

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

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vs.

LYNNE WINSTANLEY,

Respondent.

Docket Number CG S&R 08-0513

Coast Guard Enforcement No. 3335928

**ORDER FOLLOWING RESPONDENT'S SUBMISSION
IN RESPONSE TO ORDER TO SHOW CAUSE**

Issued: January 25, 2011

Presiding Hon. Parlen L. McKenna

On November 25, 2008, the United States Coast Guard (Coast Guard) initiated suspension and revocation proceedings against Respondent under 46 U.S.C. § 7704(c) and 46 C.F.R. § 5.35 and 33 C.F.R. Part 20. The Complaint alleged Respondent's use of or addiction to the use of dangerous drugs. The allegations of unlawful use or addiction were based on a pre-employment drug test, which resulted in a positive test for the presence of marijuana metabolite.

Respondent's case was assigned to the undersigned for disposition. On February 11, 2009, the Coast Guard and Respondent entered into a Settlement Agreement. On February 17, 2009, the undersigned issued a Consent Order Approving a Settlement Agreement between the Coast Guard and Respondent.

On November 16, 2010, the Coast Guard served Respondent and the ALJ Docketing Center with a Notice of Failure to Complete Settlement Agreement (Notice). The Notice indicated that Respondent had not supplied the required evidence of her successful completion of the terms of the Settlement

Agreement. Under the terms of the Settlement Agreement, Respondent's Coast Guard issued credentials would be modified to reflect that the stayed sanction of revocation went into full force and effect unless Respondent requested a hearing.

On November 22, 2010, the ALJ Docketing Center received a letter from Respondent dated November 17, 2010. Respondent's letter admitted that Respondent was "having a difficult time with the terms" of the Settlement Agreement and that she had "honored most of the terms" but not all of them due to her moving "about the country trying to find work in this terrible economy." Respondent submitted documentation along with her letter indicating her drug evaluation and rehabilitation and attendance at AA/NA meetings. Respondent also enclosed a copy of a routine urinalysis test (not a DOT-drug test) dated August 17, 2008 and a letter dated December 3, 2009 from Divers Institute Technology indicating that she had enrolled as a student and that students are subject to weekly random drug testing.¹ Respondent asked that she be given more time to complete the terms of the Settlement Agreement.

On November 30, 2010, Respondent submitted an additional letter to explain her failure to complete the terms of the Settlement Agreement. Enclosed therein was a letter dated November 30, 2010 to LT Jon D. Lane of USCG Sector Seattle, which attempted to explain Respondent's failure to adhere to the terms of the Settlement Agreement. Respondent claimed in the letter that the Coast Guard had lost some of her paperwork, but nevertheless admitted that she "was unable to secure a MRO" to complete with the terms of the Settlement Agreement. Respondent asked that she be given back her MMD "since it is a non-security sensitive position" so that she could then return to work and complete the 12 random drug tests called for in the Settlement Agreement.

¹ These additional materials are irrelevant to determining whether Respondent complied with the terms of the Settlement Agreement.

The letter addressed to the undersigned claimed that Respondent had a “hardship” case and asked for a hearing. Respondent also stated that her MMD should be returned so she could work as a deckhand and be subject to monthly random drug testing.

On January 11, 2011, the undersigned issued an Order and Notice to Show Cause, which required that Respondent demonstrate that she had complied with the terms of the Settlement Agreement. The Order to Show Cause was issued in an abundance of caution to ensure that the revocation of Respondent’s credentials were appropriate based on Respondent’s alleged breach of the Settlement Agreement and to advise Respondent of the avenues possibly available to her for return of her credentials. The Order and Notice to Show Cause gave Respondent seven (7) days to make a submission regarding his compliance with all the terms of the Settlement Agreement.

By letter dated January 12, 2001, Respondent replied to the Order and Notice to Show Cause. Respondent failed to provide evidence that she had complied with all the terms of the Settlement Agreement – for example, evidence of completion of any required random drug testing was absent. Nevertheless, Respondent’s letter reiterated previously offered explanations for Respondent’s failure to complete the Settlement Agreement. Respondent stated that she had been unemployed since November 2009 and was unable to afford the monthly random drug tests. Respondent again admitted that she had not complied with the terms of the Settlement Agreement. Respondent’s response also contained letters of reference and copies of materials submitted with her earlier letter dated November 17, 2010.

Respondent’s letter request following the Coast Guard’s Notice of Failure to Complete Settlement Agreement stayed the revocation of Respondent’s credentials until such time as the undersigned reviewed the request for hearing and examined the record. See Settlement Agreement at 3.c. See also id. at ¶ 4 (“If the Respondent requests a hearing before an ALJ under the provisions of paragraph 3c, then the revocation will be stayed until the ALJ issues a final order. *The ALJ’s ruling on*

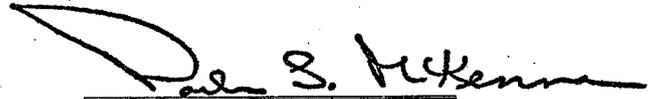
this request and any subsequent hearing will be final and unappealable.”) (emphasis in original). To be clear, a request for hearing following a notice of breach of settlement agreement does not grant Respondent carte blanche to litigate the underlying facts of a violation admitted in a settlement agreement. Rather, the sole purpose of such a hearing is to determine whether, in fact, Respondent violated the terms of the settlement agreement. See Appeal Decision 2669 (LYNCH).

Given Respondent's uncontroverted and admitted breach of the Settlement Agreement, the effect of such breach must result in the revocation of her Coast Guard issued credential by the agreed upon terms of the Settlement Agreement. Respondent has been provided all the process that is due with respect to the revocation of her credential. Respondent's only appropriate recourse is to apply for administrative clemency pursuant to 46 C.F.R. §§ 5.901-905.

ORDER

WHEREFORE:

IT IS HEREBY ORDERED that the stay of revocation called for under Paragraph 3.c of the Settlement Agreement is lifted and any and all of Respondent's Coast Guard issued credentials are **REVOKED**.



**Hon. Parlen L. McKenna
Administrative Law Judge
United States Coast Guard**

Done and Dated on this 25th day of January 2011
Alameda, California

Certificate of Service

I hereby certify that I have this day served the foregoing Order (08-0513) the following parties and limited participants (or designated representatives) in this proceeding at the listed facsimile and address:

**ALJ DOCKETING CENTER
Docketing Specialist
40 South Gay Street, Room 412
Baltimore, MD 21202-4022
Comm: (410) 962-1740
Fax: (410) 962-1746**

**Commanding Officer
LT Jon D. Lane, IO
U.S. Coast Guard Sector Seattle
Bldg 1, Pier 36, 1519 Alaskan Way S.
Seattle, WA 98134-1192
Comm: (206) 217-6250
Fax: (206) 217-6213**

I further certify that I have served the foregoing documents(s) upon the Respondent by First Class Mail (postage pre-paid) as follows:

**Ms. Lynne Winstanley
318 Southwind Drive, Apt. 34
North Palm Beach, FL 33408
Cell: (928) 533-8833**



**Cindy J. Melendres
Paralegal Specialist to the
Hon. Parlen L. McKenna**

**Done and Dated on this 25th day of January, 2011
Alameda, California**