

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 139 431
Issued to: Tony Donnell Cercy

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2221

Tony Donnell Cercy

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 8 September 1978, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's license for three months, plus three months on twelve months' probation, upon finding him guilty of negligence. The specification found proved alleged that while serving as operator on board Motor Vessel TIGER STAR under authority of the license above captioned, on 4 August 1978, Appellant negligently fell asleep at the wheel, thereby contributing to a collision between TIGER STAR and a fixed platform. A second charge of misconduct was withdrawn at the outset of the proceeding.

The hearing was held at New Orleans on 15, 22 and 29 August, and 8 September 1978.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty of the charge and specification.

The Investigating Officer introduced in evidence the testimony

of two witnesses and three documents.

Appellant offered no evidence in defense.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending all documents issued to him for a period of three months plus three months on twelve months' probation.

The entire decision was served on 8 September 1978. Appeal was timely filed on 26 September 1978.

FINDINGS OF FACT

On 4 August 1978, Appellant was serving as operator on board the Motor Vessel TIGER STAR and acting under authority of his license while the vessel was at sea in the Gulf of Mexico. TIGER STAR is a 57 gross ton, steel, passenger-carrying vessel engaged in the offshore oil industry.

On the date in question, TIGER STAR, with Appellant and one crewman, Donald George, on board, allided with a well-lighted oil production platform situated approximately 10 miles offshore. The platform, Tiger Shoal "A" Tank Battery, is a massive structure set 28 feet above sea level and is approximately 6800 feet long.

The force of the allision caused TIGER STAR to ride up on a small collection point, known as a "pig", such that a 15 foot portion of the 65 foot long vessel was suspended clear of water. A work boat assisted TIGER STAR free of the pig and helped secure the vessel to a nearby structure. Subsequently, due to hull damage sustained in the allision, TIGER STAR sank.

Appellant was taken by work boat to the shore for medical attention, and was admitted to a hospital for care.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Although no brief was filed in this case, Appellant's notice of appeal recites general grounds for

appeal. It is urged that:

1. The Administrative Law Judge erred in concluding that Appellant was guilty of negligence;
2. No direct evidence of negligence was presented; and,
3. There is no presumption of negligence of an operator of a vessel which strikes a fixed object.

OPINION

Short shrift need be given to Appellant's belief that no presumption or inference of negligence attaches to the operator of a vessel which strikes a fixed object. The authorities cited by the Administrative Law Judge in this regard are clearly controlling. *Brown & Root Marine Operators, Inc. v. Zapata Offshore Co.*, 377 F.2d 724 (5th Cir. 1967) (and cases cited therein).

Beyond the inference of negligence there is the simple fact that vessels do not in the ordinary course of navigation strike well-lit obstructions, which clearly is the state of affairs in the instant case.

Immediately after the allision, Appellant told one witness that he had been asleep at the wheel and his most recent recollection prior to the impact related to a light some 10 miles distant from the platform. On the next day, Appellant repeated the substance of his account to an employee of the firm he worked for. While hearsay evidence alone will not prove a charge of negligence, it is admissible and may be weighed by the Administrative Law Judge. Taken in concert with the surrounding circumstances and Appellant's inability to rebut the inference of negligence inherent in this case, I do not find the decision to credit this testimony with great weight to be arbitrary or ill-conceived. The standard against which his conduct is to be measured to determine whether Appellant was negligent is contained in 46 CFR 5.05-20(a)(2). Sleeping at the wheel of a vessel underway is clearly violative of the standard to which licensed operators are to be held.

CONCLUSION

There is substantial evidence of a reliable and probative character to support the finding of negligence as required by 46 CFR 5.20-95(b).

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana, on 8 September 1978, is AFFIRMED.

R. H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard
ACTING COMMANDANT

Signed at Washington, D. C., this 12th day of June 1980.

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