

**UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD**

UNITED STATES COAST GUARD)
 Complainant)

vs.)

JAMES E. HOFFMAN)
 Respondent)

) **Docket Number: 00-0127**
) **PA Number: 00000073**

BEFORE: THOMAS E. MCELLIGOTT
 Administrative Law Judge

DECISION & ORDER

On or about 11 February 2000, Investigating Officer Brett Major of Marine Safety Office (MSO) Mobile Detached Duty Office Panama City, Florida served and filed a Complaint with allegations of "Misconduct." Factual allegations alleged that on 05 November 1999, at the onsite location, Boston, Massachusetts, the Respondent did refuse to submit to a pre-employment chemical test as required by 46 CFR Part 16, in that he submitted a urine sample that was found to have been adulterated, and thereby deemed a refusal by the Medical Review Officer.

The Administrative Law Judge (ALJ) Houston prepared, served and filed a Notice of Hearing for 20 June 2000, and continued it to 30 June 2000 at the request of both sides. The ALJ also scheduled and held a pre-hearing conference with both sides on 17 April 2000, and sent out a Pre-hearing Conference Report to both sides.

Respondent and his attorney, Richard G. Alexander of Mobile, Alabama, filed an "Answer" dated 25 February 2000 in which they denied all factual allegations and requested a hearing in Mobile, Alabama, as did the Investigating Officer.

On or about 09 March 2000, the U.S. Coast Guard MSO Mobile, by Investigating Officer Mark Shane Raiford, filed two (2) second Complaints entitled "First Amended Complaints."

The First Amended Complaint alleged "Misconduct" and included factual allegations stating the following: The Coast Guard alleges that on 05 November 1999 at on site collection that Respondent wrongfully submitted an adulterated pre-employment urine sample to the onsite collector. The contracted laboratory, Quest Diagnostics of San Diego, reported the urine sample was adulterated and that the pH level was too low. The Medical Review Officer for Great Lakes Dredge & Dock, Mr. George M. Ellis, Jr., of Greystone Health Sciences Corporation, ruled it constitutes an adulterated urine sample as a refusal to submit.

The second Complaint alleged "Conviction for a Dangerous Drug Law Violation" and factual allegations alleging the following: The Coast Guard alleges that within the last ten (10) years, the Respondent was convicted of violating a dangerous drug law of the United States. Respondent was convicted, 12 February 1998, for purchasing crack cocaine from an undercover law enforcement officer in Panama City, Florida.

Respondent's attorney on 29 March 2000 filed their formal "Answer" in response to the First Amended Complaints issued by MSO Mobile, Alabama on 09 March 2000 and denied all factual allegations regarding "Misconduct" and "Conviction of a Dangerous Drug Law." Respondent requested a hearing on the proposed order in Mobile, Alabama.

On or about 05 April 2000, Investigating Officer Jerry A. Hubbard, Lieutenant, U.S. Coast Guard, of the MSO Mobile, Alabama, requested a continuance to 20 June 2000, which was granted by the Judge without objection by the Respondent's attorney who agreed to the proposed change.

A pre-hearing telephone conference was held with the Administrative Law Judge, Thomas E. McElligott; Respondent's attorney, Richard G. Alexander; and the Investigating Officer, Lieutenant Jerry Hubbard on 17 April 2000. Following that, another pre-hearing conference was held on 20 June 2000 between Investigating Officer Lieutenant Jerry Hubbard, Respondent's attorney and Respondent. A third Complaint and Answer dated 19 June 2000 was then served and filed. The factual allegations were "Conviction for a Dangerous Drug Law Violation." This third Complaint was entitled "Second Amended Complaint," dated 19 June 2000. The Coast Guard alleges under the factual allegations that within the last ten (10) years, the Respondent was convicted of violating a dangerous drug law of the United States. Respondent pleaded nolo contendere ("no contest") on 12 February 1998 to the offense of purchasing cocaine in Panama City, Florida. The Respondent was placed on probation, ordered to undergo drug/alcohol evaluation, ordered to perform 300 hours of public service, and ordered to contribute \$1.00 per month to First Step, Inc. of Bay County, Florida. Per 33 CFR 20.1307, Use of Judgments of Convictions, the Coast Guard regards him, for the purposes of 46 U.S.C. 7704, as having been convicted.

The last or third Complaint dated 19 June 2000 was signed by Investigating Officer Lieutenant Juliet Hudson of the Marine Safety Office Mobile, Alabama.

The Respondent and his attorney filed an "Answer" to the third Complaint both dated 19 June 2000 in which they admitted to all jurisdictional and factual allegations and Respondent agreed with the proposed order of revocation. They made a good faith deposit of Respondent's license and document on 19 June 2000 to Lieutenant Juliet Hudson, Investigating Officer.

Upon consideration of the entire record, the factual allegations in the third Complaint regarding "Conviction for a Dangerous Drug Law Violation" and the factual

allegations supporting it are found proved by Respondent's and his attorney's Answer. I have carefully reviewed the Complaint and Answer and find that the proposed sanction is appropriate under the provisions of 46 CFR 5.569.

SANCTION

IT IS HEREBY ORDERED that the captioned Respondent's identifying License Number 849115 and identifying Merchant Mariner's Document (MMD) Number 263-79-2103 are hereby **REVOKED** as of 19 June 2000, the date they were deposited with the Investigating Officers of the Marine Safety Office Mobile, Alabama.


THOMAS E. MCELLIGOTT
Administrative Law Judge

Dated: July 7, 2000

Copy:
MSO Mobile, Attn: LT Hudson, IO
MSO Mobile Detached Duty Office Panama City
James Hoffman, Respondent
Richard G. Alexander, Esq., Counsel for Respondent
CCGD8(m)
ALJ Docketing Center, Baltimore