

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE No 569553  
Issued to: Roy R. LAMBERT

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GAURD

2395

Roy R. LAMBERT

This appeal has been taken in accordance with Title 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 8 November 1983, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida suspended Appellant's license for six months, on twelve months' probation, upon finding prove a charge of negligence. The specifications found proved allege that while serving as Master on board the United State Army Dredge McFARLAND under authority of the license above captioned, on 1 May 1983, Appellant failed to ensure proper supervision of the removal of an electric hydraulic solenoid valve and failed to ensure that proper precautions were taken before allowing hotwork to be performed on the hydraulic system.

The hearing was held at Jacksonville, florida, on 10 August 1983 and 23 September 1983. appellant was represented by professional counsel and entered pleas of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence eight exhibits and the testimony of six witnesses. In defense, Appellant introduced his own testimony, that of another witness, and three exhibits.

On 8 November 1983, the Administrative Law Judge rendered a written Decision and Order in which he found the charge and both specifications proved and ordered Appellant's license suspended for 6 months on 12 months' probation.

The Decision and Order was served on 14 November 1983. Appeal was timely filed and perfected on 9 December 1983.

FINDINGS OF FACT

The U. S. Army Dredge McFARLAND is a public vessel of the United States. It is inspected under a memorandum of understanding between the U. S. Coast Guard and the U. S. Coast Guard and the U. S. Army. The Certificate of Inspection provides for a minimum

manning of fifteen persons, including one Master, one Mate, two Able Seamen, one Ordinary Seaman, on Chief Engineer, one Assistant Engineer and on Oiler.

On 1 May 1983, the Dredge McFARLAND was underway dredging the Port Canaveral Channel in Florida. Five individuals were removing and replacing an electric hydraulic solenoid valve in the pump room. They were Rudolph Molitar, marine mechanic; Charles Gray, boatswain; Edward Spause, welder; and two electricians, A. J. Ferguson and James Pufnock. These crewmen were working as a group and there was no one individual in charge. Before attempting to remove the valve, they isolated the supply lines that carried hydraulic fluid to it. Then they removed fluid from the system by opening the solenoid valve manually, then closing the return valve. This process is called "isolating the system." One of the return valves was defective which allowed hydraulic fluid to leak through to the valve being replaced.

The valve to be removed was held in place by four large Allen screws. The work crew was unable to remove them with a wrench, so they decided to apply heat to the screws in order to free them. The marine mechanic told Appellant the work crew was experiencing difficulty in removing the screws and that they intended to apply heat from a propane torch to them. Appellant warned them to be careful and have a fire extinguisher available. They used a propane torch for approximately fifteen minutes without success.

The crew then, without informing Appellant, used a welding torch. This was unsuccessful so they decided to use a cutting torch. While removing the screws, hydraulic fluid began spraying from the valve and ignited. The fire which ensued caused the death of one crew member and injured four others.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. On appeal, Appellant contends that:

1. The Administrative Law Judge failed to apply the standard of negligence in 46 CFR 5.05-20(a)(2);
2. The Administrative Law Judge made various errors regarding factual determinations in his Decision;
3. The Administrative Law Judge did not properly weigh the testimonial opinions of witnesses in light of testimony that heating the screws caused no harm;
4. The Administrative Law Judge did not recognize the legal

effect of two superseding cause of the harm that occurred; and

5. The Administrative Law Judge's finding of negligence was based upon the unfortunate results of the incident.

APPEARANCE: J. C. McGettingan, Jr., Department of the Army, Philadelphia District, Corps of Engineers.

#### OPINION

##### I

Appellant contends that the Administrative Law Judge did not apply the standard of negligence in 46 CFR 5.05-20(a)(2), which states:

"Negligence" and "inattention to duty" are essentially the same and cover both the aspects of misfeasance and nonfeasance. They are therefore defined as the commission of an act which a reasonably prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonably prudent person of the same station under the same circumstances, would not fail to perform.

The Master of a vessel has a great responsibility to ensure the safety of the vessel. Appeal Decisions 2113 (HINDS), 2098 (CORDISH), and 1858 (GOULART). However, a Master is not strictly liable for the actions of those aboard that person's vessel, nor does the fact an improper act occurred raise a presumption that the Master or person in command was negligent. Appeal Decisions 2349 (CANADA) and 2178 (HALL). The Master must be negligent himself, and it was so proved here. Examination of the record shows that the charge and specifications found proved by the Administrative Law Judge are fully supported by the evidence.

##### Ia

The negligence alleged in the first specification was that Appellant failed to ensure proper supervision. The Standard of negligence in 46 CFR 5.05-20(a)(2) was properly applied in finding that specification proved.

Appellant argues that having delegated the task to competent vessel personnel, Appellant is considered relieved of any responsibility for their work. This overlooks the established precedent documenting the Master's own responsibility for the safety of the vessel. Concerning the specification of improper

supervision, Appeal Decision 360 (CARLSEN) applies where it states:

"The Master of a ship may not rely on others to take the blame for damage resulting from their negligence especially when the danger would have been avoided if the Master had taken proper steps to prevent the errors of others from jeopardizing the safety of the ship."

Here, Appellant was apprise that heat from a propane torch would be applied to the valve in the highly pressurized hydraulic system (the negligence of the particular course of conduct is shown later in this opinion). The use of heat in such situations is hazardous, and someone should have been assigned to directly supervise the valve removal efforts. The Administrative Law Judge's finding that there was no one crew member in charge of the valve removal was supported by the testimony of three members of the work force. When the Appellant was advised of the dangerous nature of the work being performed, it was his responsibility to ensure that the work force was properly supervised, even though some of them possessed appropriate engineer's license. Consequently, the conclusion of the Administrative Law Judge is fully supported in that Appellant himself is responsible for failure to ensure proper supervision of the work performed.

The act of negligence alleged in the second specification was that Appellant failed to ensure adequate precautions were taken before allowing hotwork to be performed on the hydraulic system. The standard of negligence in 46 CFR 5.05-20(a)(2) was properly applied in finding that specification proved.

Pivotal testimony of the Chief Engineer and the Coast Guard's marine chemical expert provided that the entire system should have been depressurized before using a propane torch to remove screws from an electric hydraulic solenoid valve. The Chief Engineer stated isolation valves on highly pressurized systems are not reliable, and there is a degree of risk when depending upon them. The marine chemist testified that propane torches, which produce approximate temperatures of 2500°F, are not to be used on hydraulic systems pressurized at 1500 PSI.

Appellant was advised that heat from a propane torch was to be applied to the valve in the highly pressurized hydraulic system. Appellant should have known the proper precautions to be taken. Masters are required to know a propane torch is not to be used on a highly pressurized hydraulic system. The marine chemist confirmed this by testifying he expected a Master to know a propane torch could heat the metal enough to ignite hydraulic fluid.

Furthermore, the Appellant, who had 36 years of seagoing experience, stated he had "been working around machinery all of his adult life." Additionally, the Chief Engineer assumed Appellant was aware the entire hydraulic system should be depressurized before allowing hotwork of any kind on it. The Chief Engineer also stated the Appellant had been very closely associated with the engine department, more so than most Masters.

There is no dispute on this record that the Appellant authorized the use of a propane torch to free the screws at the valve without requiring the entire system to be totally shut down. The foregoing evidence supports the Administrative Law Judge's conclusion the Appellant himself was negligent in that he fail to ensure adequate and proper precautions were taken.

Appellant made repeated assertions on appeal that no harm resulted from the application of heat specifically authorized by the Appellant, and therefore there was no negligence. As discussed in Part III of this opinion, causation of an accident is irrelevant to a determination of negligence in suspension and revocation hearings.

## II

Appellant argues that the Administrative Law Judge made various errors regarding factual determinations. In effect, Appellant sets forth his interpretation of the evidence derived from the hearing, and then urges that his interpretation be adopted instead of that of the Administrative Law Judge. This I decline to do as to relevant findings supporting negligence.

Sitting as the trier of fact, the Administrative Law Judge's duty is to evaluate the evidence presented at the hearing. The Administrative Law Judge has discretion to find the ultimate facts pertaining to each specification. 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. Appeal Decision No. 2282 (LITTLEFIELD). There is a longstanding precedent in these suspension and revocation proceedings that the Administrative Law Judge's findings of fact are upheld unless they can be shown to be unreasonable or inherently incredible. Appeal Decisions 2333 (AYALA) and 2302 (FRAPPIER). The interpretation here of the evidence by Appellant may differ from that of the Administrative Law Judge. However there has been no showing here, relevant to a determination of the Appellant's negligence in the charge and specifications, that the findings of fact are either arbitrary and capricious or clearly erroneous.

III

Appellant further contends the Administrative Law Judge did not properly weigh the opinions of the Appellant and of the Chief Engineer in light of testimony that heating the screws caused no harm. Additionally, the Appellant claims the Administrative Law Judge did not recognize the legal effect of two superseding causes of the harm that occurred. Causation is irrelevant to a determination of negligence.

The purpose of suspension and revocation proceedings is to protect lives and property against actual and potential dangers and not to assess blame for casualties. 46 U. S. C. §7701. As used in 46 CFR 5.05-20(a)(2), the breach of the standard of reasonable care alone constitutes negligence of inattention to duty. Actual damage or injury is not an element to be proved. Therefore, a causal relationship between the negligent act and an injury or accident need not be present. Appeal Decisions 2358 (BUISSET), 2237 (STRELIC), 2166 (REGISTER), and 1755 (RYAN). Proximate cause, although needed to establish civil liability for damages, is not an element of negligence for the purposes of 46 CFR 5.05-20(a)(2).

IV

Finally, I find no substance to Appellant's bare implication that negligence was found only because the unfortunate casualty occurred. There is no evidence in the record or presented on appeal that shows the Administrative Law Judge had pre-judged the case, or that he had decided the case based on factors other than the evidence presented during the hearing.

CONCLUSION

There was substantial evidence of a reliable and probative character to support the findings of the Administrative Law Judge with respect to the charge and specifications of negligence.

ORDER

The order of the Administrative Law Judge entered at Jacksonville, Florida on 8 November 1983 is AFFIRMED.

B. L. STABILE  
Vice Admiral, U. S. Coast Guard  
Vice Commandant

Signed at Washington, D. C., this 11TH day of JULY 1985.