

In the Matter of License No. A-73174 and all other Licenses,
Certificates And Documents
Issued to: CHARLES ROOF, SR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

875

CHARLES ROOF, SR.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 13 October 1955, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended License No. A-73174 issued to Charles Roof, Sr., upon finding him guilty of negligence based upon a specification alleging in substance that while serving on board the American M/B MISS MYRTLE under authority of his motorboat operator's license, on or about 1 July 1955, he operated said motorboat in a negligent manner by failing to keep a proper lookout, thereby colliding with the Navy PCE 846; said collision occurring in the Mississippi River between Buras, Louisiana and Ostrica Locks, Louisiana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of several witnesses including personnel from the PCE 846. The testimony of Appellant and three passengers on the motorboat whose testimony was taken at the preliminary investigation was stipulated in evidence.

In defense, Appellant offered in evidence his additional testimony and that of another person on the motorboat. Appellant stated that he looked very carefully up and down the river before proceeding towards the Ostrica Locks.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's License No. A-73174, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of three months.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 1 July 1955, Appellant was serving as operator on board the American M/B MISS MYRTLE and acting under authority of his License No. A-58465 (later renewed as License No. A-73174) when said motorboat was in a collision with the USS PCE 846 on the Mississippi River in waters where the Inland Rules apply.

At about 0625 on 1 July 1955, the MISS MYRTLE, a 35-foot cabin-type motorboat, departed from the Gulf dock, located on the left ascending bank of the river at Buras, Louisiana, with six passengers whose destination was an oil rig across the river from Buras. The motorboat proceeded up the river to the Shell dock and then turned to starboard to cross the river to the Ostrica Locks after observing that there were no supplies to be taken to the oil rig from the Shell dock. Thereafter, the motorboat was making 15 miles per hour until the time of collision. Appellant was seated by the steering wheel at all times.

The sun was up, the weather was clear and visibility was excellent. There was no failure of material or equipment involved in the collision. The width of the river is approximately one mile in the vicinity of Buras. The river is straight for 2 or 3 miles below Buras.

The PCE was upbound. She was required to hold her course and speed in the crossing situation with the MISS MYRTLE on the port bow of the PCE. The latter was near the middle of the river proceeding at a speed of about 14 knots.

Appellant did not see the PCE as the motorboat continued across the river on a course about 90 degrees from that of the other vessel. Appellant was looking ahead for the green light on the Ostrica Locks when the passenger sitting on the starboard side, to the right of the Appellant, saw the PCE on the starboard bow at a distance of about 10 feet. The passenger shouted in order to attract Appellant's attention. Appellant then turned and saw the PCE. It was too late to avoid the collision which occurred near the middle of the river at about 0630.

The seaman standing the anchor watch and bow lookout on the PCE saw the motorboat on the port bow at a distance of 200 to 300 yards. He did not report this information to the bridge. The Officer of the Deck sighted the MISS MYRTLE at a distance of approximately 150 yards. He gave orders to stop the engines and then for the engines to go full astern. The PCE struck the motorboat 20 seconds later just as the engines were reversed. No whistle signals were sounded by either vessel before the collision occurred.

The motorboat sank almost immediately. The PCE turned around to pick up survivors but Appellant and his six passengers had already been rescued by boats which rushed to the scene. Some of the persons received minor injuries. The motorboat was a total loss.

There is no record of prior disciplinary action having been taken against Appellant.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that there is no evidence to support the finding that he failed to keep a proper lookout. Appellant looked carefully in both directions before starting across the river; but the dull gray color of the PCE 846 and the glare of the sun combined to prevent him from seeing the PCE. The cause of the collision was the failure of the PCE to sound a one-blast whistle signal, in accordance with 33 CFR 80.03, when her lookout sighted the MISS MYRTLE at a distance of 200 or 300 yards; or when the Officer of the Deck sighted the motorboat at about 150 yards, 20 seconds before the collision. Appellant could have stopped the MISS MYRTLE within 10 seconds and he would have avoided the collision if the PCE had given the one-blast signal.

If the finding of negligence is affirmed, it is respectfully requested that the order be modified to a probationary suspension in view of Appellant's prior clear record and the evidence that he is a careful, competent navigator.

APPEARANCES: Messrs. Lemle and Kelleher of New Orleans, Louisiana, by Robert B. Deane, Esquire, of Counsel.

OPINION

Regardless of whether there was any fault on the part of the PCE 846, Appellant was negligent for failing to see the PCE in time to take whatever action was necessary to avoid collision. The circumstances mentioned on appeal would not have prevented Appellant from discovering the PCE at an earlier time if he had maintained a proper lookout for approaching vessels. As a matter of fact, Appellant testified that he did see the PCE when he "looked up" after the warning shout by one of his passengers.

As a result of this neglect of duty, Appellant navigated the MISS MYRTLE into a position where she was unable to perform her clear duty under the Inland Rules to keep out of the way of the PCE, to avoid crossing ahead of her, and if necessary to slacken her speed or stop or reverse. Title 33 U.S.C. 204, 207, 208.

In view of Appellant's failure to assume the proper responsibility for the safety of his passengers, it is my opinion that the order of the Examiner is not excessive.

ORDER

The order the Examiner dated at New Orleans, Louisiana, on 13 October 1955, is ~~REVERSED~~ **AFFIRMED**.

J. A. Hirshfield

Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 6th day of April, 1956.