

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Edward K. PULSIFER 451-68-1443

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2513

Edward K. PULSIFER

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 C.F.R. 5.701.

By an order dated 22 May 1989, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia suspended Appellant's Merchant Mariner's License and Document for one month remitted on six months probation. This order supplemented the written decision of the Administrative Law Judge dated Norfolk, Virginia, on 4 May 1989.

PULSIFER

Appellant was charged with negligence supported by two specifications. This charge and both specifications were dismissed by the Administrative Law Judge. (Specification one was found not proved and dismissed, Specification two was dismissed for vagueness). Appellant was also charged with misconduct supported by four specifications. The charge and specification two were found proved. Specification one was withdrawn by the Investigating Officer. Specifications three and four were found not proved and were dismissed.

The specification found proved alleged that Appellant, while serving aboard the USNS CAPELLA, under the authority of his license and document, did, on 17 November 1988, operate the vessel in the Chesapeake Bay Regulated Navigational Area, with impaired maneuverability, without the authorization of the Captain of the Port, in violation of 33 C.F.R. +165.501(c)(6)(i)(B) (1988)1.

The hearing was held at Norfolk, Virginia on 20 and 21 December 1988. The Administrative Law Judge issued a written decision on 4 May 1989 based on the substance of that hearing. An additional session was held on 19 May 1989 at Norfolk, Virginia, at which time the Administrative Law Judge issued the order suspending Appellant's license for one month remitted on six months probation.

1 Currently, this regulation is promulgated as 33 C.F.R. +165.501(d)(6)(i) (1989).

This order was issued in writing by the Administrative Law Judge on 22 May 1989.

Appellant appeared and was represented by professional counsel. The Investigating Officer presented seven exhibits which were admitted into evidence and produced the testimony of five witnesses. Appellant presented four exhibits which were admitted into evidence and testified in his own behalf. Appellant entered the answer of deny to the charge and specification.

Appellant filed his notice of appeal on 20 June 1989 and filed his appeal brief on 19 July 1989. Since the record and administrative file do not reflect the date on which the complete decision and order was served on Appellant, Appellant's submissions must be considered timely. Accordingly, this matter is properly before the Vice Commandant for review.

FINDINGS OF FACT

At all times relevant, Appellant was the holder of the above-captioned license and document authorizing him to serve as Master of Steam or Motor Vessels of any Gross Tons upon Oceans. USNS CAPELLA (O.N. 005078) is a public vessel owned by the United States and operated by the Military Sealift Command. The vessel displaces 48,143 tons and is 892 feet long.

On 17 November 1988, USNS CAPELLA, under Appellant's command suffered the failure of the port engine thermostat requiring the port engine to be shut down. Later that same day, Appellant maneuvered the vessel into the Lynhaven Roads Anchorage area. This area is within the Chesapeake Bay Regulated Navigation Area. Title 33 C.F.R. +165.501(c)(6)(i)(B) (1988) (See, supra, note 1) prohibits the entry of disabled vessels over 100 gross tons unless specifically authorized by the Captain of the Port (COTP). Appellant, while notifying his agent of his transit plans, did not receive authorization from the COTP to enter the Regulated Navigation Area.

Appearance: Manilo DiPreta, O'Donnel & Schwartz, Lincoln Bldg, Suite 1022, 60 East 42nd Street, N.Y., NY 10165

BASIS OF APPEAL

Appellant's basis of appeal is that the Administrative Law Judge erred in proceeding against Appellant's Merchant Mariner's Document "since the offense was committed as an officer under license."

OPINION

Appellant argues that the Administrative Law Judge, while properly proceeding against Appellant's license, should not have proceeded against Appellant's Merchant Mariner's Document.

Appellant asserts that the charge of misconduct was not of such a nature that it would violate the normal requirements of non-licensed persons. Appellant also asserts that the application of the suspension to all licenses and documents is excessive and

disproportionate to the charge and specification found proved. I do not agree.

The charge and specification of misconduct having been found proved, the Administrative Law Judge was required by regulation to direct his order against Appellant's document as well as his license. In discussing the order of the Administrative Law Judge in these proceedings, 46 C.F.R. +5.567(b) states in pertinent part:

The order is directed against all licenses, certificates or documents except that in cases of negligence or professional incompetence, the order is made applicable to specific licenses, certificates or documents.

It is noted that in a precedent case involving a violation of a COTP Order, the Administrative Law Judge directed his order against both the license and the document of the individual charged as required by the above cited regulation. Appeal Decision 2220 (LAMBERT). Accordingly, in the case herein, the Administrative Law Judge's order is consonant with both the regulations and precedent decisions on appeal.

Finally, I find that the suspension ordered by the Administrative Law Judge is neither unfair nor disproportionate to the charge and specification found proved and is within the suggested range of appropriate orders listed in 46 C.F.R. Table 5.569.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the requirements of applicable law and regulations.

ORDER

The Decision and Order of the Administrative Law Judge issued on 4 May and 22 May 1989 at Norfolk, Virginia is AFFIRMED.

MARTIN H. DANIELL
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 8th day of October, 1990.

***** END OF DECISION NO. 2513 *****