

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 174114
Issued to: Richard G. Fifer, II

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2329

Richard G. Fifer, II

This appeal has been taken in accordance with 46 CFR 5.30-15.

By order dated 8 March 1983, an Administrative Law Judge of the United States Coast Guard at Miami, Florida revoked Appellant's mariner's license upon finding proved the charge of "conviction for a narcotic drug law violation."

On 17 March 1983 Appellant filed a Notice of Appeal from the order of the Administrative Law Judge and a request for a temporary license. The Administrative Law Judge denied the request by his order of 24 March 1983. Decision on Appeal 2315 (FIFER) of 6 June 1983 VACATED the Administrative Law Judge's order of 24 March 1983 and REMANDED the request for a temporary license for a new decision. By his order of 20 June 1983 the Administrative Law Judge again denied Appellant's request for a temporary license.

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge of 20 June 1983 denying a temporary license. It is contended that the Administrative Law Judge erred:

1. When he held that 46 CFR 5.03-5(b)(8) which deems that a drug offense affects the safety of life and property at sea precludes the issuance of a temporary license under the criteria of 46 CFR 5.30-15(b);
2. By failing to make the findings required by Appeal Decision 2315 (FIFER) and by 46 CFR 5.30-15(b).
3. Under the circumstances by failing to grant a temporary license.

APPEARANCE: Jack M. Ross, Esq., of Birr, Bryant and Saier, P.A.,
Gainesville, Florida.

OPINION

The Administrative Law Judge's interpretation of the regulations is not correct insofar as he concludes that temporary licenses or documents may not be issued following a finding that one of the offenses listed in 46 CFR 5.03-5(b) has been proved. Since the hearing transcript has now been forwarded to me I can take action on the merits of the request for a temporary license under 46 CFR 5.30-15(a).

I and II

The fact that an offense is among those listed in 46 CFR 5.03-5 does not automatically preclude the issuance of a temporary license pending appeal. Appeal Decision 2318 (STRUDWICK). In Strudwick I pointed out that the nature of the offense is only one of many circumstances which may bear upon the whether the service of a particular person on board a vessel is compatible with the requirements for safety of life and property at sea under 46 CFR 5.30-15(b)(1). In the past, temporary licenses and documents have occasionally been issued following such offenses where the evidence showed that the particular individual would not be a threat to ship board safety in spite of the serious nature of his offense.

III

The circumstances of this case are such that a temporary license should be issued.

Appellant was sentenced by Florida Circuit Court for the Seventeenth Judicial Circuit to 364 days in the Broward County Stockade, to five years probation and to pay a fine of \$10,000.00 following his conviction on 5 March 1982. After Appellant served approximately four and one-half months in the stockade the Court mitigated the sentence of imprisonment to the amount of time served. Appellant's counsel provided the Administrative Law Judge with copies of the letters of recommendation supporting Appellant's plea of clemency to the Florida Circuit Court.

Appellant made one attempt at importing marijuana into the United States on 17 March 1978. He was caught, convicted, imprisoned and released early because of mitigating circumstances. The Appellant presented evidence of his reputation as an excellent charter boat operator. His current and former employers and business associates unanimously agree that Appellant is a skillful and prudent seaman. His current employer desires to retain his services as a licensed operator. When Appellant first sought his present position he informed his future employer of his pending narcotics trial. He was hired anyway and vindicated his employer's confidence. While he was in the stockade his employer kept his job vacant and re-employed Appellant on his release.

Another employer observed Appellant's skill and sought to employ him. Appellant again admitted he had a narcotics trial pending and was hired. That employer kept a close watch on Appellant. From his own observation and from reports made to him, he concluded that the Appellant is "second to none" as a charter boat operator.

Appellant was divorced as a result of his narcotics conviction and has financial responsibility for, and actual custody of, his son. Appellant's father is disabled and is partially supported by Appellant.

Five years have passed since Appellant's arrest. During this period he has served under the authority of his license without incident and has earned high praise from his employers and contemporaries. This long period of safe service under observation of his employers is evidence that Appellant will not be a hazard if given a temporary license during his appeal.

The Administrative Law Judge who heard the testimony in this case recommended leniency. He was convinced that Appellant's offense was an isolated incident, that Appellant has learned his lesson, and that Appellant has rehabilitated himself. Such a recommendation by an Administrative Law Judge is given great weight by me.

The above factors convince me that Appellant is not likely to be a hazard during the period he serves under a temporary license. This is one of the criteria for issuance of a temporary license under 46 CFR 5.30-15(b). The second criterion is his prior record. It is clear of previous violations.

CONCLUSION

The order of the Administrative Law Judge denying Appellant's request for a temporary license was based on an incorrect interpretation of the regulations. An analysis of the circumstances of this case convinces me that Appellant should be issued a temporary license.

ORDER

The order of the Administrative Law Judge denying Appellant's request for a temporary license dated at Miami, Florida on 20 June 1983 is VACATED. Appellant's request for a temporary license is GRANTED.

J. S. GRACEY
Admiral, U. S. Coast Guard

Commandant

Signed at Washington, D.C., this 7th day of October 1983.