

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA	:	DECISION OF THE
UNITED STATES COAST GUARD	:	VICE COMMANDANT
	:	ON APPEAL
vs.	:	NO. 2636
	:	:
MERCHANT MARINER	:	
DOCUMENT ISSUED TO	:	
ERICK L. HOSKINS	:	

This appeal is taken in accordance with 46 USC § 7702, 46 USC § 7704, 46 CFR § 5.701, and the procedures in 33 CFR Part 20.

By a Decision and Order (D&O) dated January 9, 2002, Edwin M. Bladen, an Administrative Law Judge (ALJ) of the United States Coast Guard at Seattle, Washington, revoked Erick L. Hoskins' (Appellant) merchant mariner document. The Appellant was charged under 46 USC § 7704(b) in a single specification based on a conviction of a State of Washington dangerous drug law. The charge and specification were found proved by the ALJ.

The D&O was served on the Appellant and the Coast Guard on January 9, 2002. The Appellant filed his Notice of Appeal on February 4, 2002, and subsequently filed his appeal on March 5, 2002. The matter is properly before me.

APPEARANCES: Shane C. Crew, Esq., 720 Olive Way, Suite 1301, Seattle, Washington, 98101 for Appellant. The Coast Guard Investigating Officer was Chief Warrant Officer Clarence C. Rice, 1519 Alaskan Way South, Seattle, WA 98134-1192.

FACTS

At all relevant times, Appellant held the above captioned document. On May 15, 1998, the Appellant applied to the Coast Guard for a merchant mariner document. The Appellant disclosed to the Coast Guard that he had been convicted of a drug related offense in 1994. The Appellant also disclosed a pending charge for violation of the Washington Uniform Controlled Substance Act in 1996, specifically, distribution of cocaine. The Coast Guard considered the 1994 conviction but not the pending charge and issued a merchant mariner document to the Appellant on December 22, 1998. Subsequently, the Appellant was convicted of the 1996 offense and sentenced on February 19, 1999. He was incarcerated on August 23, 2000. The Coast Guard learned of the conviction and initiated suspension and revocation proceedings.

During the Appellant's incarceration in 2000 for the 1996 offense, he underwent emotional treatment for his former drug lifestyle. Also, the evidence showed that he was employed by the Washington State Ferry System before and after his conviction and performed his job in an outstanding manner.

BASES OF APPEAL

Appellant raised the following issues on appeal:

- I. Where an applicant has disclosed a pending charge of a drug related offense in the application process, and has admitted to being a user of drugs, and is issued a document, does his document get automatically revoked if he later pleads to the pending drug related offense?
- II. Is there any discretion allowed in the implementation of 46 USC § 7704: a) where the document holder has always executed his job in an outstanding manner, and poses no danger to the safety of the vessel, passengers or crew;

and b) has completed rehabilitation, relapse prevention training, and has been drug free for five years.

OPINION

Generally, the Appellant asserts that the Coast Guard's strict construction of 46 USC § 7704(b)¹ is not consistent with applicable law and public policy. Specifically, the Appellant argues that since he disclosed his pending drug charge at the time he applied for a merchant mariner document, the Coast Guard cannot revoke his document based on the subsequent conviction. The Appellant further argues that the statutory provision is inconsistent with 46 USC § 7704(c)² and other statutes like 46 USC § 7703.³

Appellant also argues that strict construction of 46 USC § 7704(b) is inconsistent with the Coast Guard policy to not consider convictions outside of the assessment period when an individual applies for a merchant mariner document. The Appellant further argues that it would violate public policy concerning vessel safety to revoke his document since he is a qualified mariner.

In the present case, the applicable law is found at 46 USC § 7704(b). When Congress enacted this law, it mandated that a merchant mariner document **shall be**

¹ 46 USC § 7704(b); If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or merchant mariner's document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be revoked.

² 46 USC § 7704(c); If it is show 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.

³ 46 USC § 7703; Bases for suspension and revocation

A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder—

- (1) when acting under the authority of that license, certificate, or document –
 - (A) has violated or fails to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters; or
 - (B) has committed an act of incompetence, misconduct, or negligence;
- (2) is convicted of an offense that would prevent the issuance or renewal of a license, certificate of registry, or merchant mariner's document; or

revoked based on a **conviction** of a state dangerous drug law. Congress enacted 46 USC § 7704 with the express purpose and intent of removing those individuals who possess or use drugs from service in the United States merchant marine. House Report No. 338, 98th Cong., 1st session 177 (1983). The Coast Guard has no discretion in this matter. Commandant Decisions on Appeal 2433 (BARNABY), 2435 (BABER), and NTSB Order No. EM-125. 46 USC § 7704(b) applies when there is a conviction for violation of a dangerous drug law and unequivocally requires revocation. Id. It does not contemplate any discretionary exceptions. Id. The statutory provision is clear on its face and there is no conflict between 46 USC § 7704(b) and other statutory provisions cited by the Appellant. 46 USC § 7704(c) applies when a merchant mariner has been a user of or addicted to a dangerous drug but there is no conviction.

46 USC § 7703 outlines the discretionary bases for suspension and revocation proceedings.

Regarding the Appellant's arguments concerning Coast Guard policy, I simply note that the "assessment period" applies to the application process for a merchant mariner document and not once the license is issued to the mariner which is governed by 46 USC § 7704. See 46 CFR § 12-02.4(e). The Coast Guard has discretion in the former instance but not the latter. Based on my conclusion concerning the Coast Guard's lack of discretion under 46 USC § 7704(b), there is no need to consider any further the issue raised by the Appellant concerning public policy.

I find that the Coast Guard had no discretion in this case and properly sought revocation of appellant's merchant mariners document under 46 USC § 7704(b).

(3) within the 3-year period preceding the initiation of the suspension or revocation proceeding is convicted of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of

CONCLUSION

The findings of the ALJ are supported on the record by substantial, reliable, and probative evidence. The hearing was conducted in accordance with applicable laws and regulations.

ORDER

The Administrative Law Judge's Decision and Order dated January 9, 2002, is
AFFIRMED.

T. J. BARRETT
Vice Admiral, U S Coast Guard
Vice Commandant

Signed at Washington, D.C., this 26th day of January, 2003.