

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

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UNITED STATES COAST GUARD

v.

MERCHANT MARINER DOCUMENT

Issued to: KWAME REY MORRIS

DECISION OF THE
VICE COMMANDANT
ON APPEAL

NO. **2712**

APPEARANCES

For the Government:
LCDR Maureen D. Johnson, USCG
Mr. John J. Hulslander
Coast Guard Sector Buffalo

For Respondent:
Mrs. Ana Magdalena Morris, as Representative

Administrative Law Judge: Michael J. Devine

This appeal is taken in accordance with 46 U.S.C. Chapter 77, 46 C.F.R. Part 5 and 33 C.F.R. Part 20.

By a Decision and Order (hereinafter "D&O") dated March 7, 2013, an Administrative Law Judge (hereinafter "ALJ") of the United States Coast Guard dismissed the Complaint against the Merchant Mariner Document of Mr. Kwame Rey Morris (hereinafter "Respondent"). The Coast Guard Complaint charged use of or addiction to the use of dangerous drugs, specifically alleging that Respondent submitted to a random drug test, and that the specimen he provided tested positive for the presence of cocaine metabolites.

Upon determining that the Coast Guard failed to provide substantial evidence that Respondent's positive drug test met all the elements of a *prima facie* case, the ALJ found the charge not proved and dismissed the complaint with prejudice.

The Coast Guard appeals.

FACTS

On October 14, 2011, Respondent was the holder of a Merchant Mariner Document issued to him by the United States Coast Guard. [D&O at 5; Coast Guard Exhibit (hereinafter "CG Ex.") 1; Transcript of the Proceedings (hereinafter "Tr.") at 173]

At all times relevant to these proceedings, Respondent was employed by International Ship Management (hereinafter "ISM"). [D&O at 5; CG Ex. 2] On October 10, 2011, Medi+Physicals, Inc., the company used by ISM for urinalysis services, selected Respondent to participate in a random drug test, via a computer-generated random selection process. [D&O at 5; CG Ex. 2; Tr. at 157-63]

Respondent submitted to random drug testing on October 14, 2011, at COMBI-Tampa's collection facility, a facility providing sample collection services for maritime employees. [D&O at 5; CG Ex. 2; Tr. at 157-63] A certified urinalysis collector handled the collection of Respondent's urine sample, but did not review the IDs of the individuals being tested. [D&O at 6; Tr. at 53-70, 81; CG Ex. 3, 14] Quest Diagnostics, a federally-certified laboratory, tested Respondent's urine sample. [D&O at 6; CG Ex. 8; Tr. at 92, 94-95] Respondent's putative urine sample tested positive for the presence of cocaine metabolites. [D&O at 6]

On November 4, 2011, a Medical Review Officer (hereinafter "MRO") discussed the results of Respondent's drug test with Respondent. [D&O at 7; Tr. at 132-34] Because the MRO determined that there was no valid medical explanation for Respondent's sample yielding a positive result, the MRO verified Respondent's drug test as positive. *Id.*

PROCEDURAL HISTORY

On March 23, 2013, the Coast Guard filed a Complaint against Respondent's Merchant Mariner Document. On April 30, 2012, Respondent filed his Answer to the Complaint, wherein he admitted all jurisdictional allegations but denied several of the Complaint's factual allegations.

On June 5, 2012, the Coast Guard filed a Motion to Withdraw the Complaint, asserting that because Respondent's Merchant Mariner Document had expired on May 23, 2012, the ALJ no longer had jurisdiction to entertain the matter. The ALJ denied the Coast Guard's Motion on June 19, 2012.

The hearing initially commenced on August 20, 2012, at Buffalo, New York. Because Respondent's attorney of record withdrew from the matter at that time, the ALJ continued the hearing until November to afford Respondent the opportunity to secure new counsel. The hearing recommenced on November 8, 2012, in Buffalo, New York, with Respondent's mother, Ana Magdalena Morris, participating as Respondent's designated representative.

At the hearing, the Coast Guard offered the testimony of four witnesses and entered thirteen exhibits into the record. Respondent testified on his own behalf and entered one exhibit into the record.

Following the hearing, both the Coast Guard and Respondent submitted post-hearing briefs.

The ALJ issued his D&O on March 7, 2013, dismissing the complaint. The Coast Guard filed a Notice of Appeal on March 11, 2013 and its Appeal Brief on May 3, 2013, thus perfecting its appeal. Respondent filed a Reply on June 3, 2013. This appeal is properly before me.

BASIS OF APPEAL

The Coast Guard appeals from the ALJ's D&O, which found not proved a single charge of use of or addiction to the use of dangerous drugs, and ordered the dismissal of its Complaint

against Respondent's Merchant Mariner Document. The Coast Guard urges me to find that the ALJ erred in finding jurisdiction in this case, since Respondent's merchant mariner credential expired while the proceedings were ongoing. Thus, the Coast Guard raises the following issue:

Whether suspension and revocation proceedings can be held against a mariner with an expired Merchant Mariner Document?

OPINION

The Coast Guard asserts, citing *Appeal Decisions 2141 (WADDY)* (1978) (the holding of a credential at the time of the hearing, and not at the time of the conviction of a drug offense, is necessary to establish jurisdiction) and *1566 (WHITE)* (1966) (no suspension and revocation proceedings can be held against a surrendered mariner credential), that the ALJ erred in finding jurisdiction existed after Respondent's mariner credential expired. I do not agree. The cited cases shed little or no light on this case.

Jurisdiction is a critical element to the validity of these proceedings; when jurisdiction, or proof thereof, is lacking, dismissal is required. *Appeal Decision 2656 (JORDAN)* (2006) at 6.

Although this case presents an issue of first impression in these proceedings, in other federal and administrative proceedings, the rule of continuing jurisdiction typically applies. Under the rule of continuing jurisdiction, it is commonly held that "a court that has acquired jurisdiction of a case cannot be deprived of jurisdiction by subsequent events in the course of its proceedings, even if those subsequent events would have prevented jurisdiction from attaching in the first place." 20 Am. Jur. 2d Courts §96. *See, e.g., Freeport-McMoran, Inc., et al. v. K N Energy, Inc.*, 498 U.S. 426, 428 (1991) ("We have consistently held that if jurisdiction exists at the time an action is commenced, such jurisdiction may not be divested by subsequent events."); *Chapman v. Currie Motors, Inc.*, 65 F.3d 78, 81 (7th Cir. 1995) ("Ordinarily, when a case is within federal jurisdiction when filed, it remains there even if subsequent events eliminate the original basis for federal jurisdiction."); *Steensland v. Alabama Judicial Inquiry Commission*, 87 So.3d 535, 542 (Ala. 2012) ("Once the jurisdiction of a court or administrative agency attaches, the general rule is

that it will not be ousted by subsequent events.”) (citing *In re Peoples*, 296 N.C. 109, 146, 250 S.E.2d 890, 911 (1978)).

I see no reason why the rule of continuing jurisdiction should not be applied in these proceedings. Since the record shows that Respondent was the holder of a valid merchant mariner credential when the proceeding was initiated, jurisdiction properly attached and, despite the subsequent expiration of that credential, jurisdiction nonetheless continued until the proceeding's conclusion.

Accordingly, the Coast Guard's appeal is rejected.

CONCLUSION

The ALJ's findings and decision were lawful, based on correct interpretation of the law, and supported by the evidence. The ALJ did not abuse his discretion. There is no reason to disturb the ALJ's Order; jurisdiction was proper in this case and the ALJ did not err in finding the Complaint not proved.

ORDER

The ALJ's Decision and Order dated March 7, 2013, as amended on March 12, 2013, is AFFIRMED.



Charles D. Michel
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 5th day of JANUARY, 201~~5~~⁶.

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