

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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vs.

MERCHANT MARINER'S
DOCUMENT NO. redacted

Issued to William Gary Daniels

DECISION OF THE

COMMANDANT

ON APPEAL

NO. 2605

This appeal is taken in accordance with 46 USC § 7702 and 46 CFR § 5.701.

By an order dated August 28, 1996, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana revoked Mr. William Gary Daniels' ("Appellant") document based upon a finding of one charge of *misconduct: Use of a Dangerous Drug*. The specification alleged that Appellant, while the holder of the captioned document, provided a urine specimen which tested positive for marijuana metabolites, thereby indicating use of a dangerous drug, to wit: marijuana.

The hearing was held on April 9, 1996, and May 29, 1996, in New Orleans, Louisiana. Appellant entered a response denying the charge and specification.

The Coast Guard Investigating Officer introduced into evidence the testimony of three witnesses and six exhibits. In defense, Appellant introduced into evidence his own testimony. Appellant also introduced two exhibits into evidence.

The Administrative Law Judge issued a written Decision and Order ("D&O") on August 28, 1996. The Administrative Law Judge concluded that the charge and the supporting specification were proved and revoked Appellant's document.

The Decision and Order was served to the Appellant on September 16, 1996. Appellant filed a timely notice of

appeal. The notice of appeal described with particularity the grounds for the appeal. In the case of a *pro se* Appellant, this is sufficient to constitute an appeal memorandum. See Appeal Decisions 2454 (GERMAN), 2207 (CLARK). The appeal is considered perfected.

APPEARANCE: Pro se.

FINDINGS OF FACT

At all relevant times, Appellant was the holder of the above captioned document. See Investigating Officer ("I. O.") Exhibit 1.

The Department of Transportation procedures were properly followed in conducting the test. Appellant is the individual who provided the urine sample. The proper collection procedures were followed (See TR at 27-36; I. O. Exhibit 6). The chain of custody was intact (See TR at 47-48). The Medical Review Officer concluded that the test for marijuana metabolites was positive (See TR at 63-66; I.O. Exhibit 5). The positive test results could not have been due to passive inhalation (See TR 67-70).

BASES OF APPEAL

Appellant asserts that he came into contact with marijuana while in the Netherlands and that this contact was not in violation of the local law of the Netherlands. Appellant contends that because he did not violate the local law of the Netherlands, he is not in violation of U.S. law or U. S. Coast Guard Regulations.

OPINION

Appellant failed a pre-employment drug test. He does not deny coming into contact with marijuana while vacationing in the Netherlands. Appellant contends that the attitude toward marijuana is different in the Netherlands. Any contact he had with marijuana while there did not violate the local law; therefore he should not be considered a danger to safety at sea and should not have his document revoked.

Appellant's argument is unfounded in the law. As stated in Appeal Decision 1149 (ROMAN), "Whether narcotics are used at a place where it is lawful or unlawful, this is considered to be a serious act of misconduct by a seaman because of the constant threat that such a person presents to safety at sea while serving on a ship." United States regulations prohibiting the use of dangerous drugs provide no exception for the legal status of such substances in foreign jurisdictions. See 46 USC § 7704; 46 CFR § 5.59. Therefore, the legality of marijuana use in the Netherlands is of no consequence in an action against a merchant mariner's document issued by the United States Coast Guard.

The urine sample was provided by Appellant and the chain of custody, testing center, and testing procedures were proper and in accordance with the applicable Department of Transportation regulations. The Appellant failed a pre-employment drug screening by testing positive for marijuana metabolites. This is sufficient to establish a presumption that Appellant is a user of dangerous drugs. See 46 CFR § 16.201(b). There is nothing in the record to rebut this assumption. Appellant was properly instructed about cure, but did not attempt to establish cure. The only option under the law is revocation of Appellant's document. See 46 CFR § 5.59.

CONCLUSION

The Administrative Law Judge properly found the charge of *misconduct: Use of a Dangerous Drug* proved by reliable, probative, and substantial evidence in accordance with 46 CFR § 5.63.

ORDER

The order of the Administrative Law Judge dated August 28, 1996 is AFFIRMED.

/S/

JAMES M. LOY
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this Tuesday day of January 19, 1999.