

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD
COMPLAINANT,

vs.

Merchant Mariner's Document
No. 421 11 7986 D1

Issued to:
TERRY ANTHONY BUSH
Respondent

Docket No. 01-0687
PA No. 01001376

DECISION AND ORDER

Before: Archie R. Boggs
Administrative Law Judge

PRELIMINARY STATEMENT

This proceeding is brought pursuant to the authority contained in 5 USC 551-559; 46 USC Chapter 77; 46 Code of Federal Regulations, Parts 5 and 16; and 33 CFR Parts 20 and 95.

Terry Bush was served with a Complaint by U. S. Coast Guard Investigating Officer, MST1 Roy S. Robertson, dated 27 September 2001. The Complaint alleged statutory authority as "46 USC 7704 (c)" "Use of or Addiction to the Use of Dangerous Drugs" and regulatory authority as 46 CFR 5.35.

The factual allegations read as follows:

"Use of or Addiction to the Use of Dangerous Drugs"

- "1. On July 2, 2001 Respondent took to a pre-employment drug test.
2. A urine specimen was collected by Katrina Polk, of American Family Care.

3. The Respondent signed a Federal Drug Testing Custody and Control Form
4. The urine specimen was collected and analyzed by Quest Diagnostics Inc. using procedures approved by the Department of Transportation.
5. That specimen subsequently tested positive for marijuana metabolite.

The Respondent filed an Answer in which he admitted the jurisdictional allegations and denied all factual allegations. He alleged as a defense "someone else took test." He agreed with the proposed hearing location and date.

Although Mr. Bush indicated that the location and date of the hearing were acceptable he did not make an appearance. The regulations provide that a Respondent may be found in Default for failure to appear at a hearing, but because the Investigating Officer was prepared to present evidence in the form of witnesses and the documents the matter was allowed to proceed in Mr. Bush's absence.

The hearing was held at the Marine Safety Office Mobile, 150 N. Royal Street, on 7 December 2001.

In support of the Complaint the Investigating Officer introduced into evidence the testimony of (1) Dan Guy, who is employed by Dyn Marine Services, Inc. of Reston, VA; (2) John E. Fitzmorris, who served as Chief Mate for Dyn Marine Services; (3) Katrina Polk, who collected a specimen for a pre-employment drug screen from Mr. Bush on 2 July 2001; (4) Dr. Tony D'Addario who is laboratory director for Quest Diagnostics, San Diego, CA, which laboratory analyzed Mr. Bush's urine specimen; and (5) George M. Ellis, Jr., President of Greystone Health Services Corporation, 7777 Alvarado Road, La Mesa, CA, 91941.

The Investigating Officer also introduced eight (8) exhibits.

I.O. Exhibit No. 1 – a copy of a merchant mariner's document bearing social security number 421 11 7986 D1 which is issued to Terry Anthony Bush.

I.O. Exhibit No. 2 – a copy of an application for a merchant mariner’s document, which was executed by Mr. Bush.

I.O. Exhibit No. 3 - a certified copy of a completed Federal Drug Testing Custody and Control form, copy No. 4, which is the Medical Review Officer’s copy, showing a positive result.

I.O. Exhibit No. 4 – another completed copy of the Drug Testing Custody and Control form, copy No. 2, the 2nd original, which also shows a positive result for cannabinoids.

I.O. Exhibit No. 5 – a copy of a final report for Mr. Bush’s specimen which also indicates a positive result for cannabinoids.

I.O. Exhibit No. 6 – a letter from George M. Ellis, Jr., President, Greystone Health Sciences, Inc., dated July 11, 2001, The Senior Investigating Officer, Marine Safety Office, Mobile, indicating a positive result for Mr. Bush’s specimen.

I.O. Exhibit No. 7 – a completed “Employee Profile Form” for Mr. Bush.

I.O. Exhibit No. 8 – a two page letter from Alabama Department Forensic Sciences, Birmingham, AL concerning Mr. Bush’s handwriting.

FINDINGS OF FACT

1. Terry Bush, whose merchant mariner’s document was issued to him on 6 May 1999 at Baltimore, MD provided a urine specimen as required by law for a pre-employment drug screen on 2 July 2001 while seeking employment with Dyn Marine of Reston, VA.
2. Ms. Katrina Polk, who is a qualified urine collector employed by American Family Care, collected the specimen.
3. Mr. Bush signed the multi-part custody and control form which assigned his specimen number A13041429.
4. Mr. Bush affirmed that the specimen was collected and sealed with a tamper-proof seal and assigned a specimen identification number in his presence.
5. The specimen was shipped to Quest Diagnostics, Inc, San Diego, Ca.

6. Quest Diagnostics, Inc. was, and is, a SAMSHA-NIDA certified drug testing facility.
7. Mr. Bush's specimen was received for analysis on 5 July 2001.
8. The specimen was tested and confirmed positive for marijuana.
9. The positive laboratory test result was forwarded to the Medical Review Officer, Dr. D. M. Katsuyama, of Greystone Health Sciences.
10. The Medical Review Officer conducted a telephone interview with Mr. Bush and advised him of the positive test result.
11. Mr. Bush did not provide a creditable explanation for the positive test.
12. George M. Ellis, Jr., President of Greystone Health Sciences, Inc. notified the Coast Guard of the results by letter dated 11 July 2001.

ULTIMATE FINDINGS OF FACT

On 2 July 2001 Terry Anthony Bush submitted a urine specimen to Katrina Polk, a qualified urine collector for American Family Care for a pre-employment drug test for Dyn Marine Services, Inc. of Ruston, VA. The specimen subsequently tested positive thereby indicating use of dangerous drugs, to wit, marijuana.

OPINION

The allegations in the complaint are proved by reliable, substantial and probative evidence. 46 CFR subpart B, Section 16.201(b) provides as follows:

“(b) If an individual fails a chemical test for dangerous drugs under this part, the individual will be presumed to be a user of dangerous drugs.” (Emphasis added)

Mr. Bush failed the chemical test for dangerous drugs. He is presumed to be a user of dangerous drugs. The presumption has not been rebutted.

46 USC 7704 (c) provides as follows:

“(c) If it is shown that a holder has been a user of or addicted to a dangerous drug, the license, certificate of registry, or merchant mariner’s document shall be revoked unless the holder provides satisfactory proof that the holder is cured.” (Emphasis added)

ORDER

That your merchant mariner’s document number 421 11 7986 D1 and all other documents issued to you by the U. S. Coast Guard or any predecessor authority, if still in your possession, be and the same are hereby REVOKED, and you are directed to forthwith surrender any such document to the Marine Safety Office, 150 N. Royal Street, Mobile, AL.

Rules governing appeals are attached hereto.



ARCHIE R. BOGGS
ADMINISTRATIVE LAW JUDGE

Dated 20 December 2001
New Orleans, Louisiana