

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE No. 60705
Issued to: Gregory WATSON

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2446

Gregory WATSON

This appeal has been taken in accordance with 46 USC 7702 and 46 CFR 5.701.

By order dated 11 July 1986, an Administrative Law Judge of the United States Coast Guard at St. Louis, Missouri, suspended Appellant's license for four months outright plus an additional four months remitted on twelve months' probation upon finding proved the charge of misconduct. The specification found proved alleges that on or about September 1, 1985, Appellant, while serving as operator aboard the M/V ETTA KELCE, under the authority of the captioned document, failed to post a proper lookout, a violation of Rule 5 of the Inland Rules of the Road, at approximately Mile 44 on the Kanawha River, West Virginia.

The hearing was held at St. Louis, Missouri on 15 April 1986.

At the hearing Appellant was represented by professional counsel and denied the charge and specifications.

The Investigating Officer introduced in evidence four exhibits and the testimony of two witnesses.

In defense, Appellant introduced in evidence the testimony of one witness.

After the hearing the Administrative Law Judge rendered a decision in which she concluded that the charge and specifications had been proved, and entered a written order suspending all licenses and certificates issued to Appellant for four months outright, plus an additional suspension of four months remitted on twelve months' probation.

The complete Decision and Order was served on 11 July 1986. Appeal was timely filed and perfected on 17 October 1986.

FINDINGS OF FACT

Appellant is the holder of a Coast Guard license which

authorizes him to serve as operator of uninspected towing vessels.

On 1 September 1985, Appellant was serving as Operator aboard the M/V ETTA KELCE, an uninspected towing vessel 90 feet in length, with seven barges in tow.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant has advanced several bases for appeal. However, because of the disposition of the case, these bases are not discussed.

Appearance: Thomas W. Pettit, Esq.; Vinson, Meeks, Lewis & Pettit; Huntington, West Virginia

OPINION

After the hearing concluded, on 15 April 1986, Appellant filed with the Administrative Law Judge proposed findings of fact and 2 proposed conclusions of law, accompanied by a six page brief. The Administrative Law Judge did not rule upon these proposals, and did not refer to them in the Decision and Order. Accordingly, the record as presently constituted is incomplete and cannot be adequately reviewed on appeal.

The Administrative Procedure Act, 5 USC 557(c), provides, in pertinent part:

. . . the parties are entitled to a reasonable opportunity to submit. . .
(1) proposed findings and conclusions; or
(2) exceptions. . . ; and
(3) supporting reasons for the exceptions or proposed findings or conclusions.
The record shall show the ruling on each finding, conclusion, or exception presented.
(Emphasis supplied.)

The Commandant has held that the failure of an Administrative Law Judge to rule upon proposed findings and conclusions prior to rendering a decision constitutes error, requiring remand for further proceedings. Appeal Decisions 549 (DIETRICH) and 580 (TIMMERMAN).

ORDER

The decision and order of the Administrative Law Judge dated

11 July 1986, at St. Louis, Missouri, is modified as follows:

The findings of the Administrative Law Judge as to the charge of misconduct is SET ASIDE. The order suspending Appellant's license is VACATED. The case is REMANDED to the Administrative Law Judge for further proceedings consistent with this decision.

J. C. IRWIN
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C. this 19 day of March, 1987.