

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. [REDACTED]

ISSUED TO:

GLENN B. HENDERSON

Respondent

Docket No. 01-0608
PA Case No. 01001175

APPEARANCES:

LTJG Lance Lindgren
LT Chris Tribolet,
For the Coast Guard
Glenn B. Henderson, 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 46 U.S.C. § 7701-7705 and was conducted in accordance with the procedural requirements of 5 U.S.C. § 551-559, Part 5 of Title 46 and Part 20 Title 33 of the Code of Federal Regulations (C.F.R.).

The hearings in this matter were held in Alameda, CA on January 17, 24 and February 7. LTJG Lance Lindgren and LT Chris Tribolet, USCG duly authorized Investigating Officers of the Marine Safety Office, United States Coast Guard, appeared for and represented the Coast Guard. Mr. John P. Camp, Esq., appeared for the Respondent on January 17, 2002. At that time, Mr. Camp indicated that the Respondent was physically unable to attend the hearing. Thereafter, Mr. Camp made a motion to withdraw and requested a continuance in this matter so that the Respondent could retain a new lawyer. That Motion was granted by the undersigned and the hearing was scheduled for January 24, 2002. Pursuant to 46 CFR 5.521(b), the Respondent Merchant Mariner's Document No. 564-13-3106 was turned over to the Coast Guard on January 24, 2002 (See Government Exhibit No. 7).

At the January 24, 2002 hearing, the Respondent requested an additional continuance for the purpose of obtaining counsel. The undersigned granted that request. The Respondent was given until close of business on Tuesday, January 29, 2002, to contact the court with the name and phone number of the lawyer that Respondent retained. Respondent failed to respond as ordered. The hearing was rescheduled for Thursday, February 7, 2002 (See Government No. 13). The Respondent appeared, failed to retain counsel and elected to represent himself. A record of the hearing was made by Aiken & Welch, a certified court-reporting firm. A list of the witnesses who testified and the exhibits entered into evidence are set forth in the Attachment A.

On September 12, 2001, 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:

FACTUAL ALLEGATIONS:

- (1) On April 17, 2001, you returned to the ship late from shore leave in Jebel Ali, Dubai and were ordered by the Master to report to the Master's office.
- (2) The Master smelled an alcoholic beverage on your breath and asked you if you had been drinking.
- (3) You told the Master that you had consumed alcohol by stating something to the effect of, "I have had some beers."
- (4) The Master felt he had reasonable cause for directing a chemical test and ordered you to submit to an onboard breathalyzer test.
- (5) You failed to obey the Master's order by refusing to submit to the chemical test.

The Coast Guard proposed a sanction of twelve (12) months suspension, six (6) months outright, with the remaining six (6) months remitted on twelve (12) months probation. In support of that position, the Coast Guard introduced documentary evidence demonstrating that the Respondent has longstanding alcohol related problems. In addition, the Coast Guard notes that the Respondent has totally failed to try to rectify these problems. Accordingly, the Coast Guard states that a more severe sanction is warranted in this case than might otherwise be warranted. The Respondent offered no rebuttal to the Coast Guard's arguments.

The finding of facts 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, has been carefully reviewed and given thoughtful consideration.

FINDINGS OF FACT

1. Glenn B. Henderson, the Respondent herein, was at all times the holder of Merchant Mariner's Document No. [REDACTED] Respondent's document issued at San Francisco, CA and expires on March 16, 2002. It authorizes him to serve as: Able bodied-Spec, wiper, Steward's Department (Food handler), Tankerman-Assistant (DL) (See Government Exhibit No. 7).
2. Timely and proper notice was given to the Respondent of the dates, time and place of each hearing (See Government Exhibit Nos. 4, 5 and 13).

3. Respondent was fully advised of his right to counsel and stated on the record that he wished to proceed pro se (See February 7, 2002 TR).

4. The Respondent entered an answer of "admit" to the supporting allegations. 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.

5. Such an answer operates as an admission of all matters of fact as charged and averred and constituted a waiver of all non-jurisdictional defects and defenses, and obviates the requirement for establishing a prima facie case. (46 C.F.R. 5.527 (c); Appeal Decision No. 2363-Arnold; Appeal Decision No. 2376-Frank; Appeal Decision No. 2458-German and Appeal Decision No. 2480-Lett).

6. The Respondent's prior record of alcohol problems maintained by the U.S. Coast Guard, is as follows:

- 1) On August 6, 1994, a search was conducted of Mr. Henderson's room for alcohol, based on information that Mr. Henderson had purchased alcohol on his return from medical examination. Three cans of beer were found in his room. Mr. Henderson was tested with an intoximeter which obtained a negative result. Mr. Henderson's actions violated company policy and on September 7, 1994 a Sea-Land official warning was issued. Personnel Action Narrative Supplement.
- 2) On August 7, 1994, Mr. Henderson was issued a Official Warning letter by the vessel concerning this incident.
- 3) On August 9, 1994, a follow-up medical examination of Mr. Henderson was conducted at the Port of Busan, Korea. The doctor determined that Mr. Henderson was unfit for duty (diagnosis differs from Tokyo doctor e.g. acute panic disorder) and discharged from the vessel, (IO Note: Local medical authorities informed me that it is not uncommon for a person having symptoms of acute respiratory tract infection to experience panic disorder due to chest pains, shortness of breath and so forth).
- 4) On August 10, 1994, Mr. Henderson was found to have had in his possession the Master's Shore Pass which was returned to the Sea-Lands Yokohama office. The master took offense to Mr. Henderson having his liberty pass and felt that Mr. Henderson's actions were a deliberate interference with the operation of the vessel (See Government Exhibit No 12).

7. Given the Respondent's continuing and unabated alcohol related problems the appropriated sanction in this case is a twelve (12) month suspension, six (6) month outright, with the remaining six (6) months remitted on twelve (12) months probation. 46 C.F.R. § 5.569 has a suggested range lower than that recommended by the Coast Guard. However, given the severity of the offense and the Respondent's alcohol related history, the recommended sanction is clearly warranted.

8. The acts and conduct of Respondent are within the suspension and revocation jurisdiction provided by Title 46 USC § 7703, 46 C.F.R. Part 5 and Title 33 C.F.R. Part 20.

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 § USC 7703.
2. The allegations supported by the filing of the Complaint for Misconduct is proved by Respondent's answer of "admit" entered at the hearing.

DISCUSSION

The Respondent was charged in this case 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."

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. [REDACTED] issued to Glenn B. Henderson, 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 twelve (12) months, six (6) months outright, with six (6) months remitted on twelve (12) months probation effective January 24, 2002, (the date the Respondent deposited his document with the Coast Guard)



Hon. PARLEN L. MCKENNA
Administrative Law Judge

Done and dated this 1st day of March 2002
Alameda, California

Copy:
MSO San Francisco Bay
CGD11(m)
ALJ Docketing Center