

UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

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Complainant

vs.

JEROME M. LYONS,

Respondent.

Docket Number CG S&R 02-0411
CG Case No. 1487602

DECISION AND ORDER

Issued by: 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.

Jerome Lyons was served with a Complaint at Morgan City, LA, by U. S. Coast Guard Investigating Officer, LTJG C. Nicholas Parham, on 26 June 2002. The Complaint alleged statutory authority as “46 USC 7703 (1)” and regulatory authority as “46 CFR 5.27 (Misconduct) and 46 CFR 5.33 (Violation of Law or Regulation).”

The factual allegations of Misconduct are as follows:

- “1. The Coast Guard alleges that on October 9, 2001 aboard M/V Delta Traveler the Respondent:
- 2. wrongfully violated Delta Towing, L.L.C. company policy.
- 3. In that Respondent consumed alcohol while onboard a company vessel.

Factual allegations – Violation of Law or Regulation.

4. Respondent wrongfully violated 33 CFR 95.045(b) by testing positive for alcohol while assigned as Master aboard the M/V Delta Traveler
5. In that on October 10, 2001, Respondent took a Reasonable Cause alcohol test.
6. A specimen was collected by Wade Savoy of Multi-Management Services, Inc.
7. That the initial specimen subsequently tested positive for Alcohol with a Blood Alcohol Concentration of .210.
8. A confirmation specimen was collected by Wade Savoy of Multi-Management Services, Inc.
9. That the confirmation specimen subsequently tested positive for Alcohol with a Blood Alcohol Concentration of .192.”

The Respondent filed an Answer in which he admitted all jurisdictional allegations and denied paragraph 5 only of the factual allegations. Paragraph 5 of the factual allegations reads: “in that on October 10, 2001 Respondent took a reasonable cause alcohol test.” He admitted all of the other factual allegations.

A hearing was held at the Marine Safety Office, Morgan City, on 11 September 2002.

In support of the Complaint the Investigating Officer introduced into evidence the testimony of four (4) witnesses: (1) Nicole Mallett, who served as deckhand on the M/V Delta Traveler on 10 October 2001; (2) John DeCoursey, who was crew boat manager for Delta Towing during October 2001; (3) Monty Wade Savoy, a certified BAT tester, who performed an alcohol test on Mr. Lyons on 10 October 2001 with an initial test of .210, and (4) Denise Chauvin, who is a supervisor in charge of collectors for Multi Management Services, Inc.

The Investigating Officer also introduced seven (7) exhibits.

I.O. Exhibit No. 1 – a copy of a “Drug and Alcohol Free Work Environment Policy” signed by Jerome M. Lyons on 4/18/01.

I.O. Exhibit No. 2 – a copy of a completed U.S. Department of Transportation (DOT) Alcohol Testing Form dated 10 October 2001 signed by Jerome M. Lyons.

I.O. Exhibit No. 3 - a copy of a “Training Certificate,” which was issued to Wade Savoy on 28 March 2001.

I.O. Exhibit No. 4 –another copy of a “Training Certificate,” which was issued to Denise Chauvin on 1 February 2000.

I.O. Exhibit No. 5 – a copy of a calibration testing schedule for an instrument bearing number 013337.

I.O. Exhibit No. 6 – a copy of an “e-mail” from Peggy Celestin, with a subject: “MERMARPER dated 17 October 2001 concerning Jerome Lyons.”

I.O. Exhibit No. 7 – a Rapidraft Letter dated 20 July 2000 concerning Mr. Lyons.

Mr. Lyons testified under oath in his own behalf.

FINDINGS OF FACT

1. On 9 and 10 October 2001 Jerome Lyons was serving as Master of the M/V Delta Traveler.
2. On the evening of 9 October 2001 Mr. John DeCoursey of Delta Towing was notified by telephone that crew members were drinking on board the Delta Traveler.
3. Mr. DeCoursey proceeded to the vessel and after interviewing the crew members he ordered them to submit to reasonable cause blood alcohol tests.
4. The tests were administered by Wade Savoy, a Department of Transportation certified collector from Multi-Management Services, Inc., using an alcohol sensor IV testing device.
5. The results of the initial test of Mr. Lyons showed a blood alcohol concentration of .210.
6. Fifteen minutes later a confirmation test resulted in a reading of .192 blood alcohol concentration.
7. The blood alcohol test of Mr. Lyons exceeded the .04 blood alcohol concentration set forth in 33 USC 95.02.

OPINION

The allegations in the Complaint are proved by reliable, substantial and probative evidence.

Mr. Lyons has a prior record of drug abuse. On 11 May 2000 Mr. Lyons' license was returned to him after he previously voluntarily deposited it with the Marine Safety Office, Morgan City, in order to undertake a rehabilitation program for prohibited drugs.

The record shows that Mr. Lyons previously used prohibited drugs. It has now been shown that he used alcohol to excess while serving in the responsible position of Master of a vessel.

The only appropriate order is revocation of his license.

ORDER

That your license No. 830622 and all other licenses, documents or certificates of service 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.

Rules governing appeals are attached hereto.



ARCHIE R. BOGGS
ADMINISTRATIVE LAW JUDGE

Dated 29 April 2003
New Orleans, Louisiana