

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD

Complainant

vs.

RODNEY L. LIVINGSTON,

Respondent.

Docket Number CG S&R 02-0288
CG Case No. 1613261

DECISION & ORDER

Issued : July 31, 2002

Issued by: Joseph N. Ingolia, Chief Administrative Law Judge

PRELIMINARY STATEMENT

In discharge of its duty to promote safety of life and property at sea, the United States Coast Guard (Coast Guard) initiated this administrative proceeding seeking revocation of Merchant Mariner's Document number 225044013 issued to Respondent, Rodney L. Livingston.

This action is brought pursuant to the legal authority contained in 46 U.S. Code 7703 and its underlying regulations codified at 46 CFR Parts 5 and 10. In a Complaint issued May 17, 2002, the Coast Guard charged Respondent with two counts of Misconduct for being convicted of offenses that would prevent the issuance, renewal or upgrade of a Coast Guard credential.

The factual allegations in the complaint are:

1. On June 21, 2001, the Respondent was convicted in Chesapeake, Virginia of Sexual Battery, an offense that would prevent the issuance, renewal, or upgrade of a Coast Guard credential in accordance with 46 CFR 5.61(a)(3).
2. On January 22, 2001, the Respondent was convicted in Chesapeake City, Virginia, of Driving While Intoxicated, an offense that would prevent the issuance, renewal, or upgrade of a Coast Guard credential in accordance with section 205 of the National Drivers Register Act of 1982. (This section was repealed and replaced by 49 U.S.C. § 30304 on July 5, 1994.)

The Respondent timely filed an Answer in which he failed to admit or deny any of the jurisdictional and factual allegations.

The case was called for hearing on July 15, 2002 in Baltimore, Maryland in accordance with the Administrative Procedure Act, as amended and codified at 5 U.S.C. §§ 551-59, and Coast Guard procedural regulations, 33 CFR Part 20.

Lieutenant Commander Mark Hammond and Petty Officer Michael Liburd entered appearances on behalf of the Coast Guard. The Respondent appeared on his own behalf and was advised of his right to counsel at the outset of the proceeding. The Respondent acknowledged his right to counsel and reaffirmed his decision to represent himself at the hearing.

The Chief Administrative Law Judge requested that the Respondent produce and present his Merchant Mariner's Document. The Respondent informed the court that his document was no longer in his possession and was lost. He stated he left it in his house which, at some point, was repossessed. The Respondent was informed that he would be

required to complete a lost document affidavit and informed that a willful misstatement of any material item in that affidavit is punishable as a violation of federal law.

OPINION

The charges against the Respondent were reviewed as to the specific allegations and the nature of the corresponding sanctions. The Respondent's answer was reviewed to ascertain whether or not he was pleading ADMIT or DENY regarding the charges made in the Complaint. The Respondent's positions were equivocal so the Chief Administrative Law Judge entered a denial of each complaint on behalf of the Respondent. It was made clear that should the Respondent deny the factual allegations of Driving While Intoxicated, and should the Coast Guard be successful in proving the charge, the sanction would be revocation of his document. The Respondent was also informed that if he admitted the factual allegations of Driving While Intoxicated, the Chief Administrative Law Judge would Revoke the Respondent's Merchant Mariner's Document, with the option to seek clemency after one (1) year.

The Respondent was then given a ten-minute recess to decide if he intended to dispute the applicability of the Driving While Intoxicated conviction included in the Complaint. After the recess he admitted, with full knowledge that his document would be revoked, to the Driving While Intoxicated conviction. Further, the Respondent expressed his desire to seek clemency. Subsequently, based on the Respondent's plea of ADMIT, the Respondent's document was ordered revoked and the Coast Guard representatives were instructed to assist the Respondent with his application for clemency, where necessary.

As to the charge of Misconduct stemming from the factual allegation of Sexual Battery, it was withdrawn by the Coast Guard. Thus, the issue of the validity and proper sentence for the allegation of Sexual Battery was not heard. Although no hearing was held regarding the charge of Misconduct stemming from the Sexual Battery conviction, the Respondent was advised that his entire record would be reviewed at any clemency hearing, including the record for the conviction of Sexual Battery. He was further advised that the clemency request would be considered in the light of his record of rehabilitation and how well he had conducted himself between the date of this decision and the date of the clemency application.

The Respondent's admission that he was convicted of driving under the influence of an intoxicating substance (i.e., alcohol) in the State of Virginia is sufficient to support a finding that the allegations in the complaint are proved. Appeal Decision 2458 (GERMAN). Based on the law and regulations involved and upon consideration of the record as a whole, I hereby find that the alleged Misconduct for being convicted of Driving While Intoxicated is **PROVED**, WHEREFORE,

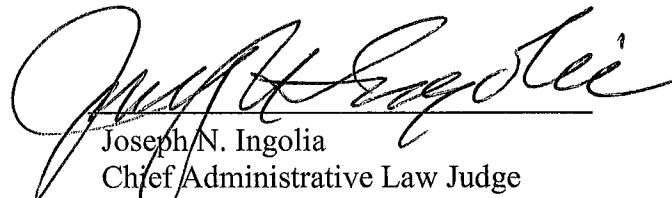
ORDER

IT IS ORDERED that the Respondent's U.S. Coast Guard Merchant Mariner's Document number 225044013, including all duplicates of that document and any other U.S. Coast Guard Merchant Mariner's Licenses or Documents issued to this Respondent, are hereby **REVOKED**.

IT IS FURTHER ORDERED that since Respondent has stated that he lost his Merchant Mariner's Document, Respondent shall, in accordance with 46 CFR Part 12.02-

24, complete an Affidavit of Lost or Stolen Merchant Mariner's Document (included as Attachment A) and forward the affidavit to the U.S. Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland, 21226, Fax (410) 576-2583 immediately. In the event Respondent has located his Merchant Mariner's Document, he shall immediately surrender the document to U.S. Coast Guard Activities Baltimore.

SO ORDERED,


Joseph N. Ingolia
Chief Administrative Law Judge
United States Coast Guard

Done and dated this 31st of July, 2002 at
Baltimore, MD

PLEASE TAKE NOTE that if neither party seeks review within 30 (thirty) days after issuance of this Order, this decision will become final. For the purposes of this action, the department of review is the United States Coast Guard. An appeal of this Order may be filed using the process as described in 33 CFR 20, Subpart J (2001). A copy of Subpart J is attached to this order. The details of clemency procedures are set forth at 46 CFR 5, Subpart L (46 CFR sections 5.901, 5.903, and 5.905) and are contained in Attachment B.