

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

UNITED STATES COAST GUARD
Complainant

VS.

TODD ANDREW FISSETTE
Respondent

Docket Number 2015-0110
Enforcement Activity No. 5103054

DECISION AND ORDER
Issued: November 13, 2015

By Administrative Law Judge: Honorable Dean C. Metry

Appearances:

**LTJG Ethan S. Lewallen
LT Lynn Buchanan
Marine Safety Unit Port Arthur**

For the Coast Guard

Todd Andrew Fisette, Pro se

For the Respondent

The undersigned held a hearing in Beaumont, Texas from November 9, 2015 through November 10, 2015. At the conclusion of the hearing, the parties waived their right to file post-hearing briefs, and the undersigned rendered an oral decision. See 33 C.F.R. § 20.902; 33 C.F.R. § 20.710. The undersigned found all three allegations contained in the Coast Guard's Amended Complaint proved. In regard to the first allegation (use of, or addiction to the use of dangerous drugs pursuant to 46 U.S.C. § 7704), the undersigned revoked Respondent's credential. In regard to the second allegation (conviction of a dangerous drug law in 2009 pursuant to 46

U.S.C. § 7704), the undersigned issued no sanction against Respondent's credential. In regard to the third allegation (conviction of a dangerous drug law in 2013 pursuant to 46 U.S.C. § 7704), the undersigned suspended Respondent's credential for 24 months. The hearing transcript contains the record of the hearing in its entirety, including the oral decision and sanctions.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED Merchant Mariner's Credential 72748 and all other Coast Guard licenses, certificates and documents issued to Respondent, Todd Andrew Fisette, are hereby **REVOKED**. Respondent must surrender all Coast Guard issued credentials to the Coast Guard, Sector Port Arthur, 2901 Turtle Creek Drive, Port Arthur, TX 77642 by November 17, 2015. If Respondent knowingly continues to use his documents, he may be subject to criminal prosecution.

PLEASE TAKE NOTICE service of this Order on you serves as notice of your right to appeal as set forth in 33 C.F.R. §§ 20.1001-20.1004. (Attachment B). The appeal time runs from the date the oral decision was rendered, November 10, 2015. A copy of the transcript will be provided to either party if requested.

**Dean C. Metry
US Coast Guard Administrative Law Judge**

Date: November 13, 2015

ATTACHMENT A
WITNESS AND EXHIBIT LIST

Coast Guard Witnesses

1. Rachel Beranek
2. Andy Firmin
3. Robert Woody
4. Thomas Dupont
5. Jerome Cooper
6. Dawn Hahn
7. Carl Goodson

Coast Guard Exhibits

1. Todd Fisette's Merchant Mariner Credential
2. Todd Fisette's June 8, 2009 Judgment of Conviction for Felony Possession of a Controlled Substance
3. Todd Fisette's December 3, 2009 Probation Order
4. Motion to Revoke Todd Fisette's Probation
5. Todd Fisette's July 8, 2013 Judgment Revoking Community Supervision
6. Todd Fisette's July 8, 2013 Judgment of Conviction for Felony Possession of a Controlled Substance
7. SeaTran Marine's Chemical Testing Policy
8. Printout of SeaTran Marine's Payroll
9. Copy of Ship's Log from the Greater Scott
10. Todd Fisette's Direct Deposit Voucher from SeaTran Marine
11. Andy Firmin's Statement
12. Andy Firmin's Statement
13. Todd Fisette's Separation Notice
14. Robert Woody's Statement
15. Carl Goodson's Statement (offered but not admitted)
16. Thomas Dupont's Certificate of Completion for Supervisor Reasonable Suspicion/Cause Training
17. Thomas Dupont Certificate of Completion for the Qualified Urine Collector Course
18. Federal Drug Testing Custody and Control Form
19. Federal Drug Testing Custody and Control Form
20. Federal Drug Testing Custody and Control Form
21. Medical Review Officer Worksheet
22. Medical Review Officer Final Report (offered but not admitted)
23. Dawn Hahn's CV
24. Litigation Package

Respondent Witnesses

1. Todd Fisette (Respondent)

ATTACHMENT B

NOTICE OF APPEAL RIGHTS

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.