

NTSB Order No.
EM-137

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 22nd day of October, 1986

PAUL A. YOST, Commandant, United States Coast Guard,

v.

ROBERT F. McDOWELL Appellant.

Docket: ME-117

ORDER DENYING RECONSIDERATION

On consideration of the Coast Guard's request for reconsideration of Order EM-132, served April 18, 1986, the appellant's reply in opposition to the request, and the entire record herein, it is concluded that the request does not present any matter or argument that establishes error in, nor provides a sufficient basis for altering, the Board's original decision in the proceeding.

The Board recognizes, as the Coast Guard maintains, that it is not always inappropriate to determine for the first time on appeal whether one party's evidence rebutted some presumption an adversary's evidence created. However, as fully explained in our original decision, the Vice Commandant is not free to rely on an evidentiary presumption concerning negligence where the Coast Guard's charge and specification against a seaman allege negligence under a regulatory standard.

ACCORDINGLY, IT IS ORDERED THAT:

The Coast Guard's request for reconsideration is denied.

BURNETT, Chairman, GOLDMAN, Vice Chairman, LAUBER and NALL, Members of the Board, concurred in the above order.