

UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF TRANSPORTATION  
**UNITED STATES COAST GUARD**

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UNITED STATES COAST GUARD

Complainant

vs.

JAMES DAVIS, JR.,

Respondent.

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Docket Number CG S&R 01-0610  
CG Case No. PA01000809

**DECISION AND ORDER**

**Issued by: Archie R. Boggs, Administrative Law Judge**

Preliminary Statement

This proceeding is brought pursuant to the authority contained in 5 USC 551-559; 46 USC Chapter 77; 46 CFR Part 5; and 33 CFR Part 20.

James Davis was served with an original Complaint dated 12 September 2001 which was issued by U.S. Coast Guard Investigating Officer LT Selvin McLean of the Marine Safety Office New Orleans, LA.

The jurisdictional allegations are that the Respondent holds merchant mariner's document 169 62 9281; and that he acted under the authority of that document on July 18, 2000 by serving as able bodied seaman aboard the vessel SS Green Island as required by law or regulation.

The factual allegations (1) are as follows:

(1) The Coast Guard alleges that on July 18, 2001 the Respondent was acting as the helmsman aboard SS Green Island.

(2) At approximately 0230 hours when a fishing vessel was approximately 5 NM directly ahead of the SS Green Island, the third mate ordered Respondent to come right 180 degrees true.

(3) Respondent failed to comply with the order until the fishing vessel was approximately 1 NM ahead of the SS Green Island.

(4) As a result of Respondent's failure to comply with the third mate's order, the SS Green Island passed within 2 NM of the fishing vessel.

The factual allegations (2) are as follows:

(1) The Coast Guard alleges that on July 18, 2001 that while on duty as the helmsman aboard the SS Green Island, the Respondent approached to within two inches of the third officer's face and stated words to the effect of, "I'll f--- you up, mother f---."

The Respondent did not file an Answer to the Complaint.

On 23 October 2001 the Investigating Officer filed a motion for Default and proposed a six (6) months suspension of Mr. Davis' merchant mariner's document.

On 28 November 2001 Chief Administrative Law Judge Joseph N. Ingolia entered an order granting the Motion for Default and issued a sanction of a six (6) months outright suspension of Mr. Davis' merchant mariner's document effective as of the date he deposited his document with the Marine Safety Office, New Orleans.

In his order Chief Judge Ingolia provided that for "good cause shown an Administrative Law Judge may set aside the findings and Default."

On 19 February 2002 the Administrative Law Judge, Docketing Center, Baltimore, MD, received a letter dated February 8, 2002, from the Respondent which was treated as a motion to set aside the Default and the outright suspension order.

On 5 March 2002 Chief Judge Ingolia set aside his previous Default Order and outright suspension of Mr. Davis' merchant mariner's document.

On 28 March 2002 Chief Judge Ingolia assigned this matter to the undersigned for a hearing.

On 2 August 2002 New Orleans Investigating Officer LTJG K. M. Utley, filed an amended Complaint alleging additional factual allegations – Violation of Law or Regulation as follows:

1. The Coast Guard alleges that on September 3, 1998 at Regional Exam Center New Orleans the Respondent:
2. Violated title 18 United States Code 1001 by submitting an application for license as officer, operator, and merchant mariner's document in which he falsely indicated that he has never been issued a Coast Guard letter of warning.
3. Respondent was issued a Coast Guard letter of warning on April 22, 1997.

A hearing was held at the Marine Safety Office, New Orleans, on 14 and 26 August 2002.

Although all of his rights were fully explained to him, including his right to be represented by professional counsel, he elected to represent himself.

He denied the allegations of the Complaint.

In support of the Complaint the Investigating Officer introduced in evidence the testimony of Robert F. Williamson, who was third mate on the 0000 to 0400 watch on the SS Green Island on 18 July 2000.

In addition to the testimony of Third Mate Williamson, the Investigating Officer introduced into evidence six (6) exhibits.

I.O. Exhibit No. 1 – a certified copy of pages 21 and 22 of the official log book of the SS Green Island.

I.O. Exhibit No. 2 – a one page typewritten letter from Robert F. Williamson addressed to Waterman Steamship Company with a subject “Incident on 0000 – 0400 watch on July 18, 2002 in the wheelhouse of the SS Green Island.”

I.O. Exhibit No. 3 – a one page typewritten letter from Jerome J. Dorman, master of the SS Green Island, addressed to James L. Davis, Jr.

I.O. Exhibit No. 4 – a one page letter of warning addressed to Mr. Davis signed by R. M. Klein, Investigating Officer, USCG, MSO Hampton Roads, VA, together with a rapidraft letter dated 27 May 1997 concerning Mr. Davis.

I.O. Exhibit No. 5 – an application for a merchant mariner’s document, which was executed by Mr. Davis on 9-3-98.

There is no I.O. Exhibit No. 6.

I.O. Exhibit No. 7 – an application for a merchant mariner’s document executed by Mr. Davis at the Regional Exam Center, New Orleans, dated 5-12-02.

Mr. Davis testified in his own defense.

In addition to his own testimony he introduced in evidence two commendatory letters: (1) a letter dated August 22, 2002 from Noe A. Corrales, who holds a second mate license and (2) a letter from Captain H. von Rettberg, who holds a master’s license. Both Second Mate Corrales and Captain von

Rettberg sailed with Mr. Davis --- Mr. Corrales on the SS Green Island, and Captain von Rettberg on the M/V Overseas Hawlette.

#### FINDINGS OF FACT

1. The Respondent James Davis is now, and was the holder of merchant mariner's document No. 169 62 9281 on 18 July 2000 and 3 September 1998.
2. At about 0206 on 18 July 2000 while the SS Green Island was off the India Coast and in the vicinity of numerous fishing vessel, the Respondent allowed a potentially dangerous situation to develop by failing to carry out helm orders as given by Third Mate Williamson.
3. By failing to carry out helm orders immediately as given the Respondent caused a dangerous distraction from the safe navigation of the vessel.
4. Mr. David had been warned on numerous occasions and he was cautioned not to repeat his belligerent conduct.
5. As a result of his actions Mr. Davis was discharged for cause and he was repatriated to the United States.
6. On 22 April 1997 Mr. Davis was issued a letter of warning by a Coast Guard Investigating Officer at the Marine Safety Office, Hampton Roads, VA.

#### OPINION

The allegations in the complaint are proved by reliable, substantial and probative evidence.

ORDER

That your merchant mariner's document No. 169 62 9281 and all other valid licenses, documents, or certificates of service issued to you by the United States Coast Guard, or any predecessor authority, now held by you, be and the same, are hereby suspended Outright for six (6) months.

The rules governing appeals are attached hereto.



ARCHIE R. BOGGS

ADMINISTRATIVE LAW JUDGE

Date 24 February 2003

New Orleans, Louisiana