

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

UNITED STATES COAST GUARD
Complainant

vs.

RODNEY DARRELL CURLEE
Respondent

Docket Number 2014-0271
Enforcement Activity No. 4900578

ORDER VACATING DECISION AND ORDER
ORDER GRANTING COAST GUARD MOTION TO AMEND COMPLAINT
ORDER GRANTING RESPONDENT'S MOTION TO FILE AMENDED ANSWER
DECISION AND ORDER

I. PROCEDURAL HISTORY

On July 7, 2015, the undersigned Administrative Law Judge issued a Decision and Order in this case. That Decision and Order followed a hearing on the Coast Guard's charges against Rodney Darrell Curlee (Respondent), which sought revocation of his Coast Guard-issued Merchant Mariner's Credential (MMC) alleging use of, or addiction to the use of, dangerous drugs—a violation of 46 U.S.C. §7704(c) and 46 C.F.R. §5.35. More particularly, the Complaint alleged that on April 28, 2014, Respondent submitted to a random drug test by providing a urine sample that subsequently tested positive for amphetamines.

On October 22, 2014, Respondent filed an Answer admitting all jurisdictional allegations and admitting some factual allegations.

On January 28, 2015, the hearing commenced in the Administrative Law Judge (ALJ) Courtroom, Hale Boggs Federal Building, New Orleans, Louisiana. Lieutenant Katrian M. Hernandez and James D. Fayard of Sector Lower Mississippi River appeared on behalf of the Coast Guard; Jeffrey L. Sanford, Esq., appeared on behalf of Respondent, who was also present in court. At hearing, the Coast Guard presented no witness testimony and offered six exhibits into evidence, all of which were admitted into the record.

At the hearing, Respondent admitted that on April 28, 2014, he was serving as captain, “running the boat at the time” when he was ordered by his marine employer’s safety representative to submit to a random urinalysis. (Tr. at 33). The testing was conducted pursuant to his marine employer’s drug policy. (CG Ex. 1). Drug testing was, and is, a requirement imposed upon all licensed mariners. Respondent was operating under his credential at the time he was both operating the vessel and at the time he was selected for chemical testing. Hence, it is clear that jurisdiction existed at the time of the original Complaint and hearing, as it does now, in this case.

Also at the hearing, Respondent admitted all of the elements of the Coast Guard’s prima facie case, to wit: Respondent admitted he was the individual tested for drugs; the urine specimen he provided tested “positive” for the presence of amphetamines; and the test of his urine specimen was conducted in accordance with 46 C.F.R. Part 16 and 49 C.F.R. Part 40. (Tr. 29-46). Respondent also testified that he had/has a lifetime medical diagnosis of Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (ADD/ADHD) which has been, and is presently, treated by the use of Adderall. (Tr. 42, 67, 90-91). Respondent testified that at the time he was selected for random testing, he used Adderall, an amphetamine, to treat his ADD/ADHD disorder; albeit without a then-current prescription from a licensed physician. (Tr. 41, 43-44).

After careful review of the entire record, including witness testimony, applicable statutes, regulations, and case law, the court found that Respondent admitted all elements of the Coast Guard's prima facie case; therefore, the court found the allegations as set forth in the Complaint were proved.

The Coast Guard's original Complaint sought revocation of Respondent's credential. Title 46 U.S.C. §7704(c) mandates that a Coast Guard issued credential shall be revoked if it is proven "that the holder of the credential has been a user of, or addicted to, the use of dangerous drugs, unless the holder provides satisfactory proof that the holder is cured." Id. (emphasis added). The statute does not define what "cure" means. However, the concept of "cure" is typically discussed in that line of cases flowing from Appeal Decision 2535 (SWEENEY) (1992).¹

The cure set forth in SWEENEY is a rigorous course of conduct whereby a respondent must not only participate in an active rehabilitation program, he must also submit to random urinalysis testing for a full calendar year. At the time of the hearing, Respondent had not proved "cure" as that term had been previously defined by Coast Guard case law. Thus, revocation of Respondent's credential was mandatory in this case.

However, this case was, from the outset, extraordinary. The undersigned Administrative Law Judge specifically found that:

¹ SWEENEY defines "cure" as:

1. The respondent must have successfully completed a bona fide drug abuse rehabilitation program designed to eliminate physical and psychological dependence. This is interpreted to mean a program certified by a governmental agency, such as a state drug/alcohol abuse administration, or in the alternative, certified by an accepted independent professional association, such as the Joint Commission on Accreditation of Health Care Organizations (JCAHO).
2. The respondent must have successfully demonstrated a complete non-association with drugs for a minimum period of one year following successful completion of the rehabilitation program. This includes participation in an active drug abuse monitoring program which incorporates random, unannounced testing during that year.

Respondent had/has a lifelong medical diagnosis of Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder, for which Adderall was/is a medically appropriate therapy.

Although on or before April 28, 2014, Respondent did not have a current prescription for the use of Adderall, his use of Adderall was medically necessary and appropriate.

The Coast Guard never produced any evidence that Respondent had used, or was addicted to, **illicit** drugs in the manner contemplated by the strictures of 46 U.S.C. §7704(c) and 46 C.F.R. §5.35.

On November 16, 2016, and pursuant to the provisions of 33 CFR §20.309, the Coast Guard and Respondent jointly filed a Motion to Vacate the July 7, 2015 Decision and Order on the basis of new and additional evidence in this case: to wit, proof of Respondent's "cure" as that term is defined by **SWEENEY** and its progeny. Based upon the court's examination of that new evidence and, particularly upon the representations of Coast Guard counsel, the parties' joint Motion to Vacate the court's July 7, 2015 Decision and Order is hereby **GRANTED**.

II. THE AMENDED COMPLAINT AND ANSWER

Also on November 16, 2016, the Coast Guard moved the court to allow an amendment of the original Complaint. Respondent joins in that Motion and files an Amended Answer in response to the Amended Complaint. There being good cause to do so, and there being no obvious prejudice to either party, the court hereby **GRANTS** the parties' joint Motion to Amend the Complaint and to File an Amended Answer to the amended Complaint.

The Amended Complaint alleges that on April 28, 2014, Respondent was employed by Deloach Marine of Port Allen, LA, as a relief captain aboard the tow vessel CITY OF PORT ALLEN. The Amended Complaint further alleges that, as an employee of Deloach Marine, Respondent knew of and was subject to his employer's "Controlled Substances/Illegal Drugs & Alcohol Testing Policies & Procedures." The Amended Complaint further alleges that on April

28, 2014, Respondent possessed amphetamine salts (Adderall) without an authorized medical prescription, while on board the CITY OF PORT ALLEN, in violation of the Deloach drug policies and procedures. The Coast Guard alleges that Respondent's possession of Adderall, while aboard his employer's vessel, without a valid prescription, constitutes Misconduct as defined by 46 USC §7703(1)(b) and 46 CFR §5.27. The Coast Guard seeks 12 months suspension of Respondent's MMC as a sanction for the alleged Misconduct.

In his Amended Answer, Respondent admits all jurisdictional and factual allegations in the Amended Complaint and specifically agrees with the proposed Order.

III. DISCUSSION

The purpose of Coast Guard Suspension and Revocation proceedings is to promote safety at sea. See 46 U.S.C. §7701. Pursuant to 46 C.F.R. §5.19, an ALJ holds the authority to suspend or revoke a license or certificate in a hearing for violations arising under 46 U.S.C. §7703 and/or §7704.

Determining the weight of the evidence and making credibility determinations as to the evidence is within the sole purview of the ALJ. See Appeal Decision 2640 (PASSARO) (2003). Additionally, the ALJ is vested with broad discretion in resolving inconsistencies in the evidence, and findings do not need to be consistent with all of the evidence in the record as long as there is sufficient evidence to reasonably justify the findings reached. Id.; Appeal Decision 2639 (HAUCK) (2003).

In their Joint Motion, the parties specifically stipulate that the evidence and testimony received by the court in the original January 28, 2015, hearing is undisputed and "may serve as the basis for a future decision by the ALJ under 33 CFR 20.902 if the current Decision and Order is vacated." Therefore, the parties asked the court to adjudicate this matter anew, based upon the extant record and the evidence newly received from Respondent.

A. Jurisdiction

“The jurisdiction of administrative bodies is dependent upon the validity and the terms of the statutes reposing power in them.” Appeal Decision 2620 (COX) (2001) (quoting Appeal Decision 2025 (ARMSTRONG) (1975)). “Where an Administrative forum acts without jurisdiction its orders are void.” Appeal Decision 2025 (ARMSTRONG) (1975). Therefore, establishing jurisdiction is critical to the validity of a proceeding. Appeal Decisions 2677 (WALKER) (2008); 2656 (JORDAN) (2006).

In order to establish jurisdiction in this case, the Coast Guard must prove that the acts of Negligence and/or Misconduct occurred while the Respondent was “acting under the authority of his MMC.” 46 U.S.C. §7703. Appeal Decision 2425 (BUTTNER) (1986) plainly states that jurisdiction is a question of fact that must be proven by the Coast Guard. “A person employed in the service of a vessel is considered to be acting under the authority . . . [when a credential is] (1) Required by law or regulation; or (2) Required by an employer as a condition for employment.” 46 C.F.R. §5.57(a). Accordingly, if neither of the criteria set forth at 46 C.F.R. §5.57(a) is met, then the Coast Guard has no jurisdiction for a Suspension and Revocation proceeding. Appeal Decision 2620 (COX) (2001) further adds that jurisdiction must be affirmatively shown and will not be presumed. See also Appeal Decision 2025 (ARMSTRONG) (1975).

In his Amended Answer, Respondent admits all jurisdictional allegations in the Amended Complaint.

Moreover, at all relevant times herein, Respondent was on his marine employer’s payroll; serving aboard his marine employer’s vessel, the CITY OF PORT ALLEN. Respondent admits that on April 28, 2014, he was serving as captain, “running the boat at the time” when he was ordered by his marine employer’s safety representative to submit to a random urinalysis. (Tr. at 33). The testing was conducted pursuant to his marine employer’s drug policy. (CG Ex. 1).

Inasmuch as Respondent served as a captain on a vessel that required a credentialed Master, the character of Respondent's employment was clearly within the scope of his MMC. In that regard, the court finds jurisdiction appropriate in a case such as the one at bar. See Appeal Decision 2615 (DALE) (2000). Here, the court has jurisdiction over Respondent and the subject matter at hand.

B. Burden of Proof

In this case, like all Suspension and Revocation cases, the Coast Guard bears the burden of proof to establish the requisite facts mandated by the organic statute, 46 U.S.C. §7703, and the implementing regulations, 46 C.F.R. Part 5 and Part 10, Subpart B; 33 C.F.R. Part 20. The Administrative Procedure Act (APA), 5 U.S.C. §§551-559, applies to Coast Guard Suspension and Revocation hearings before United States ALJs. The APA authorizes imposition of 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). The Coast Guard bears the burden of proof to establish the charges are supported by a preponderance of the evidence. 33 C.F.R. §§20.701, 20.702(a). Similarly, a respondent bears the burden of proof in asserting any affirmative defense by a preponderance of the evidence. 33 C.F.R. §§20.701, 20.702; Appeal Decisions 2640 (PASSARO) (2003); 2637 (TURBEVILLE) (2003). "The term substantial evidence is synonymous with preponderance of the evidence as defined by the U.S. Supreme Court." Appeal Decision 2477 (TOMBARI) (1988) (citing Steadman v. SEC, 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 & Products of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.,

508 U.S. 602, 622 (1993) (quoting In re Winship, 397 U.S. 358, 371-72 (1970) (Harlan, J., concurring) (brackets in original)).

As per 46 U.S.C. §7703(1)(B), a mariner's credential may be suspended or revoked if that mariner has committed an act of Negligence or an act of Misconduct.

Therefore, the Coast Guard is obligated to prove by credible, reliable, probative and substantial evidence that Respondent more-likely-than-not committed the acts alleged in the Amended Complaint.

C. Misconduct

Misconduct is defined in 46 C.F.R. §5.27 as 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.

In this case, the court finds that Respondent committed Misconduct when he violated his employer's drug policy prohibiting the use of "illegal drugs" and defined those substances as "any drug . . . (b) which is legally obtainable, but has not been legally obtained." (CG Ex. 1).²

Once again, in his Amended Answer, Respondent admits all of the factual allegations contained in the Amended Complaint.

Nevertheless, and consistent with the parties' stipulation regarding the evidence and testimony received at the original January 28, 2015 hearing, the undersigned Administrative Law Judge makes the following findings of fact.

² Likewise, Respondent's possession of amphetamine, a controlled substance, without a prescription, violates 21 U.S.C. §844, which provides in part: "It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II of this chapter."

IV. FINDINGS OF FACT

1. At all relevant times, Respondent was a holder of a valid Coast Guard-issued Merchant Mariner's Credential. (Answer).
2. At all relevant times, Respondent's marine employer, Deloach Marine, maintained a company drug policy prohibiting the use of "illegal drugs" and defined those substances as "any drug . . . (b) which is legally obtainable, but has not been legally obtained." (CG Ex. 1).
3. On April 28, 2014, Deloach Marine randomly selected Respondent to submit to a urinalysis. (Tr. at 32 – 35).
4. On April 28, 2014, Respondent provided a urine specimen to Charles Hall, a certified drug collection specialist, for drug analysis. (Tr. at 36 – 37; CG Ex. 2, 5).
5. On April 28, 2014, Respondent signed a Federal Drug Testing Custody and Control form, bearing a discrete identification number assigned to his urine specimen. (Tr. at 37; CG Ex. 3).
6. On April 28, 2014, Respondent's urine specimen was collected and processed in accordance with 49 C.F.R. Part 40. (Tr. at 37).
7. On April 30, 2014, Respondent's urine specimen, bearing the same discrete identification number as listed on his Federal Drug Testing Custody and Control form, was tested by One Source Toxicology Laboratory, Inc., Pasadena, Texas, a Department of Transportation (DOT)-certified drug testing laboratory. (CG Ex. 5).
8. On May 1, 2014, Respondent's urine specimen, bearing the same discrete identification number as listed on his Federal Drug Testing Custody and Control form, tested positive for amphetamines. (CG Ex. 5).
9. On May 2, 2014, Dr. Russell J. Green, a DOT-certified Medical Review Officer (MRO), telephoned Respondent and reported the positive drug test results to Respondent. (Tr. at 38 – 41; CG Ex. 4).
10. Prior to his random drug test, Respondent knowingly possessed Adderall, an amphetamine, without a prescription. (Tr. at 41).
11. Respondent has taken Adderall since he was five years old and was medically diagnosed with either Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder (ADD/ADHD). (Tr. at 42; Resp. Ex. C, D, E).
12. Respondent told the MRO that he had taken his wife's Adderall for treatment of his ADD/ADHD. (Tr. at 38; CG Ex. 4).
13. The MRO did not review Respondent's medical history or review other biomedical factors related to Respondent's use of Adderall.

14. Dr. Benjamin Allen Root is Respondent's current treating physician. On August 5, 2014, Dr. Root prescribed Adderall to Respondent to help Respondent "concentrate on his job as well as activities of daily living." (Tr. at 66 – 68).

The court finds that on or before April 28, 2014, Respondent committed Misconduct because he knowingly violated his employer's drug policy by possessing a controlled substance (his wife's Adderall) while aboard his employer's vessel, without a valid, current medical prescription. Thus, the allegations in the Amended Complaint are **PROVED**. It must be noted, however, that the gravamen of the offense, here, is a technical one. The medical testimony revealed that Respondent carried a life-long medical diagnosis of Attention Deficit Hyperactivity Disorder for which Adderall is the appropriate therapy. In this instance, Respondent failed to obtain a current, valid prescription from his physician before taking his wife's Adderall.

V. SANCTION

The authority to impose sanctions at the conclusion of a case is exclusive to the ALJ. 46 C.F.R. §§5.567; 5.569(a); Appeal Decision 2362 (ARNOLD) (1984). The nature of this non-penal administrative proceeding is to "promote, foster, and maintain the safety of life and property at sea." 46 U.S.C. §7701; 46 C.F.R. §5.5; Appeal Decision 1106 (LABELLE) (1959).

The Coast Guard seeks a twelve-month suspension of Respondent's credential. Moreover, in their Joint Motion, the parties specifically stipulate that "the time that has elapsed since July 7, 2015, the date when Respondent's credential was revoked, should be counted as credit toward the completion of any term of suspension ordered as a sanction" in this case.

In determining an appropriate sanction for offenses for which revocation is not mandatory, an ALJ should consider: any remedial actions undertaken by a respondent; respondent's prior records; and evidence of mitigation or aggravation. See 46 C.F.R. §5.569(b)(1)-(3).

In this case, the Coast Guard **PROVED** Misconduct as alleged in the Amended Complaint.

Remedial Action: Respondent provided significant new evidence of independent, remedial action undertaken by him which, indeed, mitigate any sanction that might be imposed. See 33 C.F.R. §5.569(b)(1). The court points with specificity to Respondent’s newly-offered Exhibits G and H, provided as part of the parties’ instant Joint Motion. Those documents are entirely consistent with Dr. Root’s prior testimony that Respondent carries a lifelong medical diagnosis of Attention Deficit Hyperactivity Disorder for which Adderall is a medically appropriate treatment. The new documents also suggest Respondent’s attentiveness to his medical condition and the legally-responsible way he has ensured his compliance with his employer’s Drug Policy. The court also notes Respondent’s honesty, candor and cooperativeness with the Coast Guard throughout these proceedings.³

³ Respondent testified credibly that he had taken Adderall, an amphetamine, since he was five years old; the time he was diagnosed with either Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder (ADD/ADHD). (Tr. at 42). Respondent also provided his medical records, dating from 1993, which substantiate a life-long diagnosis of ADHD. (Resp. Ex. C, D, E). Respondent explained that at the time he was randomly selected for drug testing, he was taking his wife’s Adderall because he could not afford to for both he and his wife to be seen by a physician to obtain a prescription for the medication. (Tr. at 43).

Dr. Benjamin Allen Root, Jr., Respondent’s treating psychiatrist, testified that Respondent had a long-standing diagnosis that mandated the use of Adderall for the treatment of ADD/ADHD. Moreover, Dr. Root provided a current medical diagnosis of Respondent’s ADD/ADHD, consistent with Respondent’s long-standing medical history. (Resp. Ex. A, B)

Dr. Root testified at length regarding Respondent’s medical history and that because of his current diagnosis of ADD/ADHD Respondent “needs Adderall to help him control his symptoms.” (Tr. at 60 – 67; Resp. Ex. B). Dr. Root further testified that on August 5, 2014, he renewed Respondent’s prescription for Adderall and specifically noted that Respondent should be taking that drug to help him “concentrate on his job as well as activities of daily living.” Respondent remains under Dr. Root’s care. (Tr. at 66 – 68).

The court finds Dr. Root highly credible. Dr. Root’s professional involvement with Respondent is a major consideration, as is Dr. Root’s review and explanation of Respondent’s significant medical history.

Likewise, the court finds Respondent to be highly credible. The court gives great weight to his candor and gives particular weight to the fact Respondent made significant declarations against his own interest by freely admitting he violated his company’s policy against taking prescription drugs without a prescription. Such an admission could have resulted in both his firing and a criminal prosecution. Thus, the undersigned finds Respondent’s testimony highly credible in this case.

Equally important to the court’s deliberation is Respondent’s marine employer’s letter to the court; written “with full knowledge of Mr. Rodney Curlee’s positive U/A for amphetamines.” That letter states, in part, that Respondent:

Is always willing to go the extra mile to do a job completely, correctly, safely and on time. Despite his young age, his hard work and dedication has (sic) paid off, making him one of [our] most valuable Mariners.

Thus, the court hereby imposes a twelve-month suspension of Respondent's MMC; said suspension to commence on July 7, 2015 and to conclude July 6, 2016. In short, Respondent is given credit for the time his license was previously revoked. That period is now properly classified as a suspension, not a revocation, and that having served that twelve-month suspension, his MMC should be returned to him forthwith.

VI. ULTIMATE FINDINGS OF FACT

1. At all relevant times, Respondent was the holder of a valid Coast Guard-issued Merchant Mariner's Credential.
2. At all relevant times, Respondent's marine employer maintained a written policy prohibiting employees from using otherwise legal drugs without a valid medical prescription.
3. On April 28, 2014, Respondent was randomly selected to provide a urine specimen for drug testing. His selection was made by a scientifically/mathematically valid means.
4. On April 28, 2014, Respondent's urine specimen was properly collected by a DOT-certified urine specimen collector.
5. On May 1, 2014, Respondent's urine specimen was properly collected and tested in a DOT-certified drug testing laboratory. His sample tested positive for amphetamines.
6. Adderall, an amphetamine, is a prescription medication for the treatment of Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder.
7. Respondent had/has a lifelong medical diagnosis of Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder, for which Adderall was/is a medically appropriate therapy.

(Resp. Ex. F).

The same letter also described Respondent's voluntary assessment and education at "Correctional Counseling" in Jackson, Mississippi, after the events of April 28, 2014. (Respondent's Ex. F). Although the evidence in this case establishes a violation of 46 U.S.C. §7704(c), the undersigned believes that the totality of the circumstances and the evidence suggests that Respondent is a strong candidate for clemency. Respondent's use of Adderall was, and is, medically appropriate. The undersigned urges the Commandant, in any future decision relative to Respondent's application for renewal of his MMC, to consider that Respondent's use of Adderall was supported by medical evidence and is consistent with safety at sea.

8. Although on or before April 28, 2014, Respondent did not have a current prescription for the possession or use of Adderall, his use of Adderall was medically necessary and appropriate.

VII. ULTIMATE 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. §7704(c); 46 C.F.R. Parts 5 and 16; 33 C.F.R. Part 20; and the APA as codified at 5 U.S.C. §§551-59.
2. On April 28, 2014, Respondent was the holder of a valid Coast Guard-issued credential and was also acting under the authority of his credential when aboard his employer's vessel and when ordered to submit to a random urinalysis.
3. Respondent was properly ordered to submit for testing in accordance with 46 C.F.R. Part 16 in that he was randomly selected by a scientifically/mathematically valid method.
4. Respondent's urine specimen was collected in accordance with 49 C.F.R. Part 40, subparts D and E.
5. Respondent's urine specimen was tested in accordance with the provisions of 49 C.F.R. Part 40, subparts F and G.
6. The results of Respondent's urine specimen test revealed the presence of amphetamine, a dangerous drug.
7. Respondent possessed Adderall on April 28, 2014, while aboard his employer's vessel, without a valid/current medical prescription for Adderall and by so doing, violated his employer's drug policy.

VIII. CONCLUSION

The Coast Guard **PROVED** that Respondent committed Misconduct by possessing Adderall while aboard his employer's vessel without a valid or current medical prescription for the Adderall. This, in violation of Respondent's employer's drug policy.

IX. ORDER

Respondent's Coast Guard-issued credential is **SUSPENDED** for twelve months, said suspension to commence retroactively on July 7, 2015 and to conclude July 6, 2016. In short,

Respondent is given credit for the time his license was previously revoked. Respondent's MMC should be returned to him forthwith.

IT IS SO ORDERED.

A handwritten signature in blue ink that reads "Bruce T. Smith".

Bruce Tucker Smith
US Coast Guard
Administrative Law Judge

Date: November 18, 2016

ATTACHMENT A: WITNESS & EXHIBIT LISTS

Coast Guard Exhibits

1. Deloach Marine Controlled Substances policy
2. Charles D. Hall DOT Certification
3. Federal Drug Testing Custody and Control Form – Copy 3
4. Federal Drug Testing Custody and Control Form – MRO copy
5. One Source Toxicology Laboratory “litigation package”
6. Random Selection methodology

Respondent Exhibits

- A. Curriculum Vitae of Dr. Benjamin Allen Root, Jr.
- B. Root letter
- C. Psychological evaluation
- D. Medical report
- E. Children’s medical group report
- F. Louisiana Marine letter
- G. Letter from Dr. Root, dated September 9, 2016
- H. Adderall prescription, from Dr. Root, dated October 17, 2016.

ALJ Exhibits

None

Coast Guard’s Witnesses

None

Respondent’s Witnesses

Rodney Darrell Curlee
Benjamin Allen Root, Jr., MD

ATTACHMENT B: SUBPART J, APPEALS

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.