UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD	**) Docket No. S&R 00-0366**
	) Coast Guard Case No. PA 00 000989
vs.	**)**
	)
RICHARD EDWIN COOK,	**)**
	)
Respondent.	**)**
	)

ORDER REOPENING THE RECORD AND AMENDING THE DECISION AND ORDER

Respondent has petitioned this Court to amend the Decision and Order in this matter to provide for a sanction, which takes into account the earlier eleven month voluntary deposit of his license with the Court. Essentially, Respondent seeks to offset the six month outright suspension with credit for the time his license was held by the Court and unavailable to him for employment. The petition was filed on July 17, 2001 and the Decision and Order was entered on July 11, 2001.

Respondent rests his request upon Federal Rule of Civil Procedure 60(b)[1] which sets forth "a general, flexible standard for all petitions brought under its equity provisions in sub-rule (5). See *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992). Respondent says it is only fair and equitable to take this time into account because he has been deprived of his license and the coincident inability to work at his profession as a master of uninspected towing vessels on the Great Lakes.

The Coast Guard strongly objects to the request arguing that much of the time between when Respondent's license was deposited and the time of the decision in this case, were his own fault and thus he should not be accordingly rewarded. Moreover, it is argued that for the disciplinary proceedings of this type to have any meaning, a mariner found responsible for misconduct, negligence and violation of law or regulation should have an appropriate sanction imposed and it be served. The disciplinary system would break down and become meaningless if mariners such as Respondent could essentially get away with it. And, finally, they say that Respondent was not deprived of any ability to earn a livelihood since he could have and likely did work during this time but not as a Master.

[1] Respondent relies upon 30 CFR §20.103(c) which provides that in the absence of an applicable rule the Federal Rules of Civil Procedure apply.

Fed. R. Civ. P. 60[b] is inapplicable. Under *Rufo*, in order to grant a Rule 60(b)(5) motion to modify a court order, a district court must find "a significant change either in factual conditions or in law." 502 U.S. at 384. Modification "may be warranted when changed factual conditions make compliance with the decree substantially more onerous."

Modification is also appropriate when a decree proves to be unworkable because of unforeseen obstacles, or when enforcement of the decree without modification would be detrimental to the public interest. *Rufo* (citations omitted). In addition, an order must be modified if compliance becomes legally impermissible. *Rufo*. at 388. Relief from a court order should not be granted, however, simply because a party finds it inconvenient to live with. Even if this rule were applicable, which I find it is not, I must also say I am not persuaded by the claimed equities given the Respondent's refusal to comply with a previous Court request to undergo a medical evaluation. That refusal not only complicated the hearing but delayed it as well. I thus turn to my authority under the Coast Guard administrative and procedural rules.

At first, I was unsure of my authority and had requested the parties suggest to me appropriate citations of my powers to do what was requested. After closer examination of the rules I found that an Administrative Law Judge [ALJ] was granted broad powers pursuant to 33 CFR §20.904 with respect to reopening the record. A fair reading of that rule compels me to conclude I may address Respondent's request as one to reopen the record for the purposes of taking information regarding the appropriate sanction to be imposed. Since Respondent's request was made within 30 days or less following issuance of the Decision and Order, I believe I retain power and jurisdiction to modify, revise, or rescind the Decision and Order once the record is reopened.

Consequently, the record is reopened for that limited purpose.

Because 46 CFR §5.567(a) authorizes an ALJ to issue an order of suspension upon finding the Coast Guard's allegations proved, the time of the period of outright suspension is normally to commence upon surrender of the license, certificate or document to the Coast Guard. See 46 CFR § 5.567(e). In this case, the license was deposited 11 months ago, so the question before me is whether Respondent should have received credit for the time period in which he did not have use of his license based on the voluntary deposit. In short, the suspension under a fair reading of the rule suggests that the suspension commenced on August 15, 2000, the date of the deposit.

Additionally, this deposit appears to have been compelled by the previously assigned ALJ pursuant to his order of August 2, 2000. The Coast Guard admits as much in its submission of August 6, 2001 when reference is made to the direction to Respondent to undergo a medical evaluation. Thus, the deposit was not entirely voluntary.

The Coast Guard's argument that Respondent was found responsible for violations of the disciplinary rules should serve the appropriate sanction is understandable, but fails to take into account for the time this particular mariner has been without a license.

Even though much of the delay to a final decision was brought about by Respondent's recalcitrance to agree to a settlement, it was his right to do so. In effect he suspended himself. He took himself away from commanding a towing vessel on the Great Lakes. I am sure it did not go unnoticed among his fellow mariners that he could not serve as a master and presumably was not employed as such during that time. But he had no special right to decline the ALJ's suggested medical evaluation.

In sum, Respondent has served only some of the time of the suspension. Credit cannot be given for the delay occasioned by the refusal to undergo a medical examination requested by the previous ALJ. To do so would countenance disrespect of an ALJ, which only encourages other mariners to think they "can get away with it."[2]

I am therefore amending the Decision and Order in this cause to provide that Respondent's six-month suspension shall commence 0001, April 15, 2001 and continue to and through 2400, October 14, 2001. I am also imposing a two month probationary period to commence at 0001 hours October 15, 2001 conditioned on Respondent providing to this judge no later than 1700, December 14, 2001 a certification from a duly licensed and competent physician knowledgeable in maritime medical matters that Respondent is physically capable of performing the duties of a master of uninspected towing vessels on the Great Lakes. Provision of such a certification shall terminate the probationary period. Failure to provide such a certification shall result in Respondent's license being suspended for three months commencing on April 1, 2002 through June 30, 2002.

Respondent's license is currently in the possession of the MSO Sault Ste Marie. The MSO is directed to return the license to Respondent upon completion of the suspension periods and satisfactory compliance with the probation conditions set forth in this order.

IT IS SO ORDERED.

Dated: August 7, 2001.

Edwin M Bladen
Administrative Law Judge

[2] The fact that the Respondent followed the advise of counsel only makes more poignant the measure of the disrespect