

U N I T E D   S T A T E S   O F   A M E R I C A

DEPARTMENT OF TRANSPORTATION

UNITED STATES COAST GUARD

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<u>UNITED STATES OF AMERICA</u>	:
<u>UNITED STATES COAST GUARD</u>	:
	: <u>DECISION OF THE</u>
	:
	: <u>VICE COMMANDANT</u>
	:
<u>vs.</u>	: <u>ON APPEAL</u>
	:
<u>Merchant Mariner's Document</u>	:
<u>Number 266-13-5109</u>	: <u>NO. 2543</u>
	:
<u>Issued to: Willie Randall SHORT</u>	:

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

By an order dated 17 December 1991, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's document upon finding proved a charge of negligence. The charge was supported by a single specification, alleging that, on or about 22 July 1991, Appellant was negligent in performing his duties as tankerman by failing to close the cargo pump bleed valve of the tank barge STCO 217, resulting in a spill of approximately five gallons of #2 diesel oil into the Houston Ship Channel.

The hearing was held at Houston, Texas on 20 November 1991. Appellant appeared at the hearing with professional counsel by whom he was represented throughout the proceedings.

Appellant responded to the charge and specification by not contesting, as provided in 46 C.F.R. § 5.527. The Investigating Officer introduced 5 exhibits into evidence. Appellant testified on his own behalf, called one other witness, and introduced two documents.

The Administrative Law Judge's final order suspending Appellant's seaman's document for one month on 6 months' probation was entered on 17 December 1991, and appears to have been served on Appellant's counsel on 6 February 1992. Appellant filed a notice of appeal on 30 December 1991, and filed his completed brief on 7 April 1992. Prima facie, therefore, the appeal was not perfected within the filing requirements of 46 C.F.R. § 5.703. However, the record does not show acknowledgement from Appellant's counsel of the date he received the transcript. Granting Appellant the benefit of the doubt, this matter is properly before the Commandant for review.

Appearance: F. William Mahley, Attorney for Appellant, Griggs & Harrison, 1301 McKinney St., Suite 3200, Houston, Texas, 77010-3033.

#### FINDINGS OF FACT

At all times relevant herein, Appellant was the holder of the above captioned document, issued to him by the United States Coast Guard. On 22 July 1991, Appellant was serving under the authority of his document as Tankerman and person-in-charge of the tank barge STCO 217, O.N. 533993.

Appellant relieved the prior Tankerman to complete the loading of #2 Diesel oil into the barge, which was berthed at the GATX terminal in Pasadena, Texas. Appellant inspected the barge and signed a Declaration of Inspection indicating his satisfaction with the loading conditions. The bleed valve on the transfer pump was neither closed nor plugged when Appellant assumed the duties of Tankerman. The barge had recently been in a shipyard or cleaning facility, and apparently the bleed valve was left open and unplugged, contrary to usual practice, when the barge left the facility before the instant loading. Neither the tankerman whom Appellant relieved, nor Appellant himself, checked or noticed that the bleed valve was open and unplugged until the spill occurred.

After Appellant had been on duty for about 6 hours, shortly before noon, Appellant was topping off the number 4 tanks when a hissing sound drew his attention to the pump's

bleed valve. When he deduced its cause he immediately shut down transfer operations and took all available steps to clean up the approximately 5 gallons which spilled from the bleed valve. Some of the spilled cargo flowed into the Houston ship channel.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge suspending Appellant's seaman's document. Appellant sets forth the following basis of appeal:

1. The Administrative Law Judge erred in imposing a penalty more severe than the circumstances of the case warrant.

OPINION

Appellant urges that the circumstances of the case should compel the Administrative Law Judge to impose a penalty less than a probationary one-month suspension, notwithstanding Appellant's answer of No Contest and the guidelines of 46 C.F.R. § 5.569 (d). I do not agree.

The Administrative Law Judge enjoys a wide discretion as to the choice of an appropriate sanction. The order imposed is exclusively within his discretion and will not be modified on appeal unless clearly excessive or abusive of discretion. Appeal Decisions 2532 (ALLSWORTH); 2423 (WESSELS); 2414 (HOLLOWELL); 2391 (STUMES); 2379 (DRUM); 2378 (CALICCHIO). The Administrative Law Judge is not bound by the table of average orders. Appeal Decision 2173 (PIERCE); affirmed by NTSB Order EM-81.

The Administrative Law Judge considered all the matters raised at the hearing in his selection of an order. [Decision and Order 12]. In particular, the Administrative Law Judge considered mitigating factors and Appellant's unblemished prior record. Id. The

order imposed is more lenient than the Table of Average Orders suggests. 46 C.F.R.

§ 5.569 (table). Any contention that the sanction is unduly harsh is without merit. Appeal Decision 2257 (MALANAPHY), reversed on other grounds sub nom. GRACEY v. MALANAPHY, NTSB Order No. EM-97. His conclusions will not be overturned unless they are without support in the record and inherently incredible; that is not the case here. Appeal Decisions 2424 (CAVANAUGH), 2423 (WESSELS), 2422 (GIBBONS).

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 dated 17 December 1991, are hereby AFFIRMED.

//S// ROBERT T. NELSON  
ROBERT T. NELSON  
VICE ADMIRAL, U.S.

COAST GUARD

VICE COMMANDANT

Signed at Washington, D.C., this 10th  
day

of \_\_\_\_\_ June \_\_\_\_\_, 1992.  
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