

IN THE MATTER OF LICENSE NO. 369895  
Issued to: James R, MOORE, JR. BK-043231

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1991

James R. MOORE, JR.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 14 June 1973, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's license for 3 months outright upon finding him guilty of negligence. The specification found proved alleges that while serving as a Pilot on board the SS HESS REFINER under authority of the above captioned license, on or about 1 February 1973, Appellant did wrongfully proceed at an immoderate speed in conditions of reduced visibility due to fog in Southwest Pass thereby contributing to a collision between said vessel and the M/V SOCRATES and tow, the T/B ALLIED CHEMICAL No. 44.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the Master and 2nd Mate of the HESS REFINER, the Captain of the

SOCRATES, and Mr. Lewis Miller, and various documents including the official ship's Log and Bell Book.

Appellant offered no evidence in defense.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. The Administrative Law Judge then served a written order on Appellant suspending his license for a period of 3 months outright.

The entire decision was served on 18 June 1973. Appeal was timely filed on 18 June 1973.

#### *FINDINGS OF FACT*

On 1 February 1973, Appellant was serving as a Pilot on board the HESS REFINER and acting under authority of his license while the ship was transiting the Mississippi River. On 31 January 1973 the SOCRATES, a 114 foot tug, towing astern the ALLIED CHEMICAL No. 44, a 340 foot barge, departed Geismar, Louisiana bound for the sea via the Mississippi River. When it reached Southwest Pass, because of reported rough seas over the bar, the Captain, Robert Scott, rounded the tug and tow into the west descending bank of the River. He pushed the barge into the bank and kept it there by placing his bow against the barge while leaving his engines turning ahead. This position was retained on a heading of 359 degrees gyro until the time of the collision.

The HESS REFINER departed Ostrica, Louisiana at about 0500 on 1 February 1973. Shortly before reaching Southwest Pass she began to experience intermittent fog. The vessel was proceeding at "half ahead," approximately 8 to 10 knots through the water, and was experiencing a following current of 4 to 6 knots. As she entered Southwest Pass at about 0726 the fog became so dense that the banks of the River, approximately 300 feet away, were not visible. At about 0739 the masts of the SOCRATES were sighted ahead, and the Appellant ordered the engines "full astern" and right full rudder. Almost simultaneously the barge became visible and the rudder was shifted to left full. The HESS REFINER hit the barge at 0740. Both vessels were damaged, but there were no injuries.

*BASES OF APPEAL*

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

- (1) the findings of the Administrative Law Judge were erroneous and against the weight of the evidence;
- (2) the SOCRATES was lying on the west bank of the River in violation of 33 CFR 110.195(b);
- (3) the case of *Union Oil Co. v. The Tugboat SAN JACINTO* is controlling and on its rationale, the HESS REFINER was not proceeding at an immoderate speed.
- (4) the 3 moth suspension is unduly harsh in light of Appellant's exemplary record.

APPEARANCE: Cornelius G. Van Dalen, Esq. for Appellant.

*OPINION*

I

It should first be noted that it appears that all parties were satisfied that the Coast Guard had jurisdiction in this case, even though the record is devoid of any evidence to substantiate same. The issue of jurisdiction was not raised at the hearing or on appeal. However, notice is now taken of the fact that the vessel was operating under valid Enrollment, J-16, issued and renewed at Jacksonville, Florida. Thus, Appellant was operating under the authority of a federal license as required by 46 U.S.C. 364.

II

The first point raised by Appellant on appeal is that the findings of the Administrative Law Judge are erroneous and against the weight of the evidence.

a. Appellant's first exception to the findings is that the Administrative Law Judge disregarded the evidence that the HESS REFINER was proceeding at "half ahead" because it had lost steerageway at "slow ahead". The testimony of the Master of the HESS REFINER on this point was that the vessel experienced difficulty in steering at "slow ahead", not that it ever actually lost steerageway. In any case the attempt to proceed at "slow ahead" was made just prior to entering Southwest Pass at a point where the river bends and another channel branches off. Once the vessel entered Southwest Pass it was proceeding in a straight channel bounded by straight banks on both sides, so that the current would have had less twisting effect on the vessel than it did as the vessel was rounding the bend above the pass. However, once the vessel entered Southwest Pass, there was never another attempt to proceed at slower speeds. It is inconceivable that a speed of 8 to 10 knots through the water and 12 to 16 knots over ground was a moderate speed under the circumstances, or was even the minimum speed necessary to maintain steerageway. Under the conditions existing at the time, it was incumbent on the Appellant to proceed at the slowest possible speed, i.e., that speed necessary to maintain bare steerageway. This should have been accomplished by proceedings at considerable reduced speeds with intermittent increases to maintain steerageway. Instead Appellant made one attempt to proceed at "slow ahead" prior to entering the straight run of Southwest Pass, and then he increased speed to "half ahead". He continued at that speed, 12 to 16 knots over the ground, for almost 16 minutes after entering Southwest Pass until just prior to the collision without any further attempt to reduce speed, even though visibility was only about 300 feet. On these facts Appellant failed to perform as a reasonable prudent navigator under the circumstances.

b. Appellant next contends that the Administrative Law Judge's finding that the SOCRATES was a "stationary" vessel "well out of the channel" was erroneous. Suffice it to say that there is substantial evidence on the record to support this finding, and in any case, the position of the SOCRATES is irrelevant in proceeding at an immoderate speed under the visibility conditions existing at the time.

c. Finally, Appellant states that it was impossible for the

collision to have occurred in the position as found by the Administrative Law Judge because there were only 24 feet of water at that point and the HESS REFINER was drawing 34.7 feet. The chart entered as exhibit 3 shows that there is over 30 feet of water right up to the point where the collision occurred. Also the HESS REFINER put a hole in its bottom shortly after the collision, which would indicate that it was out of the channel at that time. There was no evidence pertaining to tidal conditions at the time of the collision. The evidence in the record does not support Appellant's position on this point; what evidence there is in this regard, is at best inconclusive.

### III

Appellant's next point is that the SOCRATES was lying on the west bank of Southwest Pass in violation of 33 CFR 110.195(b). If this hearing was one to determine fault for the collision, this would be a relevant point; however, as already noted, this hearing was to determine whether Appellant was negligent in proceeding at an immoderate speed in reduced visibility. Any negligence or statutory violation on the part of the Captain of the SOCRATES is not relevant to the question of whether the HESS REFINER was traveling at an immoderate speed.

### IV

Appellant cites the case of *Union Oil Co. v. The Tugboat SAN JACINTO*, 93 S.Ct. 368 (1973), to support his position that the HESS REFINER was not traveling at an immoderate speed under the conditions existing just prior to the collision. As the Administrative Law Judge pointed out in his opinion, the *SAN JACINTO* case is clearly distinguishable from the instant case. In that case the SANTA MARIA (tanker) was proceeding upriver in clear visibility. The SAN JACINTO (tug) was proceeding downriver with a barge in tow and was experiencing considerable fog on its side of the river. The SANTA MARIA sighted the SAN JACINTO as it entered the fog about one mile ahead and proceeded at half speed knowing that there was ample room for a port-to-port passage. The SAN JACINTO did not sight the SANTA MARIA until her range lights appeared out of the fog. The watch on the SAN JACINTO mistakenly thought that the vessels were on a collision course and made a sharp turn to the left in an effort to execute a U-turn and ran

back up river in hopes of avoiding the collision. The SANTA MARIA sighted the SAN JACINTO as it emerged from the fog at a right angle to the SANTA MARIA. Full astern was ordered, but the collision could not be avoided. The District Court held that the SAN JACINTO was totally at fault. The Court of Appeals reversed in part, finding that the SANTA MARIA had been proceeding at an immoderate speed. The Supreme Court reversed, holding that implicit in the rule requiring moderate speed in fog, and the judicially established half-the-distance-rule, is the assumption that vessels can reasonable be expected to be traveling on intersecting courses. They stated:

If, on the facts of the case, it is totally unrealistic to anticipate the possibility that a vessel will travel on a particular heading that would intersect the course of another ship, the reason for the rule is clearly not present.

The court further noted that there was no evidence that the speed of the SANTA MARIA would not have allowed her to come to a stop in half-the-distance upon sighting a vessel on a remotely intersecting course or one being overtaken by her.

In the instant case the HESS REFINER was proceeding in a dense fog. She could have, and should have, reasonably anticipated meeting or overtaking a vessel in this heavily traveled, narrow channel. Also, since the SOCRATES was in a stationary position, the HESS REFINER had the *full distance* of the visibility to stop once she sighted the SOCRATES, but was unable to do so. It should also be noted that the issue in the *SAN JACINTO* case was one of liability, and the court found that the speed of the SANTA MARIA was not the proximate cause of the collision. In the instant case we are not concerned with liability, but rather with the question of whether the Appellant proceeded at an immoderate speed in reduced visibility, and thereby contributed to the collision, a completely separate issue from the question of the proximate cause of the collision for the purposes of establishing liability. There can be no doubt that the excessive speed of the HESS REFINER materially contributed to the collision. Thus, the very limited holding of the *SAN JACINTO* is clearly inapplicable here.

Finally, Appellant contends that a 3 month suspension is unduly harsh in light of Appellant's prior exemplary record. The severity of an order is peculiarly within the discretion of the Administrative Law Judge, and will be modified on appeal only upon a clear showing that the order is arbitrary or capricious. The facts of the instant case show that the order of a 3 moth suspension is reasonable.

### CONCLUSION

There is substantial evidence of a reliable and probative nature to support the finding of the Administrative Law Judge that under the conditions existing at the time of the collision, Appellant was negligent in proceeding at an immoderate speed.

### ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana on 14 June 1973 is AFFIRMED.

C. R. BENDER  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 26th day of October 1973.

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