

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

United States of America
United States Coast Guard

vs

MERCHANT MARINER'S DOCUMENT
NO. 105-34-3220
ISSUED TO:
ARCHIBALD DERRY NELSON
Respondent

Docket No. 02-0035
CG Activity No. 1478868

APPEARANCES:

LT Christopher Tribolet,
For the Coast Guard
Archibald Derry Nelson, Pro se
For the Respondent

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

DECISION AND ORDER

This suspension and revocation proceeding was instituted by the United States 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 Title 46 U.S.C. § 7701-7705 and was conducted in accordance with the procedural requirements of Title 46, code of Federal Regulations (CFR) part 5 and Title 33 CFR part 20.

The hearing in this matter commenced in Alameda, California on Wednesday, January 23, 2002. LT Christopher Tribolet, USCG duly authorized Investigating Officer of Marine Safety Office, United States Coast Guard, appeared for and represented the Coast Guard. Respondent appeared personally and elected to represent himself. A record of the hearing was made by Aiken & Welch, a certified court-reporting firm. A list of the exhibits entered into evidence are set forth in Attachment A.

On January 16, 2002, the Coast Guard filed a Complaint pursuant to 46 U.S.C. 7703 and 46 C.F.R 5.27 charging the Respondent with Misconduct as follows (See Government Exhibit No. 1):

- (1) that on February 23, 2001, the Respondent was convicted of driving under the influence; and
- (2) that on January 9, 2002, the Respondent violated Title 18 United States Code 1001 by wrongfully indicating on an application for renewal of his Merchant Mariner's Document that he had not been convicted of operating a vehicle while under the influence of alcohol.

At the commencement of the hearing, the Coast Guard (and with no opposition from Respondent) made a Motion that the second factual allegation of Misconduct be withdrawn (without prejudice). That Motion was granted.

The Respondent has been charged with Misconduct and has entered a plea of "admit". Accordingly, the Charge of Misconduct with one underlying specification is hereby found PROVEN.

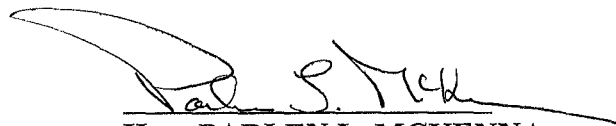
Pursuant to a joint stipulation, Respondent has no prior record. The Coast Guard is recommending a sanction in this case of Two (2) months outright suspension, effective January 23, 2002. The Respondent argues that he has a long history of good service without incidents of misconduct. Under this circumstance, he asks that the sanction be a one (1) month outright suspension.

After considering all of the facts and circumstances of this case, I find that the appropriate sanction should be a six (6) month suspension, three months outright effective November 23, 2001, with the remaining three (3) months remitted on twelve (12) months probation. Drinking and driving is unacceptable conduct and must not be tolerated. Thus, a greater sanction is clearly warranted. However, since the Respondent has not worked under his Merchant Mariner Document since prior to the incident in question, two (2) months credit will be applied to the three (3) month outright suspension. Both parties agree that this sanction is appropriate.

Based upon the foregoing and for good cause shown, it is;

ORDERED

THAT Merchant Mariner's Document No. 105-34-3220 issued to ARCHIBALD DERRY NELSON, the Respondent herein, and all other valid licenses and/or documents issued to him by the United States Coast Guard, or any predecessor authority, now held by him, are hereby suspended for six (6) months, three (3) months outright effective November 23, 2001, with the remaining three (3) months remitted on twelve (12) months probation. The probation period is to commence at the end of the period of outright suspension (February 23, 2002).



Hon. PARLEN L. MCKENNA
Administrative Law Judge

Dated: January 24, 2002
Alameda, CA