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

UNITED STATES COAST GUARD
Complainant

vs.

MARK ANTHONY RANSOM
Respondent

Docket Number 2014-0077
Enforcement Activity No. 4786338

DECISION AND ORDER

Issued: October 06, 2014

By Administrative Law Judge: Honorable Bruce Tucker Smith

Appearances:

For the Coast Guard;

Mr. Jim A. Wilson
Marine Safety Unit Morgan City

For the Respondent;

Mark Anthony Ransom, *Pro se*

I. STATEMENT OF THE CASE

The United States Coast Guard (Coast Guard) initiated this Suspension and Revocation proceeding seeking revocation of Respondent Mark Anthony Ransom's (Respondent) Merchant Mariner's Credential (MMC). This action was brought pursuant to the authority contained in 46 U.S.C. §7704(c) and §7703(1)(B), and its underlying regulations codified at 46 C.F.R. Part 5 and 33 C.F.R. Part 20.

On February 20, 2014, the Coast Guard issued a Complaint charging Respondent with violating 46 U.S.C. §7704(c) and §7703(1)(B), alleging one count of Use of, or Addiction to the Use of, Dangerous Drugs pursuant to 46 C.F.R. §5.35, and two counts of Misconduct pursuant to 46 C.F.R. §5.27. Specifically, the Coast Guard alleged that on June 27, 2013, Respondent participated in a pre-employment drug screening and tested positive for cocaine metabolites.[1] The Complaint further alleged that, on January 20, 2014, Respondent twice refused to provide a urine sample in violation of his employer's company policy.

On April 8, 2014, Respondent filed an Answer denying both the factual and jurisdictional allegations in the Complaint.

This matter was heard on August 20, 2014, in New Orleans, Louisiana. The hearing was conducted in accordance with the Administrative Procedure Act (APA) as amended and codified at 5 U.S.C. §§ 551-559, and Coast Guard procedural regulations set forth in 46 C.F.R. Part 5 and 33 C.F.R. Part 20. Jim Wilson, Esq., appeared on behalf of the Coast Guard; Respondent represented himself.

During the course of the hearing, the Coast Guard moved to dismiss the charge of Use of, or Addiction to the Use of, Dangerous Drugs pursuant to 46 C.F.R. §5.35. The undersigned granted that motion. (Tr. at 150-51).

[1] The court asks why the Coast Guard waited eight months to charge Respondent with this offense.

The Coast Guard presented testimony of four witnesses and offered twelve exhibits, eleven of which were admitted into the record.[2] Respondent did not offer any exhibits into the record and chose not to testify. The list of witnesses and exhibits is contained in **Attachment A.**

On September 18, 2014, Respondent submitted a post-hearing brief; the Coast Guard filed a post-hearing brief on September 20, 2014.

After careful review of the entire record, including witness testimony, applicable statutes, regulations, and case law, the undersigned finds the Coast Guard **DID NOT PROVE** either of the two remaining counts of Misconduct defined in 46 C.F.R. §5.27. Accordingly, the matter is **DISMISSED WITH PREJUDICE.**

II. 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 herein, Jeffrey Huddleston owned Jeff's Tugs, LLC (Jeff's Tugs), which owned and operated the vessel JEFFRITO. (Tr. at 155).

2. Jeff's Tugs occasionally utilized Respondent as a "trip pilot," which Mr. Huddleston described as "[s]omeone that fills in for . . . regular captains." (Tr. at 156).

3. Mr. Huddleston typically employed trip pilots under work agreements, which he described as "a document stating that they'll be responsible for any and all—like a contractor." (Tr. at 194).

4. Some of Jeff's Tugs' employees were full time and mostly deckhands. However, Respondent was never a full time employee. (Tr. at 156-57).

[2]Citations referencing the transcript are as follows: Transcript followed by page number (Tr. at __). Citations referring to Coast Guard Exhibits are as follows: CG followed by the exhibit number (CG Ex. 1, etc.). Of note, much of the evidence presented at the hearing was relevant only to the withdrawn charge of Use of, or Addiction to the Use of, Dangerous Drugs pursuant to 46 C.F.R. § 5.35. As this evidence is irrelevant to the remaining charges, it is not discussed herein.

5. When Mr. Huddleston hires someone who is "going to be a regular employee, [he'll] get them drug screened and physicaled, [sic] and then put them on the boat . . . ." (Tr. at 159).

6. Mr. Huddleston conducts drug tests to stay on the "Responsible Carrier Program" (RCP), a voluntary American Waterways program that provides guidelines regarding safety and procedures. (Tr. at 160-61).

7. Mr. Huddleston conducts drug tests "to be in compliance with the Coast Guard because [he has] to send in reports at the end of every year of how many randoms and how many new hires [he does]." (Tr. at 162).

8. Mr. Huddleston tries "to try to get the drug screen and a physical in even on trip pilots to make sure that they're physically capable of doing their job, and, also for insurance purposes." (Tr. at 192).

9. Mr. Huddleston conducts random drug tests in the following manner: "when I have a chance that I know someone's going to be going on the boat and I have enough time that I can take them and get it done or . . . when I know the boat's going to be sitting somewhere, I'll hire a local group to just go to the boat and test everybody all at one time." (Tr. at 162).

10. On January 8, 2014, Respondent signed Jeff's Tugs' "Drug and Alcohol Policy Summary and Compliance Statement." (Tr. at 173, 196-97; CG Ex. 9).

11. Mr. Huddleston believed Respondent's signature on the "Drug and Alcohol Policy Summary and Compliance Statement" to be an acknowledgment that Mr. Huddleston had permission "to ask [him] to have a test at any time." (Tr. at 173).

12. Mr. Huddleston testified the actual company drug testing policy is "in the RCP," which Respondent should have reviewed. (Tr. at 175).

The Events of January 20, 2014

13. Mr. Huddleston hired Respondent as a trip pilot on January 20, 2014. The two men also discussed the possibility of Respondent becoming a full-time employee. (Tr. at 163, 192).

14. Mr. Huddleston pays trip pilots after the conclusion of a trip. (Tr. at 199).

15. On January 20, 2014, the vessel JEFFRITO was fogbound at the Bayou Boeuf locks in Morgan City, Louisiana. (Tr. at 158, 190).

16. Since the vessel was fogbound, Mr. Huddleston decided he would "just go ahead and . . . get the—[Respondent's] drug screen and possibly physical in order to keep [his] papers right for the boat." (Tr. at 158, 163, 190-91).

17. On January 20, 2014, Respondent arrived at Mr. Huddleston's office in Morgan City; Mr. Huddleston told Respondent he was going to "go ahead and get a drug screen and physical on him . . . . " (Tr. at 163).

18. Respondent asked why he had not been informed about the drug screen, and then stated he would not take a drug test. Thereafter, Respondent left Mr. Huddleston's office. (Tr. at 164-65).

19. Respondent telephoned Mr. Huddleston approximately one hour later and indicated he would be willing to take a drug test. (Tr. at 165).

20. Mr. Huddleston informed Respondent that if he wanted to take a drug test, Respondent would have to go to Bourgeois Medical Center in Morgan City, Louisiana and pay for the test himself. (Tr. at 165).

21. Respondent subsequently telephoned Mr. Huddleston from Bourgeois Medical Center and said he had spent money on the test and now needed money to go home; Mr. Huddleston went to Bourgeois Medical Center and personally delivered forty dollars ($40.00) to Respondent. (Tr. at 166).

22. On January 20, 2014, Respondent departed the Bourgeois Medical Center without taking a drug test. (Tr. at 167, 179-80, 222-24) (See CG Ex. 10).

23. If Respondent taken the drug test, Mr. Huddleston would have allowed him to work as captain of the JEFFRITO and would have paid him for the day. (Tr. at 206).

III. PRINCIPLES OF LAW

a. Suspension & Revocation Cases

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 (ALJs) have the authority to revoke a mariner's MMC for Use of, or Addiction to the Use of, a Dangerous Drug, per 46 U.S.C. §7704.

ALJs also have the authority to suspend or revoke a mariner's MMC for Misconduct; that is, violations arising under 46 U.S.C. §7703. See 46 C.F.R. §5.19(b) and 46 C.F.R. §5.27.

1. Chemical Drug Testing

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, a marine employer's drug testing program must be in accordance with the applicable statutes, regulations, and the Commandant's Decisions on Appeal. See generally 49 C.F.R. Part 40 and 46 C.F.R. Part 16.

In this case, the Coast Guard charged Respondent with failing a June 27, 2013, pre-employment drug screening by testing positive for cocaine metabolites in his urine specimen. However, during the course of the hearing, the Coast Guard moved to dismiss the charge of Use of, or Addiction to the Use of, Dangerous Drugs pursuant to 46 C.F.R. §5.35. The court granted the Coast Guard's motion, rendering this issue moot. (Tr. at 150-51).

2. Misconduct

Title 46 U.S.C. §7703(1)(B) provides that an MMC may be suspended or revoked if the holder, while acting under the authority of the MMC, commits "an act of misconduct."

Title 46 C.F.R. §5.27 defines "Misconduct" this way:

> Misconduct is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required.

Id.

In order to prove Misconduct, the Coast Guard must demonstrate Respondent violated "[a] formal, duly established rule." Id. However, to do so, the Coast Guard must first demonstrate the actual existence of such a rule. The governing regulations and controlling appellate case law explain that Coast Guard chemical drug testing laws and regulations constitute only "the minimum standards, procedures, and means to be used to test for the use of dangerous

drugs." 46 C.F.R. §16.101(b). The governing regulations and controlling appellate case law allow marine employers to expand upon the Coast Guard regulatory requirements and mandate additional employee drug screening. Id.

In this regard, Appeal Decision 2675 (MILLS) (2008) specifically acknowledges that "a marine employer may require further drug testing," beyond the five (5) types of testing enumerated in 46 C.F.R. Part 16. In MILLS, the respondent mariner was charged with misconduct for allegedly refusing a "pre-access" drug screen; that is, a drug test required by the respondent's employer to perform contract work for another company. Id.

Although MILLS ultimately concluded the respondent had not been properly ordered to submit to the pre-access drug test (and thus could not have refused the test), the decision nonetheless acknowledged that a "properly established company [drug testing] policy" may constitute a "formal, duly established rule" for purposes of 46 C.F.R. §5.27. Id. So, had the respondent in MILLS been properly ordered to submit to a policy-compliant drug test, he would have committed misconduct for refusing such a test. See also Appeal Decision 2625 (ROBERTSON) (2002) (upholding a charge of misconduct following a reasonable suspicion test and noting that "the decision to drug test Respondent was made by the marine employer in a good faith effort to comply with the company's drug and alcohol policy- a policy Respondent knew he was subject to as a condition of his employment.").

Thus, either the Coast Guard drug testing regulations or a properly established marine company drug testing policy may constitute a "formal, duly established rule" for purposes of a Misconduct charge. 46 C.F.R. §5.27.

In this case the Coast Guard failed to demonstrate the tests were ordered either in accordance with Coast Guard regulations or in accordance with Jeff's Tugs' company drug policy.

b. The Coast Guard's Burden of Proof

The Administrative Procedure Act (APA), 5 U.S.C. §§551-559, applies to Coast Guard Suspension and Revocation proceedings. 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 Coast Guard bears the burden to prove the charges are supported by a preponderance of the evidence.[3] 33 C.F.R. §§20.701, 20.702(a).

Otherwise stated, the Coast Guard must prove by credible, reliable, probative and substantial evidence that Respondent more likely than not committed the violations charged.

IV. DISCUSSION

a. The January 20, 2014, Test was Not a Pre-Employment Test

As discussed above, 46 C.F.R. Part 16 requires marine employers to conduct pre-employment drug testing. The regulations governing pre-employment tests state:

> (a) No marine employer shall engage or employ any individual to serve as a crewmember unless the individual passes a chemical test for dangerous drugs for that employer.
>
> (b) An employer may waive a pre-employment test required for a job applicant by paragraph (a) of this section if the individual provides satisfactory evidence that he or she has:
>
> > (1) Passed a chemical test for dangerous drugs, required by this part, within the previous six months with no subsequent positive drug tests during the remainder of the six-month period; or
> >
> > (2) During the previous 185 days been subject to a random testing program required by §16.230 for at least 60 days and did not fail or refuse to participate in a chemical test for dangerous drugs required by this part.

[3] 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. Constr. Laborers Pension Trust for S. California, 508 U.S. 602, 622 (1993) (citing In re Winship, 397 U.S. 358, 371-72 (1970) (Harlan, J., concurring) (brackets in original)).

46 C.F.R. §16.210 (emphasis added).

Respondent's January 20, 2014, test clearly does not meet the criteria for a pre-employment test. The regulations provide that a marine employer shall not employ any individual unless he or she "passes a chemical test for dangerous drugs." Id. at (a) (emphasis added). In the instant case, Mr. Huddleston ordered Respondent to submit to a chemical test on the very same day he sought to employ him as a trip captain. (See Tr. at 206). Mr. Huddleston would not have received the results of Respondent's Department of Transportation (DoT) drug screen until after Respondent had already served as captain under the authority of his MMC. Thus, it would have been impossible for Respondent to have passed a drug test before he assumed his duties on the vessel. See 49 C.F.R. Part 40.

The record also contains no evidence Respondent had either passed a drug test within the past six (6) months, or recently been subject to random drug testing. 46 C.F.R. §16.210(b)(1)-(2).

It is also unclear exactly why Respondent's marine employer ordered him to submit to a drug test. Although Mr. Huddleston testified he took Respondent on as a trip pilot on January 20, 2014, (at which time the two had "discussed the possibility" of Respondent working on a full-time basis), Mr. Huddleston also testified he decided to order the test because he "had the time" while the JEFFRITO was fogbound. (Tr. at 158, 163, 190-92). Mr. Huddleston's testimony was uncertain and contradictory; and, in any event, his actions clearly did not comport with Coast Guard pre-employment drug testing regulations defined in 46 C.F.R. Part 16.

b. The Coast Guard Failed to Demonstrate the January 20, 2014 Test was Ordered Pursuant to Company Testing Policy

Although the Coast Guard failed to demonstrate the test was conducted in accordance with 46 C.F.R. Part 16, this does not end the inquiry. See Appeal Decision 2704 (FRANKS) (2014) (stating that "a drug test not complying with Part 16 may be used to establish drug use

when the drug test is not compelled by the Coast Guard's drug testing regulations."). If the Coast Guard was able to demonstrate Jeff's Tugs' drug testing policy required Respondent to submit to the January 20, 2014, drug test, the Coast Guard may be able to demonstrate Respondent violated an established rule, for the purposes of establishing Misconduct. 46 C.F.R. §5.27; Appeal Decision 2675 (MILLS) (2008).

For an employer's drug testing policy to apply, the Coast Guard must first establish that an employment relation existed between Respondent and Jeff's Tugs.

Respondent argued in his post-hearing submission that he was not an employee of Jeff's Tugs. Indeed, Mr. Huddleston conceded Respondent did not receive a paycheck, insurance benefits, or a 401(k) from the company. (Tr. at 198). Even though Respondent had not been paid, Mr. Huddleston testified it was company policy to pay trip pilots after trips were completed, and, had Respondent taken a drug test on January 20, 2014, he would have allowed Respondent to work as a trip pilot and paid him accordingly. (Tr. at 199, 206).

The court notes with particularity the steps Respondent took in furtherance of his intent to be an employee of Jeff's Tugs on January 20, 2014. For instance, on January 8, 2014, Respondent signed the "Drug and Alcohol Policy Compliance and Summary Statement" above the "Employee's Signature" line, acknowledging he would abide by company policy. (Tr. at 173, 196-97; CG Ex. 9).

On January 20, 2014, Respondent travelled to Mr. Huddleston's office in Morgan City, Louisiana, seeking work. (Tr. at 163). Thereafter, and in response to Mr. Huddleston's direction, Respondent presented himself to the Bourgeois Medical Clinic in Morgan City, Louisiana for company-mandated drug testing. (Tr. at 165; CG Ex. 7).

Mr. Huddleston also testified that from January 8 through January 20, 2014, Respondent was under Mr. Huddleston's supervision and control. (Tr. at 199).

In cases such as these, the existence of such an employer/employee relationship must be determined under maritime law. United States v. W.M. Webb, Inc., 397 U.S. 179 (1970). Among the factors to be considered in determining whether an employer/employee relationship exists are: the degree of control exercised over the employee; the amount of supervision; the method of payment and the parties' understanding of the relationship. Kirkconnell v. United States, 347 F.2d 260 (Fed. Cir. 1965).

The facts reveal that Mr. Huddleston exercised professional control over Respondent; that Respondent followed Mr. Huddleston's direction to submit to drug testing; that Respondent knew of – and agreed to – Jeff's Tugs' drug policy; and that Respondent knew of – and agreed to – Mr. Huddleston's pay arrangements.

Thus, based on the evidence in the record and the law, the undersigned finds Respondent was an employee of Jeff's Tugs and therefore subject to the company drug testing policy.

It is crucial to note, however, that the Coast Guard did not introduce Jeff's Tugs' actual drug testing policy into the record; the Coast Guard offered only Respondent's signed acknowledgment of a company policy. (Tr. at 173, 196-97; CG Ex. 9). The signed acknowledgment sheet, introduced as Coast Guard Exhibit 9, states on its face that it is "Page 10 of 10"; however, the exhibit does not include the first nine pages, which presumably constitute the actual Drug and Alcohol Policy to which the signed acknowledgment refers. (CG Ex. 9). The record contains no evidence of the actual policy; in other words, the record does not contain the "rule" Respondent allegedly violated. See 46 C.F.R. §5.27.

If, however, Page 10 of Exhibit 9 constitutes the entirety of Jeff's Tugs' drug and alcohol policy, then the policy is insufficient to constitute a formalized rule.[4] See 46 C.F.R. §5.27. Coast Guard Exhibit 9 contains only generalized statements including, "[t]he company has a

[4] However, this is likely not the case as the exhibit states as follows: "I am aware that this Drug and Alcohol Policy Summary and Compliance Statement is a summary of the Company's Drug and Alcohol Policy…". (CG Ex. 9). (Emphasis added).

drug and alcohol testing program and all employees are subject to testing." (Id.; see Tr. at 174). Cf. Appeal Decision 2625 (ROBERTSON) (2002) (noting the relevant portion of the marine employer's handbook explained when employees could be ordered to undergo reasonable suspicion drug testing.).

At the hearing, Mr. Huddleston explained Exhibit 9, saying: "[the exhibit is] basically permission for me to do a drug or alcohol testing [sic] at any time randomly or, you know, as such, as needed to – for them to perform their job." (Tr. at 173). However, the entirety of Mr. Huddleston's testimony regarding company drug testing policy was vague and unreliable. (Tr. at 173, 175). See Appeal Decision 2657 (BARNETT) (2006) (stating that "it is the sole purview of the ALJ to determine the weight of the evidence presented and to make credibility determinations."). The evidence in the record regarding what the company policy might have been clearly did not rise to the level of establishing a formal rule. Further, as noted above, Mr. Huddleston's testimony as to why he ordered Respondent to submit to a test on January 20, 2014, was inconsistent and unreliable. (Tr. at 158-59, 160-63, 190-92).

As discussed, the Coast Guard charged Respondent with Misconduct; this requires the Coast Guard prove Respondent violated a formal, duly established rule. 46 C.F.R. §5.27. However, the Coast Guard offered no such rule into the record. (Tr. at 173, 175). Thus, the Coast Guard failed to prove Respondent committed Misconduct pursuant to 46 C.F.R. §5.27.[5]

[5] On January 20, 2014, Respondent arrived at Jeff's Tugs office in Morgan City seeking employment. At that time, Mr. Huddleston told Respondent he was going to "go ahead and get a drug screen and physical on him…" (Tr. at 163). Respondent initially rejected the drug-testing requirement, and asked Mr. Huddleston why he had not been informed about the drug screen earlier. Respondent then stated he would not take a drug test and left Mr. Huddleston's office. (Tr. at 164-65).

An hour later, however, Respondent telephoned Mr. Huddleston indicated he was willing to take a drug test. (Tr. at 165). Mr. Huddleston then told Respondent that if he wanted to take a drug test, Respondent would have to go to Bourgeois Medical Center in Morgan City and pay for the test himself. (Tr. at 165).

Thereafter, Respondent telephoned Mr. Huddleston from Bourgeois Medical Center and said he had spent money on the test and now needed money to go home. In response, Mr. Huddleston drove to the Bourgeois Medical Center and personally delivered forty dollars ($40.00) to Respondent. (Tr. at 166). Inexplicably, however, Respondent departed the Bourgeois Medical Center without taking a drug test. (Tr. at 167, 179-80, 222-24) (See CG Ex. 10).

IV. ULTIMATE FINDINGS OF FACT

1. Respondent was an employee of Jeff's Tugs on or about January 20, 2014.

2. On January 8, 2014, Respondent signed Jeff's Tugs' "Drug and Alcohol Policy Summary and Compliance Statement."

3. On January 20, 2014, Respondent's marine employer, Jeff's Tugs, directed him to submit to a company-mandated urine test for the presence of illegal drugs.

4. On January 20, 2014, Respondent presented himself to the Bourgeois Medical Clinic in Morgan City, Lousiana for company-mandated drug testing.

5. On January 20, 2014, Respondent departed the Bourgeois Medical Center without taking a company-mandated drug test.

V. CONCLUSIONS OF LAW

1. Respondent and the subject matter of this hearing are properly within the jurisdiction vested in the Coast Guard under 46 U.S.C. §7703(1)(B); 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.

2. Respondent's marine employer, Jeff's Tugs, ordered Respondent to submit to a drug test on January 20, 2014; however, Respondent's marine employer did not order the test in accordance with a formal, duly established rule. 46 C.F.R. §16.105; 46 C.F.R. §5.27.

3. The Coast Guard **DID NOT PROVE** by a preponderance of reliable, probative, and credible evidence that Respondent committed either allegation of Misconduct. 46 U.S.C. §7703(1)(B); 46 C.F.R. §5.27.

VI. ORDER

IT IS HEREBY ORDERED THAT the allegations as set forth in the Complaint are found **NOT PROVED.** The matter is hereby **DISMISSED WITH PREJUDICE.**

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**).

IT IS SO ORDERED.

Bruce Tucker Smith
US Coast Guard
Administrative Law Judge

Date: October 06, 2014

Attachment A

Coast Guard's Witnesses

1. Raul Ainslie
2. Dawn Hahn
3. Jeffrey Huddleston
4. Carole Hidalgo

Coast Guard's Exhibits

1. Control and Custody Form
2. Sample Copy of Control and Custody Form
3. "Rapid Drug Screen" Chain of Custody Form
4. Drug Test report - At the hearing the court reserved it's ruling on admissibility, but thereafter ADMITTED this exhibit
5. Laboratory Litigation Package
6. NOT OFFERED OR ADMITTED
7. Jeff's Tugs Job Applicant Identification and Information Sheet
8. Mark Anthony Ransom's MMC
9. Drug and Alcohol Policy Summary and Compliance Sheet
10. Receipt
11. Physical Examination Flow Sheet
12. Mark Anthony Ransom's Alabama Driver's License
13. Request for Release of Medical Records

Attachment B

33 C.F.R. §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 C.F.R. §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 C.F.R. §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 C.F.R. §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.