

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

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UNITED STATES COAST GUARD  
Complainant

vs.

BENJAMIN LOWELL EDWARDS  
Respondent

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Docket Number 2013-0002  
Enforcement Activity No. 4510039

**DECISION AND ORDER**

**Date Issued: June 25, 2014**

**Issued by: Hon. Bruce Tucker Smith**  
**Administrative Law Judge**

**Appearances:**

**For the Coast Guard;**

**CWO James M. Bailey**  
**Sector New Orleans**

**For the Respondent;**

**David Gernhauser, Jr., Esq.**

## I. PRELIMINARY STATEMENT

On January 3, 2013, the United States Coast Guard (Coast Guard) filed a Complaint against Respondent Benjamin Lowell Edwards (Respondent) seeking revocation of Respondent's Coast Guard-issued Merchant Mariner's License (MML or credential) alleging use of, or addiction to the use of, dangerous drugs under 46 U.S.C. §7704(c) and 46 C.F.R. §5.35. More particularly, the Complaint alleged that Respondent submitted to a random drug test and provided a urine sample that subsequently tested positive for cocaine metabolites.

Thereafter, on January 15, 2013, Respondent and the Coast Guard entered into a Settlement Agreement, ostensibly resolving the matters contained in the Coast Guard's original Complaint. The gravamen of the Settlement Agreement provided that Respondent must not fail a drug test.

On January 22, 2013, a Coast Guard Administrative Law Judge entered a Consent Order, approving of the terms and conditions of the January 15, 2013 Settlement Agreement.

On March 11, 2014, the Coast Guard filed a Notice of Failure to Complete Settlement Agreement, alleging that Respondent had tested positive for drugs. The Coast Guard contends that Respondent submitted urine specimen for chemical testing and that, thereafter, that sample tested positive for cocaine metabolites.

On or about March 28, 2014, The Respondent contested the Notice and indicated his desire for a due-process hearing wherein the Coast Guard was obligated to prove he had, in fact, breached the Settlement Agreement by virtue of the failed drug test.

On June 19, 2014, this matter came on for hearing at the U.S. Coast Guard Administrative Law Judge Courtroom, in the Hale Boggs Federal Building, in New

Orleans, Louisiana.<sup>1</sup> The hearing was conducted in accordance with the Administrative Procedure Act (APA), as amended and codified at 5 USC §§551-559, and the Coast Guard procedural regulations as set forth in 33 CFR Part 20. Coast Guard Attorney Gary Ball, Esq. and Investigating Officer CWO James Bailey appeared on behalf of the Coast Guard; Respondent was represented by counsel, David W. Gernhauser, Esq., and was present in court.

At the hearing, Respondent indicated his desire to admit that he had made use of cocaine, in violation of the January 15, 2013 Settlement Agreement and expressed his understanding that his failure was sufficient to warrant **REVOCATION** of his MMC.

The court also entertained the advice and counsel of attorneys for both parties and believes Respondent is sincere in his desire to pursue a safe career in the maritime industry and had taken some meaningful steps toward rehabilitation. The court takes particular note that Respondent continued to submit himself to drug testing and Alcoholics Anonymous meetings even after the failed drug test.

The court believes that Respondent is beginning to appreciate the consequences of his illness and his behavior. Thus, if within the next eighteen months (commencing upon the date of this Order) Respondent completes all of the following, the court will favorably entertain a Motion to Reopen, per 33 CFR §20.904(f):

1. Respondent will attend Alcoholics Anonymous/Narcotics Anonymous meetings at least four times a month for the next eighteen months and he will maintain verifiable written evidence (including signatures by appropriate Alcoholics Anonymous members/leaders) of his attendance at Alcoholics Anonymous for presentation to the court.
2. Respondent will continue psychological counseling with an appropriate psychiatrist, psychologist, or other appropriate mental health provider

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<sup>1</sup> Citations referencing the transcript are as follows: Transcript followed by the volume number and page number (Tr. \_\_). Citations referring to Agency Exhibits are as follows: Investigation Officer followed by the exhibit number (CG Ex. 1, etc.); Respondent's Exhibits are as follows: Respondent followed by the exhibit letter (Resp. Ex. A, etc.); ALJ Exhibits are as follows: ALJ followed by the exhibit Roman numeral (ALJ Ex. I, etc.).

for the next eighteen months, as is deemed medically necessary by that psychiatrist, psychologist, or other appropriate mental health provider. The court may require verifiable proof of Respondent's presence at any/all of the required counseling sessions.

3. Respondent will not violate any Federal, State, Parish or City criminal law (minor traffic violations excepted) for the next eighteen months.
4. Respondent will, for the next eighteen months, submit himself to random drug and/or alcohol testing, at a Department of Transportation-approved, third-party drug-testing consortium facility (perhaps the one Respondent previously used), at his own expense, at such times as that third-party consortium deems appropriate. Respondent will promptly provide the Coast Guard (Sector New Orleans) with the written results of such testing as immediately practical after such test(s) are completed.

If Respondent successfully completes all of the requirements of paragraphs 1 through 4 above during the eighteen month period described herein, then the court will view a Motion filed under 33 CFR §20.904(f) in a light favorable to Respondent. If, however, Respondent fails to demonstrate his compliance with the terms set forth in paragraphs 1 through 4 above, then his MMC will remain **REVOKED**.

## **VI. SANCTION**

Based upon the record as a whole, the appropriate sanction is **REVOCATION** of Respondent's MMC. If Respondent successfully completes all of the stated requirements contained in paragraphs 1 through 4 above during the eighteen month period described herein, then the court will favorably view a Motion filed under 33 CFR §20.904(f). If, however, Respondent fails to comply with all of the terms set forth in paragraphs 1 through 4 above, then his MMC will remain **REVOKED**.

The Coast Guard will maintain physical custody of Respondent's MMC during the eighteen month period described herein.

**WHEREFORE,**

## VII. ORDER

**IT IS HEREBY ORDERED**, that all allegations of the Complaint filed against Respondent Benjamin Lowell Edwards are found **PROVED**.

**IT IS FURTHER ORDERED**, that Respondent Benjamin Lowell Edwards' Coast Guard-issued MMC shall remain in the custody of the Coast Guard to be retained for a period of eighteen months from the date of this Order. Respondent is hereby barred from acting under the authority of his MMC.

**PLEASE TAKE NOTE** that issuance of this decision serves as the parties' right to appeal under 33 CFR Part 20, Subpart J. A copy of Subpart J is provided as Attachment B.



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**Bruce Tucker Smith**  
**US Coast Guard**  
**Administrative Law Judge**

Date:

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS**  
**CODE OF FEDERAL REGULATIONS PART 20 RULES OF PRACTICE, PROCEDURE, AND**  
**EVIDENCE FOR FORMAL ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD**  
**SUBPART J - APPEALS**

**33 CFR 20.1001 General.**

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
  - (1) Whether each finding of fact is supported by substantial evidence.
  - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
  - (3) Whether the ALJ abused his or her discretion.
  - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

**33 CFR 20.1002 Records on appeal.**

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
  - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
  - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

**33 CFR 20.1003 Procedures for appeal.**

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
  - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --
    - (i) Basis for the appeal;
    - (ii) Reasons supporting the appeal; and

- (iii) Relief requested in the appeal.
  - (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
  - (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
  - (c) No party may file more than one appellate brief or reply brief, unless --
    - (1) The party has petitioned the Commandant in writing; and
    - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
  - (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

**33 CFR 20.1004 Decisions on appeal.**

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.