

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

UNITED STATES COAST GUARD

Complainant

vs.

MILTON WALKER,

Respondent.

Docket Number CG S&R 01-0668
CG Case No. 01001784

DECISION AND ORDER

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 Pars 5; and 33 CFR Part 20.

Milton Walker was served with a Complaint dated 4 October 2001 which was
issued by U.S. Coast Guard Investigating Officer LT Selvin McLean, Marine Safety
Office, New Orleans, LA.

Mr. Walker was represented by Ryan N. Cox, attorney at law, of the Cappella
Law Firm, 3421 N. Causeway Blvd., Metairie, LA 70002.

The factual allegations are as follows:

Negligence

1. On or about 5 August 2001, respondent, while operating an airboat owned by Louisiana Swamp Tours, deliberately and wantonly perpetrated the following acts against the owner of a rival swamp tour boat company and his passenger, who were both in a small pleasure boat:
 - a. He overtook the small pleasure boat at high speed, approaching to within 3 feet of the port side of the small boat and throwing water into the small boat.
 - b. He stopped 10-20 feet in front of the small boat and revved his engine, causing spray and water to spray into the small boat and its occupants.
 - c. He then turned around and headed directly toward the small boat as if he was going to ram it, only turning away at the last second.

Misconduct

2. On or about 5 August 2001, respondent, while operating an airboat owned by Louisiana Swamp Tours, deliberately and wantonly perpetrated the following acts against the owner of a rival swamp tour boat company and his passenger, who were both in a small pleasure boat:
 - a. He overtook the small pleasure boat at high speed, approaching to within 3 feet of the port side of the small boat and throwing water into the small boat.
 - b. He stopped 10-20 feet in front of the small boat and revved his engine, causing spray and water to spray into the small boat and its occupants.
 - c. He then turned around and headed directly toward the small boat as if he was going to ram it, only turning away at the last second.

On 12 October 2001, Mr. Walker, through his counsel, filed an answer admitting the jurisdictional allegations. He denied all of the factual allegations. He affirmatively alleged a defense as follows: “Respondent was threatened by Cyrus Blanchard, the operator of the other boat during the incident in question, as Cyrus Blanchard threatened to kill respondent and respondent’s family. Further, the two boats in question were never closer than 20 feet apart. Cyrus Blanchard has lied to this body and should be sanctioned accordingly.”

He requested a hearing.

Accordingly, a hearing was held on 14 November 2001 at the Marine Safety Office.

In support of the Complaint the Investigating Officer introduced in evidence the testimony, of (1) Eldon A. Boudreaux, who was a passenger in a mud boat being operated by Cyrus Blanchard on 5 August 2001; and (2) Joseph J. Bourgeois, who also witnessed the incident which is the subject matter of this hearing.

In addition to the testimony of the two (2) aforementioned witnesses the Investigating Officer introduced in evidence four (4) exhibits.

I.O. Exhibit No. 1 – a chart on which Mr. Boudreaux identified the location of the incident.

I.O. Exhibit No. 2 – another chart on which Mr. Bourgeois identified the location of the incident.

I.O. Exhibit No. 3 – a one page typewritten statement signed by Mr. Walker.

I.O. Exhibit No. 4 – a letter from LT McLean addressed to the Jefferson Parish Sheriff's Office which requested information from that office concerning the incident.

Mr. Walker testified under oath in his own defense. He also called Louis Hatty, tour boat captain, as a witness.

At the conclusion of the hearing the Administrative Law Judge took the matter under advisement.

It is now concluded that the allegations of the Complaint are proved. However, there are strong mitigating circumstances.

Mr. Bourgeois did not testify. The pertinent parts of Mr. Walker's testimony indicating the continuing harassment he received from Mr. Bourgeois, are as follows:

Mr. Cox "May I call your attention to date August 5, 2001?"

Mr. Walker It was about I guess about 1:50 when we were out on the dock, we were working on a couple of seats sitting on the dock. It was my son Justin Walker and Todd Vinnette. We were finishing up a project we had built a couple of seats so that the tours could sit on the benches under the overhang. About that time I heard a noise it sounded like a boat passing and I looked up and as I looked up the man I didn't really know who it was in the boat the man in the front waved at me. And I'm going to tell you I mean on the water you wave at everybody it's just a good friendship. I picked up my hand and waved and as I waved I realized Cyrus Blanchard was operating the boat. Him and I have not seen eye to eye for years. So, he throws the boat in natural, he backs up and can I use kind of vulgar terminology?

Judge Go ahead

Mr. Walker He says who are you waving at you stupid m-----f-----. And they got people all the tourists sitting here on the dock. And I said what did I do to you Cyrus? And he says I tell you what I'm going to do he says soon as I get you on land I'm going to kick your ass. And he took off.

Mr. Cox What did you do?

Mr. Walker Well I looked around I was very upset at the time and he had just done the same thing to me two weeks before that at Plummer's gas station – same thing. I went and jumped on my airboat I do own an airboat it's a 24 foot airboat with a grass rake, 9 foot wide, and I took off and I started running behind him and came along side him at a distance of about 20 to 30 feet. And I told him I said Cyrus, I started yelling and I know he could hear me cause I wasn't racing the engine wide open I was just keeping speed which I would say 15 to 20 miles an hour. It wasn't wide open. And I was keeping speed and I started yelling at him and I said Cyrus what is your problem? What is your problem? I said don't you care and he started shooting me a finger. And about that time I just happened to glance over and I seen the Swamp Lady, I think the boat Louis was on. He was over there and Cyrus began to slow down and I slowed down with him. Well right before that he had kind of moved toward me and I moved to port to prevent a collision and he slowed down and I slowed down then he starts yelling that you're not from down on the bayou you don't belong here. And I told him I said Cyrus you're un-American man. I said in this country you can live any place you want. He says you don't deserve to be down here. He says I'm going to kill you and your family. And then he took off. Well, needless to say I was even more upset. I shot ahead to catch up along side of him again and we was arguing back and forth yelling at each other. Doing about 20 miles an hour and then he slows down and I just kept going. I looked behind me and he was about a 100 feet behind me and I accelerated because I wanted to come back around

because I was ready to argue with him some more. So I made a hard starboard turn come back around made a 180 degree turn come along his starboard side. Then we started yelling again. And I followed him all the way to his property where I stopped out side of the boundary line of the Intracoastal versus the private property line and we continued arguing. And that's basically it.

Mr. Cox Did Mr. Blanchard ever maneuver his mud boat in direction towards you?

Mr. Walker Yes he did. Initially he did.

Mr. Cox In the time you were along side Mr. Blanchard's boat approximately what was the closest distance?

Mr. Walker I would guesstimate 20-30 feet. Well that's not when he came close.

Mr. Cox Approximately how close

Mr. Walker Maybe 8 , 9, 10 feet it was pretty close.

Mr. Cox After you performed the maneuver alongside Mr. Blanchard approximately what was the distance

Mr. Walker I'd say I was running along his starboard side at about 10 foot. But we wasn't going as fast then. Because now it was a heated argument.

Mr. Cox Did you ever purposely use your airboat to direct water spray against his boat?

Mr. Walker Not purposely, he may have got sprayed when he slowed down and when I went to make the turn.

Mr. Cox Pursuant to the threats Mr. Blanchard said he was going to kill you and your family did you take any action with the sheriff's office?

Mr. Walker Well believe it or not when they came out to cite me with a citation of aggravated assault I asked Detective Dufrene I said what can I do I said how can this man do this kind of thing threaten peoples lives and get away with it and he says there is nothing you can do about it. He says unless a man acts on his threats there is not a thing you can do about it. I told him I said that's what terrorists do. He said well there is nothing you can do about it. After speaking to my legal counsel they said yes there is because that happens to be simple assault. And at that time I contacted the District Attorney's Office and they said well call your local sheriff's office and they will send a police car out and that's what I did."

The Coast Guard and the Respondent submitted Proposed Findings of Facts. The Coast Guard's submission is in correct form. The Respondents "Proposed Findings" are not numbered and the submission is more in the nature of a brief in support of his defense. Therefore, no rulings are made on the Respondents Proposed Findings.

The Coast Guard's Proposed Findings with additional comments by the undersigned are as follows. They are adopted as the Administrative Law Judge's findings.

COAST GUARD'S PROPOSED FINDINGS OF FACTS

ACCEPTED

1. Respondent, Mr. Milton Walker, is the holder of Coast Guard License number 930975(3rd issue).

ACCEPTED

2. On August 5, 2001, an 18-foot long mud boat being operated by Cyrus Blanchard, with Mr. Eldon Boudreaux as a passenger, was proceeding westbound on the Intracoastal Waterway west near mile marker 15, between Baratavia Waterway and Bayou Villars. The weather conditions were clear with good visibility."

ACCEPTED.

However, this was after repeated continual
harrassment and threats by Mr. Blanchard – including a
threat to kill Mr. Walker and his family.

3. At approximately 1400 on August 5, respondent jumped aboard his 24-foot airboat "WILD THING" and "chased" down Mr. Blanchard and Mr. Boudreaux aboard their mud boat.

ACCEPTED

4. Mr. Walker caught up to Mr. Blanchard's mud boat and paralleled its course and speed at extremely close range for several minutes.

ACCEPTED

5. This action by respondent caused large amounts of water to pour into Mr. Blanchard's mud boat, forcing Mr. Blanchard to energize the boat's bilge pump simply to keep it afloat.

ACCEPTED

6. After paralleling the mud boat's course and speed at extremely close range for several minutes, respondent accelerated the "WILD THING" and cut directly in front of Mr. Blanchard's mud boat.

NOT ACCEPTED.

The testimony of the two Coast Guard witnesses is conflicting

7. Respondent remained directly in front of Mr. Blanchard's mud boat with his engine operating at high speed for several minutes.

ACCEPTED

8. This action by respondent caused sheets of water to spray at high speed into the faces of the mud boat's occupants.

ACCEPTED

9. This action by respondent soaked both of the mud boat's occupants, affected Mr. Blanchard's ability to see and safely operate his mud boat, and required Mr. Boudreaux to lie down in the mud boat because he feared for his personal safety.

NOT ACCEPTED.

The testimony of the two Coast Guard witnesses is conflicting

10. After operating his airboat directly in front of Mr. Blanchard's mud boat for some time, respondent turned his airboat on a dime and headed directly toward the mud boat's bow at high speed in a game of "chicken."

ACCEPTED

11. Mr. Blanchard was able to avoid a high speed head-on collision only by correctly divining that respondent was going to veer off to port at the last second, and by himself turning his mud boat to port. This resulted in a starboard-to-starboard passage at close range.

ACCEPTED

12. Respondent sounded no sound signals, nor gave any other indications of his intentions before engaging in this maneuver.

NOT ACCEPTED.

The testimony of the two Coast Guard's witnesses is conflicting.

13. In the process of engaging in the series of maneuvers described above, respondent also circled Mr. Blanchard's mud boat several times.

ACCEPTED

14. This series of reckless maneuvers by respondent made the mud boat's occupants fear for their lives, and caused them to make an immediate report to the Jefferson Parish Sheriff's Office (JPSO).

ACCEPTED

15. After responding on-scene and interviewing all involved parties, the responding JPSO officer issued Respondent a misdemeanor summons under Louisiana R. S. #14:37 for 2 counts of Aggravated assault against Mr. Cyrus Blanchard and Mr. Eldon Boudreaux. [Govt. 2 – Jefferson Parish Sheriff's Office report/summons with US Coast Guard cover letter]

CONCLUSIONNOT ACCEPTED

Though there were trivial differences in some of the details, the testimony of both government witnesses, though there were trivial differences in some of the details, was consistent in demonstrating that on August 5, 2001, an out-of-control respondent engaged in the maritime equivalent of road rage. Neither of these witnesses personally knew respondent, and respondent was unable to explain why two complete strangers would have a motive to fabricate their testimony against him. Against this compelling testimony, respondent could only offer his own self-serving version of events, and the testimony of a swamp tour boat captain from his own company who witnessed very little of the events of August 5, 2001.

Respondent acknowledged that he is in the business of carrying passengers, and that a person who perpetrated the reckless acts alleged in the complaint has no business working on the water. The evidence presented by the government proves that on August

5, 2001, respondent committed all of the offenses alleged in the complaint. As a result, as respondent himself acknowledges, his license should be revoked.

OPINION

As set forth in the findings of fact, there is no doubt that Mr. Walker initiated a dangerous maneuver of his vessel with relation to the vessel which was being operated by Mr. Blanchard. The details of the incident, as testified to by the two Coast Guard witnesses, are not clear.

The evidence shows that Mr. Walker was severely and continually harassed by Mr. Blanchard prior to the incident.

Mr. Walker testified. Mr. Blanchard did not.

The Investigating Officer recommended revocation of Mr. Walker's license. Because of the circumstances surrounding the incident and the actions of Mr. Blanchard as set forth above it is felt that an order of less than revocation is justified.

Mr. Walker has no prior record with the Coast Guard.

CONCLUSIONS OF LAW

The Respondent and the subject matter of this hearing are within the jurisdiction vested in the U.S. Coast Guard under the provisions of 46 USC Chapter 77, Section 7704.

Complaint, proved.

ORDER

That your license No. 930975 and all other valid licenses, certificates of service, or documents 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, effective as of the date on which you deposit your license with the Coast Guard.

In addition the Respondent shall successfully complete a recognized anger management program. In the event that he does not complete such a program his license shall be revoked. If he completes such a program his license will be returned to him after the completion of the six (6) month outright suspension. However, if his license is returned to him, his said license will be suspended for an additional six (6) months on twelve (12) months probation from the date of return of his license.

Mr. Walker is directed to forthwith deposit his license with the Coast Guard.

The provisions of appeal are attached hereto.

ARCHIE R. BOGGS
Administrative Law Judge

Dated 18 June 2002
New Orleans, Louisiana