UNITED STATES OF AMERICA

DEPARTMENT OF HOMELAND SECURITY

UNITED STATES COAST GUARD

UNITED STATES OF AMERICA	:	DECISION OF THE
UNITED STATES COAST GUARD	:	VICE COMMANDANT
vs.	:	ON APPEAL
MERCHANT MARINER LICENSE	:	NO. 2654
Issued to: THEODORE DALE HOWELL	:	

This appeal is taken in accordance with 46 U.S.C. § 7701 *et seq.*, 46 C.F.R. Part 5, and the procedures set forth in 33 C.F.R. Part 20.

By a Decision and Order (hereinafter "D&O") dated July 21, 2003, an Administrative Law Judge (hereinafter "ALJ") of the United States Coast Guard at Portland, Oregon, revoked Theodore Dale Howell's (hereinafter "Respondent's") merchant mariner license upon finding proved a charge of violation of law or regulation. The charge was based on two specifications: 1) failure to conduct a safety orientation in violation of 46 C.F.R. § 26.03-1; and, 2) failure to post safety instructions in violation of 46 C.F.R. § 26.03-2.

PROCEDURAL HISTORY

The Coast Guard filed its Complaint against Respondent on March 11, 2003. Respondent filed his Answer to the Complaint, admitting all jurisdictional and all factual allegations, and requesting that a hearing be held on the sanction to be imposed on March 21, 2003.

The Hearing in the matter was held on May 28, 2003, at Coast Guard Marine Safety Office, Portland, Oregon. Respondent appeared with counsel and confirmed the admissions contained in his Answer, including the following:

1. He was the holder of the Coast Guard license at issue in the instant proceedings and acted under the authority of that license on May 18, 2002, while serving as Operator of the Uninspected Passenger Vessel (hereinafter "UPV") TED'S.
2. On May 18, 2002, on the Pacific Ocean near Garibaldi, Oregon, he: 1) violated 46 C.F.R. § 26.03-1 by not conducting a safety orientation prior to getting underway with 2 passengers for hire; 2) violated 46 C.F.R. § 26.03-2 by not ensuring that an emergency check off list was posted in a conspicuous place for passengers on board the UPV TED'S.
3. These regulations are intended to promote marine safety or protect navigable waters.

[Transcript (hereinafter "Tr.") at 33-36]

Based on the foregoing, the ALJ ruled that the allegations in the Coast Guard's complaint were proved and that the only question remaining before the court was the selection of the appropriate sanction. The evidence at the hearing was limited to testimony and exhibits related to the sanction to be imposed, including any mitigating and aggravating factors. At the hearing, the Coast Guard called two witnesses and introduced 14 exhibits into evidence. Respondent called one witness and introduced two exhibits into evidence. At the conclusion of the evidence, the parties waived the filing of proposed findings of fact and conclusions of law and made oral closing arguments. A

transcript was ordered to assist the ALJ in rendering a decision and was received by the ALJ on July 14, 2003.

The ALJ issued his D&O, finding the charges proved and ordering the revocation of Respondent's Merchant Mariner License on July 21, 2003. Respondent filed a Notice of Appeal on August 5, 2003 and perfected his appeal by filing the required appellate brief on September 12, 2003.

The Coast Guard submitted its "Response to Brief of Appellant" (hereinafter "Reply Brief") on October 24, 2003. On October 28, 2003, Respondent submitted an objection to the Coast Guard's brief, alleging that the same was untimely.

APPEARANCES: Craig W. Weston, Esq., Reitsch & Weston, P.L.L.C., 1408 16th Ave., P.O. Box 250, Longview, WA, 98632, for Respondent. The Coast Guard was represented by LT Anthony Sellers, LT Marianne Gelakoska, and LTJG Belana Audirsch, and CAPT Paul D. Jewell, USCG, Marine Safety Office Portland, Oregon.

FACTS

The facts in this case are not in dispute except to the extent that Respondent takes issue with the ALJ's Findings of Fact numbers 6, 7, 21 and 23 as a basis for this appeal.

At the time of the incident, Respondent had been employed as a commercial fisherman and a fishing guide for approximately 35 years, including the 15 preceding years as a fishing guide in and about the Tillamook Bay area off the Oregon coast. [D&O at 4; Coast Guard Exhibit 5; Tr. at 165] Respondent first obtained a Coast Guard license in 1991 and, thereafter, became the owner and operator of the 25-foot UPV TED'S. [D&O at 4; I.O. Exhibits 1 and 2] Respondent operated the UPV TED'S as a commercial

charter sports fishing vessel. At all times relevant to these proceedings, Respondent served under the authority of his license.

On May 18, 2002, at about 5:15 a.m., the TED'S departed from the Garibaldi Old Mill Marina with Respondent and two customers, Messrs. Davies and Campbell, as passengers for a two-day fishing trip. [D&O at 4; I.O. Exhibit 7] Both passengers appeared to Respondent to be experienced fishermen in the Tillamook Bay area and each owned power boats. [D&O at 4; Tr. at 174] When the vessel departed port, it had seven Coast Guard approved life preservers on board, stored in a tower above the center console. [D&O at 5; I.O. Exhibit 5; Tr. at 216]

The Tillamook Bay Bar ("the bar") is an area between the north and south jetties at Kincheloe Point and in Tillamook Bay, Pacific Ocean along the Coast of Oregon. [I.O. Exhibit 12 (Portion of NOAA Chart 18558)][1] When the TED's crossed the bar at approximately 6:00 a.m., it was unrestricted and open to all vessels. [I.O. Exhibit 5; Tr. at 175] Conditions at the bar later deteriorated. [D&O at 5-6; I.O. Exhibit 5, Incident Brief at 1] At 7:15 a.m., a Coast Guard 47-foot motor lifeboat was sent to patrol the bar, and the rough bar warning light was activated. [D&O at 6; I.O. Exhibit 5, Incident Report at 1] At 9:00 a.m., the bar became restricted to all recreational and Uninspected Commercial Passenger Vessel traffic due to unsafe conditions, and it remained restricted until the time the UPV TED'S capsized. [Tr. at 91-92; I.O. Exhibit 14] During this time, Respondent was monitoring VHF channel 16 and heard the bar reports. [D&O at 6; I.O.

[1] Tillamook Bay Bar is more specifically defined in 33 C.F.R. §177.08, as follows:

> Tillamook Bay Bar, Oreg. From a point on the shoreline at 45° 35'15" N., 123° 57'05" W. thence westward 45° 35'15" N., 124° 00'00" W. thence southward to 45° 30'00" N., 124° 00'00" W. thence eastward to a point on the shoreline at 45° 30'00" N., 123° 57'40" W. thence northward along the shoreline to the north end of Kincheloe Point at 45° 33'30" N., 123° 56'05" W. thence northward to a point on the north shoreline of the

Exhibit 5, Incident Report at 1] Although respondent was aware of the worsening conditions, he continued his fishing expedition, trolling for salmon off the tip of the South Jetty, working the area to the South back and forth. [D&O at 6; Tr. at 176-177; I.O. Exhibit 5]

At approximately 11:50 a.m., Respondent suddenly noticed a 10-foot wave about 100 yards away with about 5 to 6 feet of white water. He navigated the vessel over the top of the wave. A second fast moving wave, about 12-14 feet high followed, and the Respondent was unsuccessful in his attempt to navigate over it. The vessel capsized throwing all passengers and Respondent into the water. The capsizing occurred at approximately 12:00 noon. [D&O at 6-7; I.O. Exhibit 5, Statement of Ted Howell; Tr. at 104-105, 179-180] Prior to the date of the casualty, Respondent had encountered similar sudden waves. [Tr. at 180] As he testified, "This is a treacherous locality. This is one of the treacherous localities on the Pacific Coast. I fished them all." [Tr. at 180]

The Coast Guard lifeboat was nearby and observed the TED'S taking large waves, as well as the capsizing, and recovered all three persons from the water; however, only Respondent survived. [D&O at 7; I.O. Exhibit 5; Tr. at 81-84] Neither the passengers nor Respondent were wearing life preservers when they were thrown into the water. One passenger, Mr. Campbell was clutching a cooler. [D&O at 7; I.O. Exhibits 5 and 8; Tr. at 181-182] Respondent was able to grab a life preserver from the vessel and had one arm through it when he was recovered by the Coast Guard. [D&O at 7; I.O. Exhibits 5 and 8; Tr. at 181-182]

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harbor at 45° 33'40" N., 123° 55'59" W. thence westward along the north shoreline of the harbor then northward along the seaward shoreline to the beginning.

BASES OF APPEAL

This appeal is taken from the D&O imposed by the ALJ finding proved the charge of Violation of Law or Regulation. Respondent's bases of appeal are summarized as follows:

I. *The ALJ erred or was arbitrary and capricious by entering Findings of Fact Nos. 6, 7, 21 and 23 in the written Decision and Order dated July 21, 2003, without substantial evidentiary support.*

II. *The ALJ's Finding of Fact and Conclusion of Law No. 4 is not supported by substantial evidence and/or is not in accord with applicable law, precedent and public policy.*

III. *The ALJ abused his discretion in ordering that appellant's license be revoked as the sanction for violating 46 C.F.R. § 26.03-1 and 46 C.F.R. § 26.03-2.*

OPINION

As a preliminary matter, I will address the timeliness of the Coast Guard's Reply Brief. The record shows that although the Coast Guard's Reply Brief was due for submission on October 14, 2003, the Brief was filed on October 24, 2003. I have held that "[o]nly in cases of extraordinary or extenuating circumstances will the Coast Guard deviate from its practice of strict adherence to the timeliness of procedural requirements. Appeal Decisions 2631 (SENGEL) and 2553 (ROGERS). This requirement is as applicable to the Coast Guard and its submissions as it is to Respondents. Therefore, in the instant case, I will only consider the Coast Guard's Reply Brief, untimely filed, if there were extraordinary or extenuating circumstances which prevented the timely submission of that document. I believe that such circumstances were, in fact, present in this case. The Appeal was sent by regular U.S. mail addressed to the Investigator who

represented the Coast Guard at the hearing. The item was assumed by the distribution center to be personal mail and was placed in the Investigator's box, while the Investigator was out of state on a two-month temporary assigned duty, a circumstance of military exigency. Therefore, although the Coast Guard failed to file its Reply Brief in a timely manner, I will consider it because there were extenuating circumstances which prevented its timely submission.

I.

The ALJ erred or was arbitrary and capricious by entering Findings of Fact Nos. 6, 7, 21 and 23 in the written Decision and Order dated July 21, 2003, without substantial evidentiary support.

With respect to my review of the ALJ's Findings of Fact, the law is well settled. *See, e.g.* Appeal Decision 2450 (FREDERICKS). The duty of the ALJ, sitting as trier of fact, is to evaluate the evidence presented at the hearing. *Id.* The ALJ has discretion to find the ultimate facts pertaining to the specifications. *Id.* The findings need not be consistent with all evidentiary material contained in the record so long as sufficient material exists in the record to justify such a finding. *Id.* I may only reverse the ALJ's decision if his findings are arbitrary, capricious, clearly erroneous, or based on inherently incredible evidence. Appeal Decisions 2584 (SHAKESPEARE), 2570 (HARRIS), *aff'd* NTSB Order No. EM-182 (1996), 2390 (PURSER), 2363 (MANN), 2344 (KOHAJDA), 2333 (AYALA), 2581 (DRIGGERS), and 2474 (CARMIENKE).

A. Finding of Fact No. 6

Respondent contends that the evidence did not support the ALJ's finding that Mr. Davies "appeared to Respondent to be concerned about life preservers." The ALJ found as follows: "One passenger, a Mr. Davies appeared to Respondent to be concerned

about life preservers and each passenger expressed to Respondent they had the same life preservers on board their own power boats that he had on the TED's." [D&O at 4, finding of fact no. 6.] Respondent contends that the evidence did not show Mr. Davies to be concerned about life preservers, but rather, implied he was "more of an 'enthusiast' or 'collector' of life preservers." Upon a thorough review of the record, I do not believe that the ALJ based his conclusion, in this regard, on incredible evidence; rather, I believe that the ALJ's factual conclusion was a reasonable one, supported by the testimony in the record. The record shows that Respondent addressed Mr. Davies' posture on life preservers during the Hearing:

> Q. Was there any discussion about life preservers, about the use of them, with Mr. Davies or Mr. Campbell?
>
> A. ... Davies was kind of a life preserver freak almost, because he owned half a dozen inflatables for his own operation. But this day he did not bring one...

[Tr. at 175][2] In any event, there is no indication in the ALJ's written opinion that he relied or placed undue emphasis on this particular Finding of Fact in reaching his conclusion on the imposition of a sanction; it is not mentioned in the "Discussion" portion of the D&O. Moreover, whether the deceased was "concerned" about life preservers, or whether, as Respondent contends, he was an "enthusiast" or "collector" of them, does not bear on my decision. Most importantly, since the ALJ's finding, in this

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[2] Respondent later in testimony referred to Mr. Campbell as "almost a life preserver fanatic." [Tr. at 192.] It is not clear whether Respondent confused which of the two passengers, or whether both of them, had the interest in life preservers. However, resolution of this lack of clarity is unnecessary to my decision.

regard, was not material to the imposed sanction, it is harmless error. *See* Appeal Decisions 2572 (MORSE), 2531 (SERRETTE), and 2487 (THOMAS).

B. Finding of Fact No. 7

The ALJ's Finding of Fact number 7 was as follows:

> Respondent has not, prior to getting underway on a fishing trip, regularly given a safety orientation, as required by 46 CFR 26.03-1, nor has he posted on board the TED'S any emergency instructions, as specified in 46 CFR 26.03-2, but on this fishing trip he did discuss with the two passengers the locations of the life preservers, fire extinguishers, electronic gear.

Respondent contends that this Finding of Fact was deficient in that, with respect to the safety orientation, the ALJ did not include a finding (1) that the Respondent went through the proper method of putting the life preservers on and off, and (2) that he described for the passengers the type and location of all life saving devices carried on the vessel. Respondent does not take issue with this finding in any other respect. The evidence on this point consisted of the examination of the Respondent, as follows:

> Q. Were they shown where they [the life preservers] were on the boat?
>
> A. Oh, yeah. It's obvious where they were. You couldn't help see them …

[Tr. at 175]

> Q. And the type and location of all lifesaving devices carried on the vessel, did you describe that to them?
>
> A. The what?
>
> Q. Type and location of all lifesaving devices. That's what it says you're supposed to do.
>
> A. Well, the type and location, yeah. That was obvious.

[Tr. at 184]

Q. Why don't you give me the orientation you gave them? Tell me what you said ... Tell me exactly as you recall what did you tell them?

A. I said, Stan, and Mr. Davies, too – I can't remember first names – but you can see where the life preservers are. To get one, all you got to do is reach up and get one. That was probably the extent.

Q. Nothing more?

A. No.

[Tr. at 217-218]

Respondent's testimony supports the ALJ's conclusion that the safety orientation consisted of discussing with the two passengers the locations of the life preservers, fire extinguishers, and electronic gear. I have long held that a finding of fact, supported by evidence should not be disturbed. Appeal Decision 2279 (LEWIS). Because the ALJ's Finding of Fact number 7 is well-supported by the evidence, there is no basis for disturbing his determination regarding the content of the safety orientation given by the Respondent.

C. Finding of Fact No. 21

Respondent contends that the ALJ's finding that "[t]he Coast Guard lifeboat ... was in the process of coming to it in order to orally instruct them to leave the area" is not supported by the evidence. I disagree. Coast Guard BM1 Kevin Spears, who testified at the hearing, was the duty surfman for Station Tillamook Bay on the date of the incident. [Tr. at 79] He testified that although Respondent had been fishing outside the bar that morning, at the time of the capsizing, his vessel was inside the bar. [Tr. at 126-127, 132] He further testified that Respondent's vessel should not have been in that location because the area was restricted at that time. [Tr. at 126-127, 132] BM1 Spears stated

that when he saw Respondent navigate the first large wave, he did not have time to radio the TED'S and "was already clipping in and had my belt on" (preparing to get underway). [Tr. at 106] His testimony was that, after seeing the TED'S take the first wave, he prepared to get underway in order to approach the vessel and tell the Respondent to leave the area. [Tr. at 106, 113, 132, 136] As I have already noted, I have held in the past that a finding of fact that is well-supported by the evidence should not be disturbed. Appeal Decision 2279 (LEWIS). As a result, because there is substantial evidence in the record to support a conclusion that the ALJ's Finding of Fact number 21 is well-supported by the evidence, I will not disturb that finding on appeal.

D. Finding of Fact No. 23

Respondent contends that the evidence does not support the ALJ's finding that the Respondent "does not believe in wearing them [life preservers] or instructing his passengers to do so." [D&O at 7, finding of fact no. 23] He further contends that the finding was a matter of "personal bias" on the part of the ALJ. [Brief of Appellant at 6]

I do not find Respondent's argument's with respect to Finding of Fact number 23 to be persuasive. The record is replete with evidence to support the ALJ's finding regarding Respondent's opinions on life preservers, all in the form of Respondent's own statements on the subject. [I.O. Exhibits 8 and 13; Tr. at 195-199; *see also*, Tr. at 180-181, 219, 225-226] Indeed, while being cross-examined as to his views on the topic—

views that were discussed in a newspaper article examining the aftermath of the incident[3]—Respondent testified as follows:

> Q. What I was trying to address with the statement in paragraph 4 of Mr. Apalategui's affidavit[4] is why you would make a statement such as that after the experience that you had been through with –
>
> A. I made that for one reason. I made it for the reason that not wearing a life preserver probably saved my life.
>
> I think it would be a whole lot better if all the people practiced more expertise in swimming. That's the statement I was trying to make.
>
> When these seas are traveling at 25 miles an hour and they're 5 to 6 foot with white water on them, the battling and roughing up you take, I figure that was problematic in the drowning of the two people that I had.
>
> Q. So you think if they had been better swimmers, they would have lived?
>
> A. I think they would have had a far better chance.

[Tr. at 197-199] As a result, I believe that Finding of Fact number 23 is well-supported by the evidence and should not be disturbed. Appeal Decision 2279 (LEWIS).

II.

The ALJ's Finding of Fact and Conclusion of Law No. 4 is not supported by substantial evidence and/or is not in accord with applicable law, precedent and public policy.

In his D&O, the ALJ stated, in Finding of Fact and Conclusion of Law No. 4, as follows:

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[3] *See* I.O. Exhibit 8 (Eric Apalategui, *Report clears fishing guide of negligence,* Washington Daily News, February 25, 2003) (stating: "Although the [Coast Guard] report said that wearing a life jacket greatly increases the chance of survival in a boating accident, Howell remained unpersuaded: "I've fished for 60 years on the high seas and I've never worn one. They're uncomfortable. They're big and cumbersome." The article concluded that "Howell said he continues to guide anglers off Tillamook Bay and elsewhere with his remaining boats. He still doesn't wear a life jacket himself. Nor does he require or suggest that his customers wear life jackets in most situations.")

> [t]he Respondent had and appears to continue to have a cavalier approach to safety orientation together with an unusually idiosyncratic view about the use of life preservers which demonstrated to me that Respondent's service in an uninspected passenger vessel would constitute a definite danger to public health, interest or safety at sea.

Respondent argues that his violation of the regulations consisted solely of failing to post an Emergency Checkoff List, rendering him in violation of both 46 C.F.R. §§ 26.03-2 and 1. He asserts that he was, however, in compliance with the latter regulation, which requires a passenger safety orientation, except to the extent that he did not acquaint the passengers with an Emergency Checkoff List. On the same bases that supports the ALJ's finding of fact number 7 as discussed above, I do not accept these assertions. Furthermore, Respondent is not aided in his appeal by his attempt to parse the elements of the safety orientation required by regulation. Respondent's argument comparing the elements that he did not violate to those he did is without merit. The regulation in its entirety is intended to promote safety with a view towards preventing the type of events that gave rise to this case.

Respondent additionally takes issue with the ALJ's conclusion on the grounds that: he now posts the Checkoff List; he has many years experience; he has fished the Tillamook Bay for many years without incident; he only received one prior citation, which was dismissed after prompt correction of the violation; and prior to the incident in question, he rescued fishermen whose boat had capsized near the same location. Even assuming that these contentions are factually correct, they are not determinative of the ultimate finding of fact and conclusion of law reached by the ALJ, which is supported by separate and additional facts in evidence.

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[4] *See* I.O. Exhibit 13 (Affadavit of Mr. Eric Apalategui) (Quoting Respondent as stating that he's "never worn" life preservers because "[t]hey're uncomfortable" and "[t]hey're big and cumbersome." In addition,

Respondent admitted that he had carelessly viewed his obligation to be aware of Coast Guard safety regulations in the past. [Tr. at 225] He was the only survivor of the capsizing and the only one of the three persons thrown into the water to have gotten hold of a life preserver after the capsizing. Yet, he still does not wear a life preserver, nor does he require or suggest that his customers wear life preservers in most situations. [Tr. at 196; I.O. Exhibit 8 and 13] Respondent believes that a person's expertise in swimming is a superior means of boating safety to life preservers. [Tr. at 197-199] He believes that one survives an incident like the capsizing by going underwater. [Tr. at 198] He believed the victims would have had a better chance of surviving if they had been better swimmers, although he did not know their level of swimming skills. [Tr. at 197-199, 225-226]

The trier of fact, by virtue of his unique opportunity to observe witnesses and weigh their testimony, is assigned the duty of assessing the evidence adduced and making credibility determinations. Appeal Decision 2279 (LEWIS). His conclusions on the weight to be given any particular evidence and ultimate findings of fact deserve a degree of deference. Appeal Decision 2214 (CHRISTENSEN). The evidence was sufficient to support the ALJ's conclusion that the Respondent had a cavalier approach to assuring his passengers were oriented to safety matters and equipment, and that he had an idiosyncratic bias against life preservers. These findings were not arbitrary, capricious, clearly erroneous, or based on inherently incredible evidence; thus, there is no basis for disturbing them. Appeal Decision 2584 (SHAKESPEARE).

Mr. Apalategui stated that Respondent does not think he "committed any errors" in the incident.

III.

The ALJ abused his discretion in ordering the revocation of Respondent's license as the sanction for violating 46 C.F.R. § 26.03-1 and 46 C.F.R. § 26.03-2.

Respondent contends that the ALJ abused his discretion in determining that revocation was the appropriate sanction in this case. He specifically complains that the ALJ did not adopt the suggested range of order contained in 46 C.F.R. § 5.569 with respect to failure to comply with U.S. law or regulations (suspension of one to three months) or failure to perform duties related to vessel safety (three to six months). He argues that, in his written decision, the ALJ incorrectly stated: "Consultation with the Table of Suggested Range of Appropriate Orders, 46 C.F.R. §5.569 is not helpful since it does not provide any suggestion for a violation of rules and regulations." [Brief of Appellant at 9; D&O at 9] I do not find Respondent's final assertion of error to be persuasive.

The selection of an appropriate order is the responsibility of the ALJ, who has wide discretion as to the choice of the appropriate sanction. *See* 46 C.F.R. § 5.569(a); Appeal Decisions 2640 (PASSARO), 2609 (DOMANGUE), 2618 (SINN), and 2543 (SHORT). While the ALJ may look to the Suggested Range of an Appropriate Order Table, 46 C.F.R. Table 5.569, for information and guidance with respect to a particular violation, he is not required to do so, and he may increase or decrease the suggested sanction as he sees fit. 46 C.F.R. § 5.569; Appeal Decisions 2640 (PASSARO) and 2618 (SINN). To that end, I have long held that an ALJ's order will only be modified on appeal if it is clearly excessive or an abuse of discretion. Appeal Decisions 2640 (PASSARO), 2422 (GIBBONS), 2391 (STUMES), 2362 (ARNOLD), 2313 (STAPLES), 2256 (BURKE) and 2245 (MATHISON).

In this case, the record shows that the ALJ gave thoughtful consideration to the evidence and applied the factors, as set forth in 46 C.F.R. § 5.569, which may affect the order: (1) remedial actions which have been undertaken independently by the respondent; (2) prior record of the respondent; and (3) evidence of mitigation or aggravation. Indeed, the record shows that the ALJ specifically acknowledged those factors favorable to the Respondent, as well as those to the contrary in reaching his decision. [D&O at 10] Based on the Findings of Fact, as supported by the evidence, the ALJ concluded that Respondent's attitude toward safety, along with his idiosyncratic belief that life preservers serve no useful function in the kinds of hazards encountered in the Tillamook Bay area, posed adverse implications for safety at sea.

I may only reverse the ALJ's decision if his findings are arbitrary, capricious, clearly erroneous, or based on inherently incredible evidence. Appeal Decisions 2584 (SHAKESPEARE), 2581 (DRIGGERS), 2570 (HARRIS), *aff'* NTSB Order No. EM-182 (1996), 2474 (CARMIENKE), 2390 (PURSER), 2363 (MANN), 2344 (KOHAJDA), and 2333 (AYALA). Since there is ample evidence in the record to support the ALJ's conclusion in this regard, including the fact that two persons lost their lives due—in large part—to Respondent's cavalier attitude towards safety, I find that the ALJ did not abuse his discretion in ordering revocation on those grounds.

CONCLUSION

The actions of the ALJ had a legally sufficient basis and his decision was not arbitrary, capricious, or clearly erroneous. Competent, reliable, probative, and substantial evidence existed to support the findings and order of the Administrative Law Judge. Therefore, I find Respondent's bases of appeal to be without merit.

ORDER

The Decision and Order of the ~~Administrative~~ Law Judge is AFFIRMED.

TERRY M. CROSS
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 14th day of November 2005.