

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE NO. 515632
Issued to: William R. LANCASTER

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2399

William R. LANCASTER

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

By order dated 26 February 1985, an Administrative Law Judge of the United States Coast Guard at St. Louis, Missouri, suspended Appellant's merchant mariner's license upon finding him guilty of negligence. The specification found proved alleges that while serving as Operator aboard the M/V PAT BREEN, under authority of his license, Appellant did, on or about 5 March 1984, while down bound on the Ohio River at approximately mile 860 fail to safely navigate said vessel and its tow resulting in the tow grounding on the left descending bank of the river.

The hearing was held at Evansville, Indiana on 24 April 1984.

At the conclusion of the hearing, the Administrative Law Judge concluded that the Charge and specification had been proved and entered an order suspending Appellant's merchant mariner's license.

The Decision and Order was served 28 February 1985. Appeal was timely filed and a copy of the transcript requested on 21 March 1985.

A transcript was not provided and cannot be prepared because the commercial court reporting service under contract to record the hearing did not preserve the record of the hearing.

APPEARANCE: John K. Gordinier, Esq., Pedley, Ross, Zielke & Gordinier, Louisville, Kentucky.

OPINION

By statute and regulation Appellant is entitled to appeal from the decision of the Administrative Law Judge and to have his appeal considered on the record of the hearing including the transcript. See 46 U.S.C. 7702, 46 CFR 5.20-35(a), 46 CFR 5.30-1, 46 CFR 5.30-5. The Administrative Procedure Act, under which these proceedings are conducted, also requires that agency decisions be

based on the record which includes a transcript of the hearing. 5
U.S.C. 556.

In the absence of the transcript of the hearing, there is no
sufficient legal basis upon which to affirm the findings and order
of the Administrative Law Judge.

CONCLUSION

The order of the Administrative Law Judge cannot be affirmed
because sufficient record of the proceeding cannot be prepared.

ORDER

The order of the Administrative Law Judge dated at St. Louis,
Missouri, on 26 February 1985 is VACATED, the findings are SET
ASIDE, and the charge and specification DISMISSED.

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

Signed at Washington, D.C. this 31th day of July, 1985.