

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO 99792
Issued to: LELAND H. GOODWIN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2008

LELAND H. GOODWIN

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 9 January 1974, an Administrative Law Judge of the United States Coast Guard at Long Beach, California suspended Appellant's seaman's documents for four months outright plus three months on twelve months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as Operator on board the MV PIONEER under authority of the license above captioned, on or about 19 September 1973, Appellant negligently failed to keep clear of the tankship SANINENA II causing a collision between the two vessels.

At the hearing, Appellant initially elected to act as his own counsel and entered a plea of not guilty to the charge and specification. At a subsequent session, he was represented by professional counsel. At the final session, the proceedings were properly concluded *in absentia*. The Investigating Officer introduced in evidence the live testimony of three witnesses and various documents.

In defense, Appellant offered no evidence.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He subsequently entered an order suspending all documents issued to him for a period of four months outright plus three months on twelve months' probation.

The entire decision and order was served on 11 January 1974. Appeal was timely filed on 23 January 1974.

FINDINGS OF FACT

On 19 September 1973, Appellant was serving as Operator on board the MV PIONEER and acting under authority of his license while the ship was at sea. On 19 September 1973, the MV PIONEER, a 42' sportfishing vessel was underway with eight passengers aboard. The crew consisted of Appellant and an unlicensed deckhand. At approximately 0445, about one-half hour after departing Ventura, Appellant lay down on the wheelhouse deck and the deckhand took over the operation of the vessel.

On the 20-mile scale of the radar, the deckhand observed another vessel at an approximate distance of 10 miles. After switching to the 6-mile scale, however, he picked up no further vessel contacts. The mate on watch aboard the tanker SANSINENA II observed the MV PIONEER in a port to starboard crossing situation and took evasive action. After passing, however, MV PIONEER came about and collided with the tanker's starboard side at approximately 0550. The MV PIONEER deckhand saw the side of the tanker a few feet prior to the impact.

BASES OF APPEAL

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

(1) The number of hearing sessions rendered the decision and order unjustifiable.

(2) Appellant's inability to obtain counsel prevented a fair

hearing.

(3) The deckhand, not Appellant, was at fault.

(4) The collision was caused by the alteration of the SANSINENA II's course.

(5) Various statements by the witnesses were false or erroneous.

APPEARANCE: Appellant, *Pro se*.

OPINION

I

Appellant complains that the granting of three continuances during the course of the hearing made it impossible for him to present a defense and resulted in his failure to attend the last two sessions. The initial continuance was granted upon motion of the Investigating Officer for the purpose of securing the presence of two witnesses, who were at sea. This was a legitimate purpose for continuance and well within the confines of "good cause" as used in 46 CFR 137.20-10. The other two continuances were granted upon motion of Appellant's counsel and, therefore, present no legitimate basis for appeal. I note, however, that these latter continuances were granted for the sole purpose of enabling Appellant to present his defense. As to Appellant's inability to attend the last two sessions of the hearing, it is sufficient to note that the proceedings were properly conducted *in absentia* in accordance with 46 CFR 137.20-25.

II

There is nothing in the record to indicate that Appellant's initial decision to represent himself at the hearing was anything but voluntary. At a later stage, he was in fact represented by professional counsel. Prior to the final session of the hearing, however, counsel withdrew from the case. While the person charged in suspension and revocation proceedings has a right to be represented by counsel of his choice, the responsibility of the government in this regard is fully exercised when the person

charged has been duly informed of that right and given reasonable opportunity to procure such representation. This responsibility was clearly fulfilled in this case and Appellant did retain counsel, whose subsequent withdrawal presents no meritorious basis for appeal. Appellant's proper remedy in this situation was to move for a continuance to enable him to retain another attorney. This he did not do.

III

Appellant disclaims responsibility for the collision because the deckhand was operating the vessel at the time. This, however, is not a meritorious defense. It was held in *Appeal Decision 1887 (VIGILANT)* that the licensed operator of a vessel such as MV PIONEER is not necessarily required to be in direction, control or *immediate* supervision of the vessel's operation at all times in order to prevent a finding of misconduct. Indeed the licensing system contemplates that a deckhand will be given the opportunity to accumulate operating experience. This, however, does not afford the licensed operator carte blanche to relieve himself of his responsibility for the safety of his vessel and those on board. Indeed the *VIGILANT* decision clearly pointed out that the licensed operator may be found guilty of negligence as the result of the operation of the vessel by a deckhand, particularly if a marine casualty ensues. The purpose of the licensed operator requirement is to ensure that responsibility for the safe navigation of the vessel will rest on the shoulders of a qualified person. The licensed operator is, therefore, at all times responsible for the safety of the vessel and the actions of his crew in this regard. He may shift control to a deckhand and withdraw from supervising that deckhand only to the extent consistent with safety. Appellant clearly failed to meet that standard in this case. Had he exercised properly his duties, the collision would certainly have been avoided. Appellant chose to allow the deckhand to operate the vessel for an extended period of time without supervision. Appellant was, thus, fully responsible for the failure to keep clear of the SANSINENA II.

IV

There is ample evidence on the record to show that the evasive action taken by the SANSINENA II was necessitated by Appellant's

failure to give way as required by the Rules of the Road. This action prevented the earlier occurrence of the collision and the evidence clearly shows that the collision in fact occurred solely because of the improper maneuvering of MV PIONEER.

V

Appellant offers various allegations of fact which simply cannot be considered on appeal. Appellant was afforded sufficient opportunity to cross-examine the government witnesses and to present his own version of the facts at the hearing. The appeal is not the proper forum for the introduction of evidence. I note in passing, however, that the record supports Appellant in his assertion that the deckhand assumed the controls approximately 30 minutes after departure, rather than 1 1/2 hours as found by the Administrative Law Judge. This is, at best, irrelevant to the case, however, because it shows only that the deckhand was operating the vessel for a longer period of time with no apparent supervision.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California on 9 January 1974, is AFFIRMED.

E. L. PERRY
Vice Admiral, U.S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 13th day of September 1974.

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