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

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| UNITED STATES OF AMERICA<br>UNITED STATES COAST GUARD<br><br>vs.<br><br>MERCHANT MARINER DOCUMENT<br><br>Issued to: MICHAEL STEVEN MOORE | : | DECISION OF THE<br><br>VICE COMMANDANT<br><br>ON APPEAL<br><br>NO. 2652 |

This appeal is taken in accordance with 46 U.S.C. § 7701 *et seq.*, 46 C.F.R. § 5, and the procedures set forth in 33 C.F.R. § 20.

By a Decision and Order (D&O) dated July 31, 2003, an Administrative Law Judge ("ALJ") of the United States Coast Guard at New Orleans, Louisiana, revoked Michael Steven Moore's (Respondent's) merchant mariner document upon finding proved a charge of misconduct. The charge was based on a single specification of Failure to Obey Law or Regulation in violation of 46 U.S.C. § 7703 and 46 C.F.R. § 5.33 for Respondent's refusal to submit to random drug testing requested on three separate occasions in September of 2002.

## PROCEDURAL HISTORY

The Coast Guard filed its Complaint against Respondent on October 2, 2002. [D&O at 2; Complaint at 3]. Respondent filed his Answer to the Complaint, admitting all jurisdictional allegations, denying all factual allegations, and requesting that a hearing be held on the matter. [D&O at 2; Respondent's Answer to the Complaint at 1]. On

October 18, 2002, Mr. Mr. Grover Asmus, II, entered his appearance as counsel for Respondent and filed a second answer to the Complaint. [D&O at 2]. In addition to admitting all jurisdictional allegations and denying all factual allegations, Respondent's Second Answer raised five affirmative defenses: 1) the Complaint failed to state a claim upon which relief could be granted; 2) Respondent did not refuse to submit to a random drug screen; 3) Respondent was not provided with notice for all incidents alleged in the Complaint; 4) Respondent lacked adequate funds to pay for the drug test; and, 5) exigent circumstances prevented Respondent from complying with any notices he allegedly received to submit to a random drug screen. [D&O at 2-3].

A Hearing was convened on January 17, 2003, in Daphne, Alabama. Respondent appeared with counsel and admitted all jurisdictional allegations, denied all factual allegations, and raised the affirmative defenses asserted in his Second Answer. At the Hearing, the Coast Guard called three witnesses and introduced six exhibits into evidence while Respondent called two witnesses, including himself, and introduced four exhibits into evidence. The ALJ issued the D&O on July 31, 2003.

On August 11, 2003, Respondent filed numerous post-hearing motions including Alternative Motions for Reconsideration, for a New Trial, and to Alter, Amend or Vacate the Decision and Order and a Motion to Stay Operation of the Order of Revocation Pending Appeal. On August 26, 2003, the Coast Guard filed its Replies to Respondent's post-hearing motions. Thereafter, on September 5, 2003, Respondent filed a Motion to Stay and Alternative Request for Issuance of a Temporary License with the ALJ Docketing Center. On September 8, 2003, the ALJ issued an Order denying all of Respondent's post-hearing motions. On September 8, 2003, Respondent filed his Notice

of Appeal. Thereafter, on September 17, 2003, the ALJ issued an Order of Clarification to ensure that the record clearly reflected that he considered Respondent's Motion for Issuance of a Temporary License which had been filed only days before the ALJ issued his order denying all of Respondent's post-hearing motions. Respondent perfected his appeal of the ALJ's D&O by filing a brief on October 31, 2003. Therefore, this appeal is properly before me.

APPEARANCES: Mr. Grover E. Asmus, II, Armbrecht Jackson, LLP, P.O. Box 290, Mobile, Alabama, for Respondent. The Coast Guard was represented by LT John Catanzaro, USCG, and Mr. Robert W. Foster, Marine Safety Office Mobile, Alabama.

FACTS

At all times relevant to this Appeal, Respondent served under the authority of the above captioned merchant mariner document.

Respondent is a member of the Mississippi Charter Boat Captains Association, an entity comprised of self-employed charter boat captains who have joined together and are, as a group, subject to Department of Transportation (DOT) drug and alcohol testing. [D&O at 5; Tr. at 23, 33] The Mississippi Charter Boat Captains Association (Consortium) uses the services of Mississippi Drug Compliance (MDC) to perform drug screening and random drug testing of its members, to document the operation of the Consortium's drug and alcohol testing programs, and to maintain rosters of member names, social security numbers, addresses and telephone numbers of its members. [D&O at 5; Tr. at 23, 33; I.O. Exhibits 1 and 2]

In September 2002, Ms. Tammy Taylor, of MDC, performed a random drug screen selection and randomly selected 35 members from the Consortium, including

Respondent, for drug testing. [D&O at 5; Tr. at 23, 31, 33, 38] Of the 35 members selected for random testing, thirty members properly provided their urine for drug testing and 4 members were not tested because they were no longer members of the Consortium. [D&O at 5; Tr. at 33, 36] Respondent was the only active member of the Consortium who did not participate in the random drug test. [D&O at 5; Tr. at 43]

Ms. Judy Shaw, a clerk and specimen collector for MDC, is responsible for contacting mariners selected for random drug testing. [D&O at 6; Tr. at 91] On September 10, 2002, Ms. Shaw was instructed to contact the thirty-five Consortium members randomly selected for drug testing. [D&O at 6; Tr. at 47, 91; I.O. Exhibit 3] In accordance with customary procedure, Ms. Shaw contacted the selected members by telephone and informed them that they were required to provide a urine sample for testing within twenty-four hours of the call and that the mariners were responsible for paying the $47.00 testing fee. [D&O at 6; Tr. at 60; I.O. Exhibit 1]

Using the contact number provided by Respondent, at 11:30 a.m. on September 10, 2002, Ms. Shaw called Respondent to inform him that he had been randomly selected for drug testing. [D&O at 6; Tr. at 47-48, 60, 83, 97; I.O. Exhibits 1 & 3] Since there was no answer at Respondent's contact number, Ms. Shaw left an answering machine message for Respondent, informing him both that he should report for drug testing within 24 hours of the call and that he would be required to pay the $47.00 cost of the drug test. [D&O at 6; Tr. at 97-98; I.O Exhibit 5] Because Respondent did not report for drug testing within the required time period, Ms. Shaw placed additional telephone calls to Respondent's number of record on September 11, 2002, September 12, 2002, and September 20, 2002, and, on each of those occasions, left answering machine messages

informing Respondent that he was required to submit to random drug testing within 24 hours and that he would be required to pay the cost of the test. [D&O at 7; Tr. at 97; I.O. Exhibit 5]

Because Respondent did not contact Ms. Shaw and failed to report for testing, she involved Mr. Tom Becker, the President of the MDC to assist in contacting Respondent. [D&O at 7; Tr. at 82-83; 101] On September 27, 2002, Mr. Becker left a message on Respondent's cellular telephone informing him that he should report to MDC by Monday, September 30, 2002, for random drug testing or the matter would be turned over to the Coast Guard. [D&O at 7; I.O. Exhibit 5] On September 28, 2002, Respondent's mother, Ms. Delores Moore, informed Respondent of the telephone call received from MDC regarding a drug test. [D&O at 7] Respondent called MDC on that date and left a message on Ms. Taylor's voicemail informing her that his boat had been inoperable and, as a result he was "broke" and could not afford to pay for the test. [D&O at 7; Tr. at 48] At that time, Respondent requested that the Consortium pay the cost of his drug test and requested that MDC return his call to explore that option. [D&O at 7; Tr. 49-51; I.O. Exhibit 4]

Because Respondent did not submit to a random drug test during the 24 hour period required by MDC policy, MDC informed the Coast Guard of Respondent's failure and, as a result, on October 2, 2002, the complaint initiating the instant proceedings was served on Respondent at his home of record. [D&O at 8; Tr. at 111, 136] At that time, although Respondent offered to submit to random drug testing, the Coast Guard informed him that because more than 72 hours had passed since he was told to report for drug testing, it was too late for Respondent to complete the drug test. [D&O at 8; Tr. at 137]

Nonetheless, on October 8, 2002, Respondent submitted to a drug test which yielded a negative result. [D&O at 8; Tr. at 84, 39; Respondent's Exhibit A]

## BASES OF APPEAL

This appeal is taken from the Decision and Order imposed by the ALJ finding proved the charge of Violation of Law or Regulation. Respondent's bases of appeal are summarized as follows:

*I. The ALJ erred by finding that Respondent was notified of his selection for random drug screening and directed to appear for drug testing and, as a result, the ALJ's decision is not supported by substantial evidence and should be vacated;*

*II. The ALJ erred in ruling that the notice requirement in 49 C.F.R. § 40.61(a) (that the Consortium/Third-Party Administrator inform Respondent that his failure to report for testing constitutes a refusal to submit to required drug testing) is not an indispensable element of the charge of "refusal to submit" and, as a result, the ALJ's decision is clearly erroneous; and,*

*III. The sanction imposed by the ALJ, revocation, is clearly excessive under the circumstances of the case and represents an unwarranted and unsupportable departure from the administrative regulations.*

## OPINION

### I.

*The ALJ erred by finding that Respondent was notified of his selection for random drug screening and directed to appear for drug testing and, as a result, the ALJ's decision is not supported by substantial evidence and should be vacated.*

Respondent contends that he was not accorded "actual notice" that he was required to submit to a random drug screening in September 2002. [Brief of Respondent at 23-24] Respondent asserts that although the record shows that telephone calls were placed to the contact number that Respondent provided MDC and that several messages informing Respondent that he had been selected for random drug screening were left on the answering machine attached to that number, there is insufficient evidence in the

record to support a conclusion that Respondent "was ever made aware of these voice messages." [Brief of Respondent at 24] Respondent asserts:

> to the extent the ALJ's Decision and Order in this case can be read to hold that voice messages left on a residential telephone answering machine constitute sufficient legal notice on which to predicate a charge of failure to report for drug testing, the Decision and Order is clearly in error and does not comport with the spirit and letter of the applicable regulations. Simply put, the applicable regulations do not contain any provision supporting the conclusion that a voice-mail message on a telephone answering machine is adequate notice.

[Brief of Respondent at 24-25] Based upon his conclusions that "the regulations clearly contemplate the communication of actual notice to report for testing" and there is not substantial evidence in the record to support a conclusion that Respondent received this "actual notice," Respondent contends that the ALJ's decision should be vacated. [Appellate Brief of Respondent at 25 (emphasis in original)]

A review of the applicable DOT drug testing regulations, at 49 C.F.R. Part 40, and Coast Guard drug testing regulations, at 46 C.F.R. Part 16, shows that while the regulations do expressly state the procedures required during, for example, specimen collection and medical review of test results, they do not address the manner of notice required to inform parties that they have been selected for random testing. Instead, the regulations simply require that a person submit to drug testing "after being directed to do so by the employer." 49 C.F.R. § 40.191(a)(1). Therefore, as long as an employer's policy with respect to notification is in accord with the applicable DOT and Coast Guard regulations, the form and manner of notification may be left to the employer's discretion.

MDC informs Consortium members of their selection for random drug testing via telephone, using phone numbers provided by the members. [Tr. at 23-24; I.O. Exhibit 1] During these telephone calls, MDC informs the members that they will be required to

report for drug testing within 24 hours of the call and that they will be required to pay for the required drug test. [I.O. Exhibits 1 and 2] Respondent was notified of his selection for random drug testing in this manner; however, he never reported for testing. [Tr. at 54-55]

I may only reverse the ALJ's decision if his findings are arbitrary, capricious, clearly erroneous, or based on inherently incredible evidence. Appeal Decisions 2333 (AYALA), 2344 (KOHAJDA), 2363 (MANN), 2390 (PURSER), 2474 (CARMIENKE), 2570 (HARRIS), *aff'* NTSB Order No. EM-182 (1996), 2581 (DRIGGERS), and 2584 (SHAKESPEARE). In his D&O, the ALJ found that "[w]ritten notification explaining MDC's drug testing policies and random drug testing was provided to members of the Consortium at meetings, by mail, and copies were available at MDC's office" and that, in conjunction with those policies "[m]embers who are selected for random drug testing are contacted by telephone, instructed to provide a sample that day or within twenty-four hours." [D&O at 6] Since the record shows that Respondent was aware of the form of the notification that would be received in the event that he was selected for random drug testing, the key issue remaining for resolution at this time is whether the ALJ was correct to conclude that there was sufficient evidence in the record to support a conclusion that Respondent was so notified.

Although the ALJ noted that the record contained "conflicting testimony regarding MDC's effort to notify Respondent of the random drug test selection," he concluded that "[t]he Coast Guard...proved by a preponderance of reliable and credible evidence that on September 10, 11, and 12, 2002, the MDC left telephone messages notifying Respondent that he was selected for a random drug test." [D&O at 9]

I have long held that it is the sole purview of the ALJ to determine the weight of evidence and to make credibility determinations as to that evidence. Appeal Decisions 2116 (BAGGETT), 2156 (EDWARDS), and 2472 (GARDNER). I will only disturb the ALJ's resolution of conflicting evidence in exceptional circumstances. The rule in this regard is well established:

> [w]hen...an Administrative Law Judge must determine what events occurred from the conflicting testimony of several witnesses, the determination will not be disturbed unless it is inherently incredible.

Appeal Decisions 2275 (ALOISE), 2302 (FRAPPIER), 2472 (GARDNER), 2333 (AYALA), 2340 (JAFFE), 2344 (KOHAJDA), 2356 (FOSTER), and 2390 (PURSER), *aff'd sub nom Commandant v. Purser*, NTSB Order No. EM-130 (1986). That said, I have also stated that the findings of the ALJ need not be completely consistent with all the evidence in the record as long as sufficient evidence exists to reasonably justify the findings reached. Appeal Decisions Appeal Decision 2282 (LITTLEFIELD) and 2492 (RATH).

While the Coast Guard presented testimonial evidence to show that MDC called Respondent on September 10, 11, 12, and 20, 2002, and that the Consortium left answering machine messages on all four of those occasions to notify Respondent that he had been selected for random drug testing, Respondent presented testimonial evidence to show that he received only one answering machine message from MDC. That message was received on September 27, 2002. In addition, Respondent presented the testimony of his mother to show that, even if MDC had, as it asserted, called Respondent's number on the dates that it asserted, it was possible that Respondent did not receive those messages because the answering machine attached to the relevant phone line was "sensitive" and

may have lost any messages left. In his D&O, the ALJ weighed the conflicting factual testimony elicited at the hearing and determined as follows:

> ...credible evidence exists that Ms. Shaw and Mr. Becker [Employees of MDC] did call Respondent on five occasions and left messages to report for a random drug test as documented on the call log. Compared to MDC's efforts, Mrs. Moore's testimony surmising what could have happened to the answering machine messages is speculative, and lacks supporting documentation or corroboration. In this regard her testimony was not credible but was self-serving to Respondent.

[D&O at 10-11] While it is true that conflicting testimony exists in the record with respect to the notification of Respondent, I find that the testimony was sufficiently addressed by the ALJ in his D&O. I do not find that the ALJ's determinations, in that regard, were arbitrary, capricious, clearly erroneous or an abuse of his discretion and, as a result, I am not persuaded by Respondent's first argument.

II.

*The ALJ erred in ruling that the notice requirement in 49 C.F.R. § 40.61(a) (that the Consortium/Third-Party Administrator inform Respondent that his failure to report for testing constitutes a refusal to submit to required drug testing) is not an indispensable element of the charge of "refusal to submit" and, as a result, the ALJ's decision is clearly erroneous.*

Respondent contends that ALJ erred in finding that "the notice requirement referenced in 49 C.F.R. § 40.61 is not an element of the offense of 'refusal to submit'." [Appellate Brief of Respondent at 29] Citing 49 C.F.R. § 40.61(a), Respondent asserts that the "regulations require that the person selected for testing be notified that a failure to report constitutes a refusal to test." [Appellate Brief of Respondent at 31] Respondent contends that this "additional duty" is placed on the Consortium/Third-Party Administrator "to ensure that the person selected for testing has, in fact, received actual notice that he has been so selected and to give that person an opportunity to submit to

testing." [Appellate Brief of Respondent at 30] Respondent concludes that because this "administrative requirement" was not met, the ALJ's Order should be vacated.

As I have already stated, I may only reverse the ALJ's decision if his findings are arbitrary, capricious, clearly erroneous, or based on inherently incredible evidence. Appeal Decisions 2333 (AYALA), 2344 (KOHAJDA), 2363 (MANN), 2390 (PURSER), 2474 (CARMIENKE), 2570 (HARRIS), *aff'* NTSB Order No. EM-182 (1996), 2581 (DRIGGERS), and 2584 (SHAKESPEARE). In his D&O, the ALJ discussed Respondent's argument that the Coast Guard failed to establish an indispensable element of the offense of "refusal to submit" as follows:

> Respondent argued that the Coast Guard failed to establish the offense "refusal to submit" because the Consortium did not notify Respondent that his failure to appear for the drug test was considered a "refusal to submit" offense under 49 CFR 40.61(a). I do not agree with Respondent's argument that the notice requirement referenced in 49 CFR 40.61 is an element of the offense of "refusal to submit". Part 40 Section 61 explains the steps to be taken by the urine collector. In contrast, 49 CFR 40.191(a)(1) provides the definition of refuse to test, "[F]ail to appear for any test within a reasonable time...This includes the failure of an employee to appear for a test when called by a C/TPA [Consortium/Third-Party Administrator].

[D&O at 11-12] After a review of the applicable regulations and case law, I do not find Respondent's second assignment of error to be persuasive.

49 C.F.R. § 40.61 is contained within Subpart E of Part 40, Title 49, Code of Federal Regulations, which contains regulations regarding "Urine Specimen Collections." The specific regulation upon which Respondent's second assignment of error is based, 49 C.F.R. § 40.61(a), is contained in Subpart E and discusses the preliminary steps in the collection process, focusing particularly on the responsibilities of the urine collector after a person has been scheduled for testing. As such, the direction contained within

49 C.F.R. § 40.61(a) that "where a C/TPA [Consortium/Third-Party Administrators] has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test" is not an element of the offense or "refusal to submit" but, rather, a requirement placed on the C/TPA. This conclusion has been upheld in the federal courts. *See* Duchek v. National Transp. Safety Bd., 364 F.3d. 311, 313 (D.C. Cir. 2004) (stating that 49 C.F.R. § 40.61(a) is "a provision addressed to C/TPAs and other service agents who collect drug testing specimens."). Therefore, I find the ALJ's conclusion with respect to Respondent's second assertion of error was in accordance with law and is neither arbitrary nor capricious.

III.

*The sanction imposed by the ALJ, revocation, is clearly excessive under the circumstances of the case and represents an unwarranted and unsupportable departure from the administrative regulations.*

As Respondent correctly stated in his appellate brief, 46 C.F.R. Table 5.569 indicates that the typical sanction for a "Violation of Regulation" for "Refusal to take [a] chemical drug test" is 12-24 months. Respondent contends that the ALJ's departure from that suggested range of suspension is in error and should be vacated. I do not agree.

The sanction imposed in a particular case is exclusively within the authority and discretion of the ALJ. 46 C.F.R. § 5.569(a); Appeal Decisions 1998 (LE BOEUF), 2543 (SHORT), 2609 (DOMANGUE), 2618 (SINN), and 2622 (NITKIN). While the ALJ may look to 46 C.F.R. Table 5.569 for information and guidance as to the typical order associated with a charge, he may increase or decrease the sanction as he sees fit. 46 C.F.R. § 5.569(d); Appeal Decisions 2173 (PIERCE ), 2362 (ARNOLD), 2391

(STUMES), 2455 (WARDELL), 2618 (SINN), and 2622 (NITKIN). As a result, on appeal the sanction imposed by the ALJ will only be modified if it is clearly excessive or involves an abuse of discretion. Appeal Decisions 2245 (MATHISON), 2256 (BURKE), 2313 (STAPLES), 2362 (ARNOLD), 2366 (MONAGHAN ), 2391 (STUMES), 2422 (GIBBONS), 2423 (WESSELS), and 2618 (SINN).

In his D&O, the ALJ spent considerable time addressing his departure from the sanction suggested in 46 C.F.R. Table 5.569:

> Here, the suggested range of an appropriate order for refusal to submit to a drug test is 12-24 month suspension. See 46 CFR Table- 5.569. The Coast Guard is seeking revocation of Respondent's Merchant Mariners License...In support of revocation, the Coast Guard has requested that the undersigned take judicial notice of Appeal Decision 2624 (Downs). In DOWNS, the Commandant affirmed the ALJ's sanction revoking respondent's license for refusal to take a reasonable cause drug test. Id. at 19. See also Appeal Decision 2578 (CALLAHAN) (ALJ's decision to revoke license for refusal to test held not excessive or abuse of discretion). The Commandant has recognized the ALJ's discretion to formulate an appropriate order in an effort to deter appellant from repeating a violation. Id. at 18 (quoting (CALLAHAN), 5).
>
> Based upon my review of the facts presented at the hearing, I conclude a sanction of revocation is appropriate. The Coast Guard proved it contacted Respondent for a random drug test on September 10, 11, 12, and 20, 2003. Further, Respondent admits to receiving a telephone message from the Consortium on September 27, 2003, but he still waited six days to submit to a "random" drug test. I do not consider Respondent's drug test on October 8, 2003 as complying with 46 C.F.R. 16.230. Respondent has undermined the purpose of random drug testing by failing to comply with federal regulations and Consortium policies within 24 hours.
>
> Respondent has provided several explanations for his failure to test. Respondent cites his inability to pay the $47.00 fee, severe weather consisting of tropical storms and a hurricane. Finally, Respondent claims maintenance on his boats rendered them inoperable. All of these explanations do not excuse Respondent of his responsibility as a member of the Consortium and licensed mariner, to participate in random drug testing. I conclude revocation of Respondent's Coast Guard an appropriate sanction.

[D&O at 13-14] In this case, the record shows that the ALJ considered the evidence presented, including the evidence in mitigation submitted by Respondent and the Table of Suggested Sanctions before ordering the revocation of Respondent's mariner credential. Though Respondent asserts that the ALJ did not accord proper weight to the mitigating evidence that he presented, I do not find that the ALJ erred, under the facts of this case, in revoking Respondent's mariner credential.

Past Commandant Decisions on Appeal have articulated a clear rationale as to why revocation of a mariner's credential is appropriate in cases involving the mariner's refusal to submit to a required drug test: "if mariners could refuse to submit to chemical testing and face a lesser Order, it is difficult to imagine why anyone that may have used drugs would ever consent to be tested." Appeal Decisions 2578 (CALLAHAN) and 2624 (DOWNS). Respondent contends that those past appeal decisions are not on point to the instant case because they did not involve random drug testing; Appeal Decision 2578 (CALLAHAN) applied the principal to a post incident drug test, while Appeal Decision 2624 (DOWNS) applied it to a reasonable cause drug test. I do not find Respondent's assertion persuasive.

In order for the integrity of the Coast Guard's drug testing regulations to be maintained, revocation must be an available, if not predictable, consequence for those who refuse to submit to drug testing, regardless of the reason that the test is required. *Cf.* Exxon Shipping Co. v. Exxon Seaman's Union, 73 F.3d 1287, 1294 (3d. Cir. 1996). If that were not the case, individuals could routinely escape accountability for drug use by simply refusing to be tested. Appeal Decisions 2578 (CALLAHAN) and 2624 (DOWNS); *Cf.* Administrator v. Krumpter, NTSB Order No. EA-4724 (1998) (if

revocation were not the predictable consequence for airmen who refuse to submit to required drug testing, individuals could routinely escape accountability for drug use by simply refusing to be tested). The final rule implementing the Coast Guard's drug and alcohol testing regulations made clear that the regulations were meant to ensure that "[d]rug users and abusers will either be deterred from continued drug use or will be faced with sufficient probability of being identified in the workplace and precluded from employment in the industry when such use is detected through chemical testing." [Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel, 53 Fed. Reg. 47,064 (1988) (to be codified at 46 C.F.R. Parts 4, 5, and 16).] If mariners were allowed to refuse to submit to random drug tests and face any order less than revocation, the intent of the Coast Guard's drug testing regulations would undoubtedly be thwarted. Accordingly, I find that the ALJ did not err in assessing a sanction of revocation in this case.

## CONCLUSION

The actions of the ALJ had a legally sufficient basis and his decision was not arbitrary, capricious, or clearly erroneous. Competent, reliable, probative, and substantial evidence existed to support the findings and order of the Administrative Law Judge. Therefore, I find Respondent's bases of appeal to be without merit.

## ORDER

The Decision and Order of the Administrative Law Judge is AFFIRMED.

Signed at Washington, D.C., this 11th day of February 2005.

**TERRY M. CROSS**
**Vice Admiral, U.S. Coast Guard**
**Vice Commandant**