spend a sufficient amount of time on the case is unavailing. Upon review of the record, the undersigned finds Dr. Cooper was a credible witness who complied with the MRO's duties as outlined in 49 C.F.R. Part 40. <u>See</u> 49 C.F.R. § 40.123. Respondent did not allege Dr. Cooper, who is properly qualified as an MRO, violated any particular regulatory provision; instead, Respondent seems only to generally assert that Dr. Cooper should have spent more time on Respondent's case and should have given more particular answers in his testimony. (CG Ex. 9). Such an assertion does

not call into question any element of the prima facie case.[3] See Appeal Decision 2560 (CLIFTON) (1995).

Respondent further asserts that "Dr. Cooper testified there are other ways to get cocaine in your system other than taking it illegally, such as medical procedures and drinking certain types of tea…[t]his was not disproved at trial by the US Coast Guard." However, as discussed, Dr. Cooper credibly testified he phoned Respondent to inquire whether there was any alternate explanation for the cocaine in his system; there was not. (Tr. at 177, 187-89, 197-98) (CG Ex. 9, CG Ex. 11). Respondent did not allege to Dr. Cooper, at the hearing, or in his brief, that he had undergone any medical procedure or consumed any tea that could account for the cocaine in his system. The Coast Guard is not required to affirmatively prove Respondent did not have a medical procedure or consume tea when Respondent himself does not even allege he has done so.

As to the laboratory testing process, Respondent notes a rack jam occurred during the testing process "that caused a malfunction of the testing equipment," and that Ms. Roberts did not investigate this rack jam. He also notes that Ms. Roberts' speculation as to what happened with the equipment "is not a valid evidence to base this Court's decision on." Respondent further contends Ms. Roberts' testimony is nothing more than unreliable hearsay.

At the hearing, Ms. Roberts explained the laboratory litigation packet documented a rack jam on the Olympus analyzer, and, as a result, the urine samples on that particular machine were transferred to another Olympus analyzer. (Tr. at 97, 159-60). Respondent does not allege, and the evidence does not indicate, the rack jam compromised Respondent's test results in any way; to the contrary, the record shows Quest corrected the rack jam, documented the issue, and

[3] Along these lines, Respondent also asserts "[i]t is not Mr. Youman's fault that Captain Rapone had only done a few urine collections and didn't know he was to get the samples to Quest as soon as possible or at least refrigerate the bottles." To the extent Respondent argues Captain Rapone was unqualified as a collector, the undersigned notes the Captain has been a certified DOT collector since July 2012 and conducted the collection in accordance with 49 C.F.R. Part 40. (Tr. at 28-29, 71) (CG Ex. 4).

transferred Respondent's specimen to another Olympus analyzer. Id. Such a transfer does not undermine the accuracy of Respondent's test. See Appeal Decision 2625 (ROBERTSON) (2002) (explaining "the testing procedure is not vitiated where the infractions do not breach the chain of custody or violate the specimen's integrity.").

The undersigned finds Ms. Roberts credibly explained the testing process based on the laboratory testing package. (CG Ex. 8). See Appeal Decision 2641 (JONES) (2003) (explaining hearsay evidence, including documentary evidence containing hearsay, is admissible in Coast Guard Suspension and Revocation proceedings). 33 C.F.R. § 20.802. Respondent provided no evidence to suggest anything documented in the laboratory package was inaccurate in any way.

Next, Respondent argues the medical officer of the M/V RESOLVE, James Anderson, had access to the hospital where Respondent's sample was temporarily stored. To this end, Respondent suggests "Mr. Anderson had a key to the hospital and could have been in and out of the hospital a number of times during the week after Mr. Youman's injury…[w]hether he did anything with the urine bottles or not, we will never know."

This argument is also unavailing. An ALJ is not required to infer any deliberate acts of tampering or gross negligence in the handling of a specimen when none has been shown. Appeal Decision 2560 (CLIFTON) (1995) (citing Gallagher v. Nat'l Transp. Safety Bd., 953 F.2d 1214, 1218 (10th Cir. 1992)). Further, the record indicates Quest received Respondent's specimen on July 25, 2013, with the bottle seals intact. (Tr. at 89-91, 143, 150) (CG Ex. 8).

Last, Respondent seemingly calls into question the chain of custody of his specimen. In this regard, Respondent notes Captain Rapone waited to ship Respondent's urine specimen because he did not have a FedEx label aboard the M/V RESOLVE. (See Tr. at 49). As such, the specimen remained in the vessel's hospital until the M/V RESOLVE arrived at port in Baltimore, Maryland. Respondent contends the Coast Guard did not call the agent from Wilhelmsen Ship Service as a witness and suggests "the chain of custody was broken sufficiently to not allow the

taking of Mr. Youman's Credential." Respondent also argues that "the chain of custody was broken on numerous occasions to people that handled the bottles of urine that should have testified at the trial. [sic]."

The purpose of the chain of custody is to ensure "the chances of a specimen being altered, contaminated, switched, or lost are minimized and that the test results provided are, in fact, those of the indicated specimen." Appeal Decision 2606 (SWAN) (1999) (quoting Appeal Decision 2555 (LAVALLAIS) (1994)). In the instant case, the Coast Guard proved the test results provided came from Respondent's urine specimen.

Respondent's specimen remained in the M/V RESOLVE's secure hospital space until Captain Rapone provided the box containing the specimen (inside two sealed vials inside a sealed pouch) to an agent from Wilhelmsen Ship Service. (Tr. at 72, 76-77). The specimen was then shipped to Quest via FedEx. (See Tr. at 142, 161). When Respondent's specimen arrived at Quest, the seals were still in place on the vials. (CG Ex. 8) (See Tr. at 87-89).

The laboratory assigned a unique accession number to Respondent's specimen to track his sample throughout the testing process. (CG Ex. 8) (Tr. at 88). Ms. Roberts then credibly explained exactly how Respondent's specimen was tracked and logged throughout the testing process without irregularity. (See Tr. at 92-93). See Gallagher v. Nat'l Transp. Safety Bd., 953 F.2d 1214, 1219 (10th Cir. 1992).

None of Respondent's arguments, either collectively or individually, sufficiently (1) call into question any element of the prima facie case, (2) indicate an alternative medical explanation for his positive test result, or (3) indicate his drug use was not wrongful or not knowing. Appeal Decision 2560 (CLIFTON) (1995). 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 Credential 000168571.

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. Respondent submitted to a drug test following a serious marine incident. See 46 C.F.R. § 16.240.

4. The drug test, which was conducted in accordance with 49 C.F.R. Part 40 and 46 C.F.R. § 16.240, was positive for cocaine.

5. The Coast Guard **PROVED** by a preponderance of reliable, probative, and credible evidence that Respondent is a user of or addicted to dangerous drugs. 46 U.S.C. § 7704(c); 46 C.F.R. § 5.35.

SANCTION

When the Coast Guard proves that a mariner has used or is addicted to dangerous drugs, any Coast Guard issued licenses, documents, or other credentials must be revoked unless cure is proven. See 46 U.S.C. 7704(c); 46 C.F.R. 5.569; Appeal Decision 2535 (SWEENEY) (1992). Absent evidence of cure or substantial involvement in the cure process, an ALJ must revoke a respondent's license and document under 46 U.S.C. 7704(c). See also Appeal Decision 2634 (BARRETTA) (2002), Appeal Decision 2583 (WRIGHT) (1997).

In the instant case, Respondent did not present any evidence of cure or substantial involvement in the cure process. Accordingly, the undersigned is precluded from issuing an Order other than revocation.

ORDER

IT IS HEREBY ORDERED THAT the allegations as set forth in the Complaint are found **PROVED.**

IT IS FURTHER ORDERED THAT Respondent Eddie Franklin Youman's Merchant Mariner's Credential Number 000168571 is hereby **REVOKED.**

IT IS FURTHER ORDERED THAT Respondent shall immediately surrender any and all of his Coast Guard-issued credentials to the Coast Guard Investigating Officer.

PLEASE TAKE 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 B**).

SO ORDERED.

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

Date: April 09, 2014

Attachment A

Coast Guard's Witnesses

1. Captain William Rapone
2. Anne Roberts
3. Dr. Jerome Cooper

Coast Guard's Exhibits

1. CG-2692, Report of Marine Casualty
2. CG-2692B, Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident
3. NOT OFFERED OR ADMITTED
4. Collector Training Certificate
5. Collector Copy of Custody and Control Form
6. M/V RESOLVE Medical Log Sheet
7. NOT OFFERED OR ADMITTED
8. Quest Diagnostics Lab Litigation Package
9. Dr. Jerome Cooper MRO Certification Letter
10. MRO Copy of Control and Custody Form
11. MRO Worksheet
12. MRO Final Report
13. Resume of Dr. Jerome Cooper

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.