

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

UNITED STATES COAST GUARD
Complainant

vs.

CAMERON MITCHELL

Respondent

Docket Number 2015-0212
Enforcement Activity No. 5160335

DECISION AND ORDER OF SANCTION FOLLOWING HEARING

Issued: October 28, 2015

By Hon. Parlen L. McKenna

Appearances:

**LCDR Nathan S. Menefee
Sector Los Angeles/Long Beach**

For the Coast Guard

MR. BENJAMIN SUSMAN, Esq.

For the Respondent

The United States Coast Guard (Coast Guard) brought these proceedings against Respondent Cameron J. Mitchell's Merchant Mariner Credential pursuant to 46 U.S.C. § 7703(1)(b) and Coast Guard regulations found at 46 C.F.R. Part 5. The case was conducted under the Administrative Procedure Act (5 U.S.C. § 551 et seq.) and the Coast Guard's procedural and evidentiary rules found at 33 C.F.R. Part 20. The Coast Guard alleged that Respondent failed to submit to a reasonable cause alcohol test on or about February 26, 2015. At

the time, Respondent was subject to the terms of a previous Settlement Agreement with the Coast Guard. See Docket No. 2014-0139, Enforcement Activity No. 4820749.¹

On August 20, 2015, I issued an Order Granting the Coast Guard's Motion for Summary Decision as to Fact of Violation. As a result of Respondent's admissions concerning the refusal to test on or about February 26, 2015, that Order also found that he had violated the then-current Settlement Agreement. Accordingly, Respondent's Coast Guard-issued credential was suspended immediately for six months per the terms of that Settlement Agreement. Additionally, the following jurisdictional and factual findings were made in the Order granting Summary Decision:

Jurisdictional Allegations:

- 1) Respondent holds the following Coast Guard-issued credential: MMC: 000237538.
- 2) Respondent acted under the authority of his MMC on February 26, 2015 by serving as Able Seaman aboard the vessel PRIDE OF AMERICA as required by law or regulation.

Factual Allegations:

- 1) On February 26, 2015, Respondent was serving as a crewmember on the MV PRIDE OF AMERICA (O.N. 9209221), an inspected vessel of the United States.
- 2) Respondent returned from authorized shore leave and displayed visible signs of intoxication to the gangway security guard.
- 3) Respondent was ordered by the Vessel Security Officer to take an alcohol test based on reasonable cause described in 33 C.F.R. § 95.035(a)(2).
- 4) Respondent refused to take an alcohol test as ordered by the Vessel Security Officer.
- 5) On February 26, 2015, Respondent committed an act of Misconduct as described by Title 46 C.F.R. § 5.27 by operating a vessel in violation of Title 46 U.S.C. § 2302(c) as described by Title 33 C.F.R. § 95.045(b).

In aggravation, the Coast Guard asserted that pursuant to the January 26, 2015 Order which contained the Revised Settlement Agreement for Docket Number 2014-0139, Respondent agreed to complete non-association with alcohol while signed onto any vessel and shall not be involved in any alcohol related incidents.

¹ The Coast Guard originally brought a Motion for Failure of Probationary Period, dated March 10, 2015. On April 8, 2015, it withdrew this Motion and brought a Complaint under a new Enforcement Activity and Docket Number, i.e., 5160355 and 2015-0212. The two cases were not formally consolidated and thus the earlier enforcement activity number remains open.

Given this Order and Respondent's admission as to the second violation, the sole issue remaining in this case is the appropriate sanction.² Therefore I conducted a hearing in Long Beach, California on September 1, 2015 focused on this singular issue. LCDR Nathan S. Menafee and Mr. Brian C. Crockett, Esq., appeared for the Coast Guard. Mr. Benjamin Susman, Esq., appeared on Respondent's behalf.

During the hearing, the Coast Guard called one witness and Respondent testified on his own behalf. The Coast Guard offered one exhibit into evidence, and Respondent offered five exhibits, all of which were admitted into evidence. Also, there was one Judge's Exhibit admitted into evidence. The witnesses who testified and the exhibits entered into evidence are listed on Attachment A.

Following the hearing, the parties met and conferred concerning an appropriate sanction and on September 30, 2015 filed a stipulated recommendation concerning the proper sanction for Respondent's established act of misconduct.

Findings of Fact Concerning Sanction

- 1) Mr. John Michael Gallagher, Jr., a licensed alcohol and drug counselor, substance abuse professional (SAP), and current Director of the Seafarer's Addictions Rehabilitation Center, testified during the hearing. Tr. at 7:14-8:6.
- 2) On or about March 30, 2015, Mr. Gallagher made a pre-treatment assessment of Respondent, which involved an evaluation concerning diagnosis and appropriate treatment. Tr. at 9:2-21; see also CG Exh. 1.
- 3) Mr. Gallagher determined that Respondent suffers from severe alcohol use disorder, which means that Respondent is an "alcohol dependent individual". Tr. at 10:2-5; 10:25-11:12.
- 4) Mr. Gallagher thus recommended that Respondent take part in a month-long inpatient treatment program, which Respondent completed at the Seafarer's treatment facility. Tr. at 12:11-13:15.
- 5) Since the time Respondent started this treatment, Mr. Gallagher has worked with Respondent and believes he has demonstrated improvement and is currently a "recovery oriented person". Tr. at 15:3-16:16.

² Respondent's counsel reiterated at the hearing that Respondent was not denying any of the Coast Guard's allegations and the only issue was the sanction for admitted refusal to test. Tr. at 3:4-5.

- 6) At the time of the hearing, Respondent had complied with all the terms of his aftercare agreement, which primarily consists of abstaining from alcohol and attending regular AA/NA meetings. Tr. at 18:6-19:5.
- 7) Respondent has gone through a program that focuses on relapse prevention and Mr. Gallagher believed that if Respondent maintains his commitment to sobriety and adheres to the twelve-step program, chances are good that he could stay in recovery and remain abstinent. Tr. at 20:6-21:14.
- 8) The most critical period for maintaining abstinence is the first year following treatment and if an individual remains in recovery for two years, there is a good chance that such individual will maintain such abstinence. Tr. 21:23-22:14.
- 9) Respondent deposited his Merchant Mariner credential with the Coast Guard on August 21, 2015 pursuant to my earlier Order Granting in Part the Coast Guard's Motion for Summary Decision. Tr. at 25:5-13.
- 10) Respondent returned to work under his Merchant Mariner Credential on February 7, 2015 pursuant to the terms of a modified Settlement Agreement with the Coast Guard. On February 27, 2015, Respondent had a subsequent refusal of an alcohol test. Tr. at 28:2-7.
- 11) Respondent has accepted the fact that he has a serious problem with alcohol addiction. Respondent appears committed to maintaining his sobriety following his inpatient treatment program at Seafarer's, including his further education and treatment at New Directions (a Veteran's Administration facility), attending NA/AA meetings and attempting to positively deal with his alcohol problems. Tr. at 30:5-32:3; 32:15-33:13; 38:9-39:3; 44:11-16; 45:21-49:13; see also Resp. Exh. 4-7, 10.
- 12) Respondent currently goes to AA meetings three or four times a week and has been doing so for the six months prior to the hearing. Tr. at 32:4-12; Resp. Exh. 4-6.

Analysis

The parties' joint submission following the hearing suggested the following as a proper sanction for Respondent's act of refusing to undergo the February 26, 2015 alcohol test. First, Respondent's Merchant Mariner Credential be suspended for twelve months, with the term of suspension deemed retroactively to have commenced on March 30, 2015 and running concurrently with the six month term of suspension previously imposed in enforcement activity # 4820749.

Second, during this term of suspension, the parties proposed Respondent must: 1) completely abstain from the use of alcohol; 2) not be involved in any alcohol related incidents

including, but not limited to: NDR offense convictions, intoxication aboard a merchant vessel, and violation of company drug and alcohol policies; 3) attend a substance abuse support program (such as AA/NA) at least two sessions per week; 4) participate in a random, unannounced alcohol testing program during the suspension period with Respondent taking at least one random alcohol test per month and reporting for testing no more than four hours from the testing coordinator's notification;³ and 5) at the end of the suspension period, Respondent must provide to the Coast Guard's Investigating Officer (IO) proof of attendance at AA/NA meetings and all results of the required alcohol testing (with all such results indicating a Blood Alcohol Content of 0.0 for compliance).

Third, the parties proposed that following the suspension period, Respondent shall serve a 12 month term of probation, with the same conditions as (1), (2), and (5), above with the following modifications to conditions (3) and (4):

(3) attend a substance abuse support program (such as AA/NA) for a minimum period of one-year at least two sessions per month when not signed on as a crew member aboard a commercial vessel making regular voyages greater than 24 hours; and

(4) participate in a random, unannounced alcohol testing program during the suspension period with Respondent taking at least 24 random alcohol tests during the 12 month probationary period and reporting for testing no more than four hours from the testing coordinator's notification.⁴

Finally, the parties proposed that if proven that Respondent failed to meet any of these terms during the suspension or probationary periods, his Coast Guard-issued credentials would be revoked.

The parties' proposed sanction appears reasonable and addresses many of the concerns present in this case. The suspension and probationary periods include significant random testing

³ The Respondent's proposed testing arrangements to be submitted and approved by the Coast Guard no later than October 1, 2015.

⁴ The parties proposed testing arrangements to be submitted and approved by the Coast Guard prior to commencement of the probationary period.

and require Respondent's continued attendance at AA/NA programs/meetings to help maintain his sobriety.

However, I have concerns that Respondent has proven in the past that he cannot be fully trusted to abide by an agreement made with the Coast Guard. Specifically, Respondent entered into a modified Settlement Agreement with the Coast Guard on or about January 26, 2015, the terms of which were quite beneficial to Respondent. In particular, Respondent was allowed to work under his credential due to hardship and supposed efforts to address his alcohol problems. Nevertheless, on or about February 26, 2015, Respondent committed the same offense (refusing to submit to a reasonable cause alcohol test) while subject to the modified Settlement Agreement. Both the Court and the Coast Guard had gone out of their respective ways to assist this mariner. However, he failed to comply approximately one month thereafter.

A further concern is the parties' suggestion that Respondent only report the results of the random tests and compliance with the AA/NA meeting requirements after the suspension/probation periods end. Presumably, the Coast Guard would be informed immediately should Respondent refuse any random test or if the test indicates his use of alcohol. However, the Coast Guard must receive documentary proof on at least a monthly basis that Respondent has maintained his attendance at AA/NA meetings to ensure that he stays in compliance with this remedial measure.

Upon consideration of all the facts and circumstances, I find the parties' recommended sanction adequate to promote safety at sea, provided that Respondent report the results of both his random alcohol tests immediately during his suspension/probationary period and report his attendance at the required AA/NA meetings on a monthly basis. The hearing testimony revealed both that Respondent has undergone extensive alcohol rehabilitation education and has maintained his sobriety since March 30, 2015. The SAP credibly testified that Respondent has a good chance to adhere to his treatment and maintain his sobriety. Finally, I found Respondent's

testimony concerning the changes he has made to his life and his commitment to maintaining an alcohol-free lifestyle equally earnest and credible.

To be clear, this is Respondent's last chance. Any further proven miscues will almost certainly result in revocation of his Coast Guard-issued credentials.

WHEREFORE:

ORDER

IT IS HEREBY ORDERED THAT Respondent's Coast Guard-issued credentials are **SUSPENDED OUTRIGHT** for a period of **TWELVE (12) MONTHS** effective **MARCH 30, 2015** as a consequence of his proven act of misconduct. This period of suspension will run concurrently with the previously-ordered **SIX (6) MONTHS SUSPENSION** as a result of my partial grant of the Coast Guard's Motion for Summary Decision on August 20, 2015.

IT IS HEREBY FURTHER ORDERED THAT during this term of suspension, Respondent must:

- 1) Abstain from the use of alcohol;
- 2) Not be involved in any alcohol related incidents including, but not limited to: NDR offense convictions, intoxication aboard a merchant vessel, and violation of company drug and alcohol policies;
- 3) Attend a substance abuse support program (such as AA/NA) at least two sessions per week;
- 4) Participate in a random, unannounced alcohol testing program during this suspension period with Respondent taking at least one random alcohol test per month and reporting for testing no more than four hours from the testing coordinator's notification;⁵ and
- 5) Provide the Coast Guard's Investigating Officer proof of attendance at AA/NA meetings and all results of the required alcohol testing (with all such results indicating a Blood Alcohol Content of 0.0 for compliance) on a monthly basis.

IT IS HEREBY FURTHER ORDERED THAT following the 12 month suspension ordered herein, Respondent will serve a **TWELVE (12) MONTH PROBATION PERIOD** during which Respondent:

- 1) Must abstain from the use of alcohol;
- 2) Not be involved in any alcohol related incidents including, but not limited to: NDR offense convictions, intoxication aboard a merchant vessel, and violation of company drug and alcohol policies;
- 3) Attend a substance abuse support program (such as AA/NA) for a minimum period of one-year at least two sessions per month when not signed on as a crew member aboard a commercial vessel making regular voyages greater than 24 hours;
- 4) Participate in a random, unannounced alcohol testing program during the suspension period with Respondent taking at least 24 random alcohol tests during the 12 month probationary period and reporting for testing no more than four hours from the testing coordinator's notification;⁶ and

⁵ The testing arrangements are to be submitted and approved by the Coast Guard's Investigating Officer no later than two weeks from the date of this Decision if not done so already.

5) at the end of the probationary period, Respondent must provide to the Coast Guard's IO proof of attendance at AA/NA meetings and all results of the required alcohol testing (with all such results indicating a Blood Alcohol Content of 0.0 for compliance).

SO ORDERED.

/s/ Parlen L. McKenna

Parlen L McKenna

Administrative Law Judge

United States Coast Guard

Date: October 28, 2015

⁶ The parties proposed testing arrangements to be submitted and approved by the Coast Guard prior to commencement of the probationary period.

Attachment A – Witness and Exhibits

Coast Guard Witnesses

1) John Michael Gallagher, Jr.

Respondent's Witnesses

1) Cameron Mitchell

Coast Guard Exhibits

CG-01) Seafarer's Addiction Assessment Treatment (page 1 only)

Respondent's Exhibits

R-04) AA/NA Logs

R-05) AA/NA Logs

R-06) AA/NA Logs

R-07) New Directions letter

R-10) Certificates of completion

Judge's Exhibit

J-01) Seafarer's Addiction Assessment Treatment (additional pages)