

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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UNITED STATES OF AMERICA; *
UNITED STATES COAST GUARD *

Date: October 4, 2000

Merchant Mariner's Document *
No. 575-71-8039 *
Issued to *

Docket No. 99-0387
(Honolulu, HI)

CESAR RUIZ *

Respondent *

* * * * *

APPEARANCES:

LT Michael Simbulan,
LTJG William N. Deluca,
For the Coast Guard
Ben Martin, Esq.
For the Respondent

BEFORE: **Hon. Parlen L. McKenna**
Administrative Law Judge

DECISION AND ORDER

This suspension and revocation proceeding was instituted by the U. S. Coast Guard in the discharge of its duty to promote the safety of life and property at sea. It was brought pursuant to the legal authority contained in 46 United States Code § 7703 and was conducted in accordance with the procedural requirements of 5 U.S.C. 551-559 and Part 5 of Title 46 of the Code of Federal Regulations. A hearing was held on Friday, March 31, 2000, at the United States Bankruptcy Court, District of Hawaii, 1132 Bishop Street, Suite 601, Honolulu, HI 96813.

LT Michael Simbulan and LTJG William N. Deluca, USCG, duly authorized Investigating Officers of Marine Safety Office, United States Coast Guard, appeared for and represented the Coast Guard. Respondent appeared personally and with Ben Martin, Attorney at Law. A record of the hearing was made by a qualified reporter. A list of the exhibits entered into evidence are set forth in Appendix A.

Respondent's Merchant Mariner's Document No. 575-71-8039 issued by the U. S. Coast Guard, was not produced for identification and examination, However, on April 15, 2000, Respondent returns from his rotation at sea and will surrender his document to the Coast Guard at that time (See Government Exhibit No. 2).

After examining the charges and the factual allegations they were found by me to be correct as to form and legal sufficiency. They are as follows:

FIRST CHARGE: VIOLATION OF LAW OR REGULATION

1) **FACTUAL ALLEGATIONS:** The Coast Guard alleges that on December 7, 1998, while aboard the S.S. Independence, the Respondent violated Company policy and Coast Guard regulations by refusing to submit to a "Breath alcohol Test" and "Chemical Drug Test".

SECOND CHARGE: MISCONDUCT

1) **FACTUAL ALLEGATIONS:** The Coast Guard alleges that on or about December 7, 1998, at approximately 1:15 a.m. (local time), the Respondent did wrongfully engage in mutal combat with another crewmember, Mr. Pati Taototo, while aboard the vessel S.S. Independence.

2) **FACTUAL ALLEGATIONS:** The Coast Guard alleges that on or about December 7, 1998, at approximately 1:15 a.m. (local time), the Respondent did wrongfully assault Mr. Pati Taototo, by brandishing a knife in a threatening manner and stabbing Mr. Taototo.

The findings of fact and conclusions of law which follow are prepared upon my analysis of the entire record, and applicable regulations, statutes, and case law. Each exhibit entered, although perhaps not specifically mentioned in this decision, have been carefully reviewed and given thoughtful consideration.

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Respondent was charged in this case with "Violation of Regulation" which is defined for the purposes of these remedial suspension and revocation proceedings in 46 C.F.R. § 5.33 as follows:

"Where the proceeding is based exclusively on that part of title 46 U.S.C. § 7703, which provides as a basis for suspension or revocation a violation or failure to comply with 46 U.S.C. subtitle II, a regulation prescribed under that subtitle, or any other law or regulation intended to promote marine safety or protect navigable waters, the charge shall be violation of law or violation of regulation. The specification shall state the specific statute or regulation by title and section number, and the particular manner in which it was allegedly violated".

The Respondent was also charged with "Misconduct" which is defined for the purposes of these remedial suspension and revocation proceedings in 46 C.F.R. § 5.27 as follows:

"Misconduct" is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required."

46 U.S.C. § 7703 (2) provides that a document "may be suspended or revoked if, when acting under the authority of that license, certificate or document, the holder has committed an act of incompetence, misconduct or negligence".

It was convincingly established by Respondent's plea of "Admit", that on December 7, 1998, while being the holder of Merchant Mariner's Document No. 575-71-8039, wrongfully refused to submit to a "Breath Alcohol Test" and "Chemical Drug Test"; wrongfully engaged in mutal combat with another crewmember, Mr. Pati Taototo, while onboard the vessel S.S Independence; and wrongfully assault Mr. Pati Taototo, by brandishing a knife in a threatening manner and stabbing Mr. Taototo.

FINDINGS OF FACT

1. Cesar Ruiz, the Respondent, was at all times the holder of a duly issued Merchant Mariner's Document No. 575-71-8039. His document was issued at Honolulu, HI. It authorizes him to serve as: Wiper, SD (FH), Lifeboatman, Tank-Assistant (DL) with no additional endorsements. Respondent's document expires on June 8, 2004. (See Government Exhibit No. 4).

2. Timely and proper notice was given to the Respondent of the date, time and place of the hearing as required by 46 C.F.R. § 5.107.

3. The answer of "Admit" to the charges of Violation of Law or Regulation, Misconduct and to the factual allegations entered herein was accepted by the Administrative Law Judge only after Respondent had been fully informed as to the consequences of such a plea. Respondent entered his answer of "Admit" voluntarily, intelligently, knowingly and was at the time fully aware of the possible consequences of such an answer.

4. An answer of "Admit" entered in open hearing is sufficient in and of itself to support a finding of proved (See 46 C.F.R. 5.527(c)). Moreover such an answer operates as an admission of all matters of fact as charged and averred and constitutes a waiver of all non-jurisdictional defects and defenses, and obviates the requirement for establishing a prima facie case (Appeal Decision No's. 2362-Arnold; Appeal Decision No. 2376-Frank; Appeal Decision No. 2458-German and Appeal Decision No. 2480-Lett).

5. The Respondent lists his current address as 94-1487 Kahualoa Street, Waipahu, HI 96797. In addition, the Respondent list Ben Martin, Attorney at Law, as his secondary address as follows: 1188 Bishop Street, #1810, Honolulu, HI 96813. Respondent has been advised that if he changes his current residence address, Respondent must advise the Judge's office and the Marine Safety Office Honolulu, HI, of the new address and telephone number, by postcard or letter.

6. The acts and conduct of Respondent while aboard the above-described vessel are within the suspension and revocation jurisdiction provided by Title 46 U.S.C. § 7703 and 46 C.F.R. Part 5.

CONCLUSIONS OF LAW

1. The Respondent and the subject matter of the hearing are within the jurisdiction vested in the United States Coast Guard by 46 U.S.C. § 7703; the United States Administrative Procedure, 5 U.S.C 551 et seq.; and 46 C.F.R. Part 5.

2. The charges and the factual allegations are proved by Respondent's answer of "Admit".

The Respondent's prior disciplinary record, maintained by the U. S. Coast Guard, was examined by the Administrative Law Judge in accordance with 46 C.F.R. § 5.565 after a finding of 'proved' was entered. The record indicates it as being "Negative" for the past ten years (See Government Exhibit No. 3).

Based upon the foregoing Findings of Fact and Conclusions of Law and for good cause shown, it is

ORDERED

THAT Merchant Mariner's Document No. 575-71-8039 issued to CESAR RUIZ is hereby SUSPENDED OUTRIGHT for four (4) months commencing December 7 1998 and ending on June 7, 1999. In addition, Respondent agrees not to use alcohol of any kind or at any time for two years; attend AA/NA meetings one day per week for one (1) year; receive stress/anger management counseling and provide the results of the above to the Coast Guard; along with one (1) random drug test per quarter starting April 15, 2000 for one (1) year.

Violation of the agreement will result in the Revocation of the Respondent's Merchant Mariner's Document.

IT IS FURTHER ORDERED that the complete Decision and Order, be delivered to Counsel and Respondent by mailing the same to them addressed as follows:

Ben Martin, Esq.
1188 Bishop Street, #1810
Honolulu, HI 96813

Cesar Ruiz
94-1487 Kahualoa Street
Waipahu, HI 96797

This will constitute service of the Decision and Order upon the Respondent within the intendment of Title 46 C.F.R. § 5.571

Dated this 4th day of October, 2000
Alameda, California



HON. PARLEN L. McKENNA
Administrative Law Judge