

UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF HOMELAND SECURITY  
**UNITED STATES COAST GUARD**

---

UNITED STATES COAST GUARD

Complainant,

vs.

DIEGO HATCH GARCIA

Respondent.

---

Docket Number 2018-0407  
Enforcement Activity No. 5758004

**DECISION AND ORDER**

**Issued: July 11, 2019**

**By Administrative Law Judge: Honorable Michael J. Devine**

**Appearances:**

**Jennifer A. Mehaffey, Esq.  
USCG SR-NCOE,**

**LT Mathew Schirle  
USCG SR-NCOE,**

**and**

**LT Carlos J. Diaz-Colon  
USCG Sector San Juan**

**For the Coast Guard**

**Thomas E. Cafferty, Esq.**

**For the Respondent**

**TABLE OF CONTENTS**

**I. PRELIMINARY STATEMENT.....3**

**II. FINDINGS OF FACT.....4**

**III. DISCUSSION.....7**

**IV. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW.....15**

**V. SANCTION.....16**

**VI. ORDER.....21**

**ATTACHMENT A – WITNESS AND EXHIBIT LISTS.....23**

**ATTACHMENT B – RULINGS ON PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW.....25**

**ATTACHMENT C – NOTICE OF APPEAL RIGHTS.....29**

## I. PRELIMINARY STATEMENT

The United States Coast Guard (Coast Guard) filed a Complaint seeking to revoke Diego Hatch Garcia's (Respondent) Merchant Mariner Credential (MMC) for committing misconduct. See 46 U.S.C. § 7703(1)(B); 46 C.F.R. § 5.27. Specifically, the Coast Guard alleged 1) on June 14, 2016, Respondent submitted an MMC application seeking endorsements for First Class Pilot of Bahia de Jobos, Arecibo, and Tallaboa, and in support of that application submitted trip sheets (*i.e.*, forms evidencing the applicant's familiarization with the route) that contained at least one falsified pilot signature; and 2) on December 2, 2016, Respondent submitted an MMC application seeking an endorsement for First Class Pilot of Bahia de Ponce, and in support of that application submitted trip sheets that contained at least one falsified pilot signature. Respondent filed a timely Answer denying the operative jurisdictional and factual allegations and requested a hearing.

The Administrative Law Judge (ALJ) conducted a hearing in accordance with the Administrative Procedure Act (APA), as amended and codified at 5 U.S.C. §§ 551-59, and Coast Guard procedural regulations set forth in 46 C.F.R. Part 5 and 33 C.F.R. Part 20, on March 21, 2019 in San Juan, Puerto Rico. The Coast Guard moved for admission of 16 exhibits, all of which were admitted, and presented the testimony of five (5) witnesses. Respondent marked Exhibit A for identification, but after an objection was sustained, did not offer that exhibit for admission into evidence, and instead referenced Coast Guard Exhibit 11. Respondent subsequently moved for the admission of two (2) exhibits, both of which were admitted. Respondent also presented the testimony of one (1) witness. The parties agreed to a Joint Stipulation of Fact, which was admitted into evidence as ALJ Exhibit I. The list of witnesses and exhibits is contained in Attachment A. The parties submitted post-hearing briefs and the

matter is now ripe for a decision.

After carefully reviewing the evidence adduced at the hearing, the undersigned Administrative Law Judge finds **PROVEN** the charges of misconduct relating to Respondent's June 14, 2016 and December 2, 2016 MMC applications for pilot endorsements. The parties presented substantial argument regarding the appropriate sanction for misconduct relating to fraud in the application for merchant mariner credentials. I find neither party's position to be fully persuasive. As discussed *infra*, the imposition of an appropriate sanction is within the discretion of the ALJ. In view of the purpose of these proceedings to maintain standards for competence and promote safety at sea, Respondent's credentials are **REVOKED** but the revocation is **STAYED** for a period of twenty-four (24) months, consisting of twelve (12) months' outright suspension, followed by twelve (12) months' probation.

## **II. FINDINGS OF FACT**

The Findings of Fact are based on a thorough and careful analysis of the documentary evidence, testimony of witnesses, and the entire record taken as a whole.

1. At all times relevant to this matter, Respondent held Merchant Mariner Credential (MMC) No. 000320608. [CG Ex. 1; Court Ex. I].
2. On June 14, 2016, Respondent submitted an MMC application seeking First Class Pilot endorsements for Bahias de Jobos, Arecibo, and Tallaboa, in Puerto Rico. [CG Ex. 10; Court Ex. I].
3. Respondent's June 14, 2016 MMC application contains trip sheets that have pilot signatures reading "Patrick Martinez." [CG Ex. 10].
4. On December 2, 2016, Respondent submitted a second MMC application seeking a First Class Pilot endorsement for Bahia de Ponce in Puerto Rico. [CG Ex. 3; Court Ex. I].
5. Respondent's December 2, 2016 MMC application contains trip sheets, all having pilot signatures reading "Patrick Martinez." [CG Ex. 3].
6. Respondent submitted the December 2, 2016 MMC application to Jorge Estrada, legal instrument examiner of the San Juan satellite office of the Miami Regional Exam Center (REC). Respondent told Mr. Estrada that all signatures on the trip sheets were original. [Tr.

at 97-98, 101].

7. Mr. Estrada returned part of the original application to Respondent on December 2, 2016, but retained the trip sheets that Mr. Estrada suspected to be fraudulent. [Tr. at 102].
8. Approximately four days after submitting the application, Respondent called and emailed Mr. Estrada, requesting that his application be withdrawn. [Tr. at 102; CG Ex. 3 at 40-41].
9. Respondent submitted a trip sheet with his June 14, 2016 MMC application purporting to show that he observed Patrick Martinez pilot the vessel PATAGONIAGAS on January 7, 2015 inbound in Tallaboa, PR. The trip sheet bears a signature purporting to be Patrick Martinez' [CG Ex. 10 at 18].
10. Patrick Martinez did not pilot the PATAGONIAGAS on January 7, 2015 inbound in Tallaboa and did not sign the trip sheet. Fulgencio Anavitate piloted the PATAGONIAGAS on that trip, did not have Respondent aboard as an observer, and did not sign a trip sheet for Respondent. [Tr. at 143-145, 149, 179-180; CG Ex. 8 at 9; CG Ex. 9 at 4].
11. Respondent submitted a trip sheet with his June 14, 2016 MMC application purporting to show that he observed Patrick Martinez pilot the vessel PRINS HENDRIK on May 6, 2016 inbound in Tallaboa. The trip sheet bears a signature purporting to be Patrick Martinez'. [CG Ex. 10 at 13].
12. Patrick Martinez did not pilot the PRINS HENDRIK on May 6, 2016 inbound in Tallaboa and did not sign the trip sheet. Alex Cruz piloted the PRINS HENDRIK on that trip, did not have Respondent aboard as an observer, and did not sign a trip sheet for Respondent. [Tr. at 159-160, 181-182; CG Ex. 7 at 22; CG Ex. 9 at 12].
13. Respondent submitted a trip sheet with his June 14, 2016 MMC application purporting to show that he observed Patrick Martinez pilot the vessel PRINS HENDRIK on May 8, 2016 outbound in Tallaboa. The trip sheet bears a signature purporting to be Patrick Martinez'. [CG Ex. 10 at 13].
14. Patrick Martinez did not pilot the PRINS HENDRIK on May 8, 2016 outbound in Tallaboa and did not sign the trip sheet. Alex Cruz piloted the PRINS HENDRIK on that trip, did not have Respondent aboard as an observer, and did not sign a trip sheet for Respondent. [Tr. at 160-161, 181-182; CG Ex. 7 at 22; CG Ex. 9 at 12].
15. Respondent submitted a trip sheet with his December 2, 2016 MMC application purporting to show that he observed Patrick Martinez pilot the vessel JOSE FERNANDA on April 9, 2016 inbound in Bahia de Ponce. The trip sheet bears a signature purporting to be the signature of Patrick Martinez'. [CG Ex. 3 at 13].
16. Patrick Martinez did not pilot the JOSE FERNANDA on April 9, 2016 inbound in Bahia de Ponce and did not sign the trip sheet. Alex Cruz piloted the JOSE FERNANDA on that trip, did not have Respondent aboard as an observer, and did not sign a trip sheet for Respondent. [Tr. at 161-162, 185-186; CG Ex. 7 at 22; CG Ex. 9 at 12].

17. Respondent submitted a trip sheet with his December 2, 2016 MMC application purporting to show that he observed Patrick Martinez pilot the vessel JOSE FERNANDA on April 11, 2016 outbound in Bahia de Ponce. The trip sheet bears a signature purporting to be Patrick Martinez'. [CG Ex. 3 at 13].
18. Patrick Martinez did not pilot the JOSE FERNANDA on April 11, 2016 outbound in Bahia de Ponce and did not sign the trip sheet. Alex Cruz piloted the JOSE FERNANDA on that trip, did not have Respondent aboard as an observer, and did not sign a trip sheet for Respondent. [Tr. at 162, 185-186; CG Ex. 7 at 22; CG Ex. 9 at 12].
19. Respondent submitted a trip sheet with his December 2, 2016 MMC application purporting to show that he observed Patrick Martinez pilot the vessel JOSE FERNANDA on May 4, 2016 inbound in Bahia de Ponce. The trip sheet bears a signature purporting to be Patrick Martinez'. [CG Ex. 3 at 18].
20. Patrick Martinez did not pilot the JOSE FERNANDA on May 4, 2016 inbound in Bahia de Ponce and did not sign the trip sheet. Alex Cruz piloted the JOSE FERNANDA on that trip, did not have Respondent aboard as an observer, and did not sign a trip sheet for Respondent. [Tr. at 163, 186-187; CG Ex. 7 at 22; CG Ex. 9 at 12].
21. Respondent submitted a trip sheet with his December 2, 2016 MMC application purporting to show that he observed Patrick Martinez pilot the vessel JOSE FERNANDA on May 6, 2016 outbound in Bahia de Ponce. The trip sheet bears a signature purporting to be Patrick Martinez'. [CG Ex. 3 at 18].
22. Patrick Martinez did not pilot the JOSE FERNANDA on May 6, 2016 outbound in Bahia de Ponce and did not sign the trip sheet. Alex Cruz piloted the JOSE FERNANDA on that trip, did not have Respondent aboard as an observer, and did not sign a trip sheet for Respondent. [Tr. at 164, 186-187; CG Ex. 7 at 22; CG Ex. 9 at 12].
23. Respondent submitted a trip sheet with his December 2, 2016 MMC application purporting to show that he observed Patrick Martinez pilot the vessel JOSE FERNANDA on May 28, 2016 outbound in Bahia de Ponce. The trip sheet bears a signature purporting to be Patrick Martinez'. [CG Ex. 3 at 15].
24. Patrick Martinez did not pilot the JOSE FERNANDA on May 28, 2016 outbound in Bahia de Ponce and did not sign the trip sheet. Fulgencio Anavitate piloted the JOSE FERNANDA on that trip, did not have Respondent aboard as an observer, and did not sign a trip sheet for Respondent. [Tr. at 141-142, 149, 187-188; CG Ex. 8 at 23; CG Ex. 9 at 13].
25. Respondent submitted a trip sheet with his December 2, 2016 MMC application purporting to show that he observed Patrick Martinez pilot the vessel SEATTLE on July 23, 2016 inbound in Bahia de Ponce. The trip sheet bears a signature purporting to be Patrick Martinez'. [CG Ex. 3 at 22].
26. Patrick Martinez did not pilot the SEATTLE on July 23, 2016 inbound in Bahia de Ponce and did not sign the trip sheet. Fulgencio Anavitate piloted the SEATTLE on that trip, did not have Respondent aboard as an observer, and did not sign a trip sheet for Respondent.

[Tr. at 139-141, 149, 184-185; CG Ex. 8 at 24; CG Ex. 9 at 13].

27. On December 2, 2016, Capt. Martinez and Respondent spoke on the phone and Respondent admitted he did something regarding Capt. Martinez' signature on a trip sheet related to the vessel JOSE FERNANDA. [Tr. at 176-177; CG Ex. 5].
28. After the phone call, Respondent sent Capt. Martinez a text stating in Spanish: "Thank you once again as always and one thousand apologies." [Tr. at 175-177; CG Ex. 4].
29. Respondent has no previous disciplinary history with the Coast Guard. [ALJ Ex. I].

### **III. DISCUSSION**

The purpose of Coast Guard Suspension and Revocation (S&R) proceedings is to promote safety at sea. 46 U.S.C. § 7701(a). The Commandant of the Coast Guard "delegated to Administrative Law Judges the authority to admonish, suspend with or without probation or revoke a license, certificate or document issued to a person by the Coast Guard under any navigation or shipping law."<sup>1</sup> 46 C.F.R. § 5.19. Administrative actions against a mariner's credentials "are remedial and not penal in nature" and are intended to help maintain standards for competence and conduct essential for safety at sea. 46 C.F.R. § 5.5. The Coast Guard may seek revocation of an MMC if the holder has committed an act of misconduct and permitting the holder to serve under the MMC would clearly be a threat to the safety of life or property or detrimental to good discipline. 46 U.S.C. § 7703(l)(B); 46 C.F.R. § 5.61(b).

#### **A. Burden of Proof**

The Administrative Procedure Act (APA), at 5 U.S.C. §§ 551-559, applies to Coast Guard S&R trial-type hearings before United States Administrative Law Judges. 46 U.S.C. § 7702(a). The APA authorizes sanctions if, upon consideration of the entire record as a whole, the charges are supported by reliable, probative, and substantial evidence. 5 U.S.C. § 556(d). Under Coast Guard procedural rules and regulations, the Coast Guard bears the burden of proving the

---

<sup>1</sup> The Coast Guard now refers to licenses, certificates of registry, and documents as credentials. 74 Fed. Reg. 11,216, 11,196 (March 16, 2009).

charges by a preponderance of the evidence. 33 C.F.R. §§ 20.701, 20.702(a). The term “preponderance of the evidence” is synonymous with the term “substantial evidence.” Appeal Decision 2477 (TOMBARI) (1988); See also Steadman v. Securities & Exchange Comm'n, 450 U.S. 91, 107 (1981). Proving a fact by a preponderance of the evidence "simply requires the trier of fact 'to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence.'" Concrete Pipe & Prod. of California, Inc. v. Constr. Laborers Pension Tr. for S. California, 508 U.S. 602, 622 (1993) (quoting In re Winship, 397 U.S. 358, 371-372 (1970) (Harlan, J., concurring) (brackets in original)). Therefore, the Coast Guard must prove by reliable, probative, and substantial evidence that Respondent more likely than not committed the violation charged.

## **B. Jurisdiction**

The parties stipulated as to jurisdiction in this case. [ALJ Ex. I]. Nevertheless, jurisdiction is a question of fact and the ALJ must determine whether jurisdiction exists before deciding the substantive issues of the case. Appeal Decision 2620 (COX) (2001). In an S&R proceeding based on alleged misconduct, an ALJ must determine whether the mariner was acting under the authority of his or her credential at the time of committing the acts that constitute misconduct. 46 U.S.C. § 7703(1)(B).

A mariner acts under the authority of his or her credential when he or she is engaged in official matters regarding the credential, including, but not limited to, applying for renewal, taking examinations for raises of grade, requesting duplicate or replacement credentials, or appearing at a hearing pursuant to the regulations of Title 46, Part 5. 46 C.F.R. § 5.57(b). The Commandant has interpreted this provision to include cases in which a mariner applies for an upgrade to his or her current credential. See Appeal Decision 2346 (WILLIAMS) (1984)



(mariner intentionally altered and then mutilated his credential in an attempt to obtain a duplicate credential with an endorsement to which he was not entitled); see also Appeal Decision 2610 (BENNETT) (1999) (mariner submitted a fraudulent document in connection with an application to upgrade his Master 500 Gross Tons Inland license to a Master 1600 Gross Ton Inland license).

On June 14, 2016, Respondent applied for First Class Pilot endorsements for three ports: Bahia de Jobos, Arecibo, and Tallaboa. [CG Ex. 10]. On December 2, 2016, Respondent applied for a First Class Pilot endorsement for Bahia de Ponce. [CG Ex. 3]. At the time of applying for these pilot endorsements, Respondent held duplicate MMC No. 000320608, which qualified him as Master of Towing Vessels. [CG Ex. 1]. A mariner licensed as a master who also qualifies as a pilot is not required to hold each credential separately; instead, the qualification as pilot will be included as an endorsement on the master's license. 46 U.S.C. § 7112. As he already held a license as Master of Towing Vessels, had Respondent obtained the pilot endorsements he was seeking, the pilot endorsements would have been included as endorsements on his current MMC. Therefore, Respondent acted under the authority of MMC No. 000320608 when he submitted the applications on June 14, 2016 and December 2, 2016 and I have jurisdiction to suspend or revoke the MMC for the alleged misconduct perpetrated in connection with the applications.

### **C. Misconduct**

Misconduct is human behavior that violates some formal, duly established rule. 46 C.F.R. § 5.27. 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. Id. Furthermore, it is an act which is forbidden or a failure to do that which is required. Id.

Here, the Coast Guard alleged Respondent committed misconduct by fraudulently submitting falsified documents in connection with his June 14, 2016 and December 2, 2016 MMC applications for pilot endorsements. Specifically, the Coast Guard alleged Respondent submitted trip sheets with falsified pilot signatures in support of the applications. The Coast Guard contends this behavior violated 18 U.S.C. § 1001, which prohibits a person from knowingly and willfully using a false document or fraudulent representation in any matter within the jurisdiction of the executive, legislative, or judicial branch of the U.S. Government.<sup>2</sup>

The Commandant has held a knowingly false statement made in an application for an MMC can constitute misconduct under 46 C.F.R. § 5.27 because such behavior is a violation of a duly established rule, such as 18 U.S.C. § 1001. See Appeal Decision 2610 (BENNETT) (1999), Appeal Decision 2569 (TAYLOR) (1995), Appeal Decision 2570 (HARRIS) (1995). In TAYLOR, the mariner applied for a duplicate license and answered “no” to a question asking if the mariner had been convicted of any crimes including DWI’s, despite the mariner having been convicted of DWI 15 times prior to submitting the application. Appeal Decision 2569 at 1. The ALJ determined, and the Commandant affirmed, the mariner’s knowingly false statement constituted a violation of 18 U.S.C. § 1001, and thus, amounts to misconduct. Id. In HARRIS, the Commandant affirmed the ALJ’s finding that the mariner knowingly lied when he stated on his license application that he had never used or been addicted to narcotics, and that this

---

<sup>2</sup> 18 U.S.C. § 1001. Statements or entries generally.

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--
- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
  - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
  - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
- shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

fraudulent representation constituted a violation of 18 U.S.C. § 1001. Appeal Decision 2570 at 2.

**1. June 14, 2016 MMC Application**

With regard to the June 14, 2016 application, the Coast Guard submitted into evidence a copy of the application signed by Respondent. [CG Ex. 10]. It contained a “Certification” section signed by the Respondent, wherein he verified that all of the information contained in the application was “true and correct to the best of my knowledge.” [CG Ex. 10 at 10-11]. Respondent included numerous trip sheets with the application to prove he familiarized himself with the waterways (Bahia de Jobos, Arecibo, and Tallaboa) by observing a pilot navigate the routes. All of the trip sheets alleged by the Coast Guard to contain falsified pilot signatures were ostensibly signed by pilot Patrick Martinez.

The Coast Guard presented the testimony of Patrick Martinez (Capt. Martinez) and submitted into evidence his Pilot Activity Report. [CG Ex. 9]. Capt. Martinez is a harbor pilot employed in Puerto Rico’s State pilot system and had, in the past, allowed Respondent to observe as he conducted pilot trips. [Tr. at 170-173]. According to Coast Guard witness Fulgencio Anavitate, the Pilot Activity Report is a record compiled by the Puerto Rico Harbor Pilots Pension and Welfare Plan that documents all instances in which the subject has piloted a vessel [Tr. at 141].

Respondent submitted trip sheets purporting to show that he had observed Capt. Martinez pilot vessels on the following occasions:

- PATAGONIAGAS on an inbound trip in Tallaboa on January 7, 2015 [CG Ex. 10 at 18];
- PRINS HENDRIK on an inbound trip in Tallaboa on May 6, 2016 [CG Ex. 10 at 13]; and
- PRINS HENDRIK on an outbound trip in Tallaboa on May 8, 2016 [CG Ex. 10 at

13].

Capt. Martinez testified that he did not conduct those pilot trips and did not sign the corresponding trip sheets Respondent included in the MMC application. [Tr. at 180-182]. The Pilot Activity Report for Capt. Martinez, which lists pilot trips in chronological order, does not include these trips. [CG Ex. 9 at 4, 12].

Fulgencio Anavitate (Capt. Anavitate), who is also a harbor pilot for Puerto Rico's State pilot system, testified he piloted the PATAGONIAGAS inbound in Tallaboa on January 7, 2015 [Tr. at 128-130, 143-145]. Capt. Anavitate stated Respondent was not observing on that trip and Capt. Anavitate had not signed a corresponding trip sheet for Respondent. [Tr. at 145]. The Coast Guard also submitted into evidence the Pilot Activity Report for Capt. Anavitate, showing he piloted the trip on January 7, 2015. [CG Ex. 8 at 9].

The Coast Guard additionally presented testimony from Alex Cruz (Capt. Cruz), another harbor pilot for Puerto Rico's State pilot system. Capt. Cruz testified he piloted the PRINS HENDRIK inbound in Tallaboa on May 6, 2016 and outbound on May 8, 2016. [Tr. at 159-161]. Capt. Cruz stated he had no observers onboard during those trips and did not sign any trip sheets corresponding to those trips for Respondent. Id. The Pilot Activity Report for Capt. Cruz confirmed he conducted those trips. [CG Ex. 7 at 22]. Capt. Cruz further testified he never met Respondent in person and his only interaction with Respondent was a phone conversation in which Capt. Cruz declined to allow Respondent to observe with him on pilot trips. [Tr. at 154].

Respondent did not present any credible evidence to contradict the Coast Guard's position that Capt. Martinez's signature was intentionally falsified on the trip sheets. Based on the testimony of Capt. Martinez, Capt. Anavitate, and Capt. Cruz, and the Pilot Activity Reports for each of them (CG Ex. 7, 8, and 9), I find Respondent falsified Capt. Martinez's

signature on the trip sheets for the above-referenced trips.

## **2. December 2, 2016 MMC Application**

With regard to the December 2, 2016 application, the Coast Guard submitted the application into evidence. [CG Ex. 3]. This application also contained a “Certification” section signed by the Respondent, wherein he verified that all of the information contained in the application was “true and correct to the best of my knowledge.” [CG Ex. 3 at 3].

As with the June application, all of the trip sheets containing the allegedly falsified pilot signatures were ostensibly signed by Capt. Martinez. The trip sheets documented the following pilot trips:

- JOSE FERNANDA on an inbound trip in Bahia de Ponce on April 9, 2016 [CG Ex. 3 at 13];
- JOSE FERNANDA on an outbound trip in Bahia de Ponce on April 11, 2016 [CG Ex. 3 at 13];
- JOSE FERNANDA on an inbound trip in Bahia de Ponce on May 4, 2016 [CG Ex. 3 at 18];
- JOSE FERNANDA on an outbound trip in Bahia de Ponce on May 6, 2016 [CG Ex. 3 at 18];
- JOSE FERNANDA on an outbound trip in Bahia de Ponce on May 28, 2016 [CG Ex. 3 at 15]; and
- SEATTLE in the Bahia de Ponce on July 23, 2016 [CG Ex. 3 at 22].

Capt. Martinez testified he did not conduct these pilot trips and did not sign the corresponding trip sheets that Respondent included in the MMC application. [Tr. at 184-188]. The Pilot Activity Report for Capt. Martinez does not include these trips. [CG Ex. 9 at 12-13].

On direct examination, Capt. Cruz testified he piloted the JOSE FERNANDA in Bahia de Ponce on April 9 and 11, and May 4 and 6, 2016, Respondent was not onboard during the trips, and Capt. Cruz had not signed any paperwork associated with the trips for Respondent. [Tr. at 161-165]. Capt. Cruz’ Pilot Activity Report shows he conducted these pilot trips. [CG Ex. 7 at

22].

Capt. Anavitate testified he piloted the JOSE FERNANDA on May 28, 2016 and the SEATTLE on July 23, 2016 in Bahia de Ponce. [Tr. at 139-142]. He stated Respondent did not observe those trips and Capt. Anavitate had not signed the trip sheets. Id. In addition, Capt. Anavitate's Pilot Activity Report confirms he conducted the trips. [CG Ex. 8 at 23-24].

Respondent did not present any credible evidence to contradict the Coast Guard's position that Capt. Martinez' signature had been intentionally falsified on the trip sheets. Based on the testimony of Capt. Martinez, Capt. Anavitate, and Capt. Cruz, and the Pilot Activity Reports for each of them (CG Ex. 7, 8, and 9), I find Respondent falsified Capt. Martinez' signature on the trip sheets for the above-referenced trips.

**3. Respondent's Actions Show He Knowingly Submitted Trip Sheets with Falsified Pilot Signatures**

Respondent's December 2, 2016 MMC application submission initially triggered the Coast Guard's investigation.<sup>3</sup> Respondent submitted the December application to Jorge Estrada, a legal instrument examiner for the Coast Guard, working in the Puerto Rico satellite office of the Miami Regional Exam Center (REC). [Tr. at 96]. Mr. Estrada suspected some of the signatures on the trip sheets were photocopied. [Tr. at 100]. In normal circumstances, the legal instrument examiner would scan the mariner's application and hand the original application back to the mariner, and the mariner would leave with his original application in hand. In this case, Mr. Estrada scanned the application and returned it to Respondent, but retained the pilot trip sheets he thought to contain photocopied signatures. [Tr. at 102].

Respondent did not leave with the full original application, just the original application minus

---

<sup>3</sup> The Coast Guard assigned Special Agent Michael Perez of the Coast Guard Investigative Service to the investigation. [Tr. at 20]. Special Agent Perez then conducted research into other MMC applications submitted by Respondent, including the June 14, 2016 application. [Tr. at 53].

the pilot trip sheets suspected to be fraudulent. [Tr. at 102]. About four days after submitting his application, Respondent called and sent an email to Mr. Estrada, requesting his application be withdrawn. [Tr. at 102; CG Ex. 3 at 40-41].

Additionally, Respondent had a phone conversation and a text communication with Capt. Martinez that shows Respondent knew that Capt. Martinez' signature was falsified on the trip sheets. During his investigation, Special Agent Perez contacted Capt. Martinez and discussed the case with him. [Tr. at 33]. After Capt. Martinez' initial contact with the Coast Guard, Respondent called Capt. Martinez; in response to Capt. Martinez' question asking if Respondent knew what had "happened with my [Capt. Martinez'] signature," Respondent said "something had happened with a boat called the JOSE FERNANDA in the port of Ponce." [Tr. at 174-175]. According to Capt. Martinez' testimony, Respondent admitted "he had done something with the signature of the JOSE FERNANDA." [Tr. at 176]. After that phone conversation, Respondent sent Capt. Martinez a text that said, in Spanish, "Thank you once again as always and one thousand apologies." [Tr. at 175-176; CG Ex. 4]. Capt. Martinez understood Respondent's text to be an apology for forging Capt. Martinez' signature on the trip sheets. [Tr. at 176-177].

Respondent's behavior requesting the December application be withdrawn after receiving his application back from Mr. Estrada, minus several pilot trip sheets, supports the finding that he knew the trip sheets contained falsified signatures. I also find Respondent's text message to Capt. Martinez was an apology for using false signatures indicating that he observed Capt. Martinez on trip sheets.

#### **IV. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Coast Guard and the undersigned ALJ have jurisdiction over Respondent and the subject matter of this hearing pursuant to 46 U.S.C. Chapter 77, 46 C.F.R. Part 5, and 33 C.F.R. Part 20.

2. Respondent was acting under the authority of MMC No. 000320608 when he submitted applications for First Class Pilot endorsements on June 14, 2016 and December 2, 2016.
3. Respondent knowingly submitted pilot trip sheets containing the falsified signature of pilot Patrick Martinez with his June 14, 2016 and December 2, 2016 MMC applications.
4. Respondent's behavior violated 18 U.S.C. § 1001 because he knowingly and willfully used a false document or fraudulent representation in a matter within the jurisdiction of the executive branch of the U.S. government.
5. Respondent's behavior constitutes misconduct under 46 U.S.C. § 7703(1)(B) and 46 C.F.R. § 5.27.

## V. SANCTION

Suspension and Revocation proceedings are remedial in nature and their purpose is to help maintain standards for competence and conduct essential to the promotion of safety at sea. 46 U.S.C. § 7701(a); 46 C.F.R. § 5.5. The ALJ has the exclusive authority to impose sanctions at the conclusion of a case. Appeal Decision 2362 (ARNOLD) (1984).

The Coast Guard seeks the sanction of revocation and argues in its Post-Hearing Brief that "when a mariner commits fraud in the procurement of an MMC, revocation is the only appropriate sanction." [Post-Hearing Br. at 9]. The Coast Guard acknowledges Respondent did not obtain the pilot endorsements he sought with the June and December 2016 MMC applications, but argues his current credential, for which there is no evidence of procurement by fraud, should be revoked, relying on Appeal Decision 2205 (ROBLES) (1980), Appeal Decision 2346 (WILLIAMS) (1984), Appeal Decision 2570 (HARRIS) (1995), Appeal Decision 2569 (TAYLOR) (1995), and Appeal Decision 2613 (SLACK) (1999).

Respondent's primary argument at both the hearing and in his Post-Hearing Brief is that revocation of his original MMC is not warranted, since any fraud committed by Respondent was in the attempted procurement of additional endorsements, and the Coast Guard did not allege that Respondent obtained the original MMC through fraud. Respondent argues that if the charges are



found proven, the revocation of Respondent's MMC is not mandatory as shown by Appeal Decision 2610 (BENNETT) (1999). Respondent contends the sanction should be limited to one to six months' suspension, considering the guidance contained in 46 C.F.R. § 5.569. Respondent also presented argument based on parts of Volume III and Volume V of the Coast Guard's Marine Safety Manual contending that revocation should only be considered required for a fraudulently obtained credential or endorsement. Some of this Manual is consistent with the Coast Guard position in support of revocation. However, the Manual is Coast Guard internal policy guidance, it does not constitute a regulation, and it is not binding authority.

The Coast Guard cites to several cases in support of its position: Appeal Decision 2205 (ROBLES) (1980), Appeal Decision 2346 (WILLIAMS) (1984), Appeal Decision 2570 (HARRIS) (1995), Appeal Decision 2569 (TAYLOR) (1995), and Appeal Decision 2613 (SLACK) (1999). I do not agree that these cases mandate revoking Respondent's current credentials for which he was deemed qualified and approved. The cases cited by the Coast Guard are consistent with the delegation to the ALJ of the authority to determine the appropriate sanction for a violation. Except for acts or offenses for which revocation is mandatory, the ALJ may consider various factors, including: remedial actions taken by a respondent, prior record of the respondent, and evidence of mitigation or aggravation. See 46 C.F.R. § 5.569(b). In keeping with 46 U.S.C. § 7704, the regulations require an order of revocation in cases where charges of use of, or addiction to, dangerous drugs are proven. 46 C.F.R. § 5.59. Otherwise, the selection of an appropriate order is the responsibility of the ALJ. 46 C.F.R. § 5.569; Appeal Decision 2362 (ARNOLD), *supra*.

The facts presented at the hearing are critical in determining an appropriate sanction. In ROBLES, the charge of a false statement in an application was found proved and the ALJ

entered an order suspending the mariner's credentials for two months. Because the mariner had not received written notice that a previous application had not been rejected, the Commandant vacated the decision and dismissed the charges. Consequently, the quoted statement<sup>4</sup> in ROBLES regarding the appropriate sanction is dicta. The statement implies that revocation of *the license procured by fraud* is the appropriate sanction. The case contains no discussion of the situation presented here, wherein the Coast Guard seeks revocation of a validly-procured license after the mariner has been found to have submitted fraudulent applications seeking additional, different endorsements.

In WILLIAMS, the mariner was found to have committed misconduct by altering his license by typing the term "DEMAC" onto the document, then presenting it to the Coast Guard and requesting that a duplicate license be issued to correct his birthdate. Appeal Decision 2346 (WILLIAMS) at 1. The mariner attempted to obtain an endorsement for Deck Engine Mechanic or Machinist by fraud, and was caught before the credential was issued. The ALJ issued an order revoking the mariner's document. On appeal, the Commandant upheld the ALJ's decision to revoke the mariner's document. The Commandant found the ALJ's determination to revoke the mariner's document was appropriate given the seriousness of the violation, which could have resulted in the mariner being "placed in a critical position aboard ship, although he is, in reality, unqualified." Appeal Decision 2346 (WILLIAMS) at 4. The evidence and testimony presented at the hearing before the ALJ are not able to be viewed by reading Commandant Decisions on Appeal and the case law supports deference to the determination by the ALJ that saw and heard the evidence. Appeal Decision 2362 (ARNOLD) (1984).

In HARRIS, the ALJ revoked the mariner's credential after it was proved that the same

---

<sup>4</sup> "[i]t must also be noted that if a fraud in the procurement of a license is found, revocation (not a suspension, or a suspension on probation) is the only appropriate disposition..." Appeal Decision 2205 (ROBLES) at 2.

credential had been obtained by fraud (the mariner had knowingly lied in his application regarding prior drug use). Appeal Decision 2570 (HARRIS) at 2. In TAYLOR, and SLACK, the ALJ ordered revocation after it was proved that the mariners made knowingly false statements regarding convictions for offenses including DWI in their applications for duplicate and renewal credentials. Appeal Decision 2569 (TAYLOR) at 1; Appeal Decision 2613 (SLACK) at 1. Although Respondent attempted to expand the scope of authority of his original credential by submitting false documents to support his application for additional pilot endorsements, he has no prior violations and no indication of drug or alcohol abuse that would present concerns on whether a person is a safe and suitable individual to be a mariner.

Respondent argues that Respondent's case is most closely aligned with Appeal Decision 2610 (BENNETT) (1999), in which the mariner attempted to upgrade his license from Master 500 Gross Ton Inland (Master 500) to Master 1600 Gross Ton Inland (Master 1600). After finding the mariner had committed misconduct by submitting knowingly false documentation regarding sea service time in support of the upgrade to Master 1600, the ALJ declared the Master 1600 license *void ab initio* and suspended the mariner's original credential for six months on 12 months' probation. Appeal Decision 2610 at 1. On appeal, the Vice Commandant noted it was entirely appropriate for the Coast Guard to seek sanctions against the mariner's original credential after discovering the mariner attempted to procure an upgraded license by fraud. Appeal Decision 2610 (BENNETT) at 10. The Vice Commandant also affirmed the ALJ's decision to order a sanction of suspension and did not hold the only appropriate sanction was revocation. Considering the analysis of the relevant case law, *supra*, I find that the law does not mandate revocation in this matter. Instead, in keeping with 46 C.F.R. § 5.569 and Appeal Decision 2362 (ARNOLD) *supra*, determination of an appropriate sanction is the responsibility

of the ALJ based on application of the law and regulations and the evidence in the record. Cf. Appeal Decision 2702 (CARROLL) (2013).

Respondent committed serious misconduct by submitting falsified trip sheets with his applications for pilot endorsements. The purpose of the trip sheets is to ensure that the mariner has sufficient knowledge of the route to safely navigate vessels through the waterway. Respondent's behavior represented a clear disregard for the safety of life and property at sea, because he undermined safety regulations and attempted to deny the Coast Guard the opportunity to make an informed decision regarding the safety and suitability of Respondent as a pilot. On the other hand, the Coast Guard and Respondent stipulated that there is no evidence of any prior misconduct by Respondent. Additionally, Respondent presented the testimony of character witness Armando Garayua, who testified he has sailed as a Chief Engineer under Respondent as Captain since 2001 and finds Respondent to be a competent mariner who consistently follows safety rules and regulations. [Tr. at 196-198].

Coast Guard hearings are remedial in nature, as provided by 46 C.F.R. 5.5. In keeping with 46 C.F.R. 5.569, the ALJ finds **REVOCATION, STAYED pending suspension and probation**, to be the appropriate sanction. Revocation of Respondent's credentials is **STAYED** for a period of 24 months on **12 months' outright suspension followed by an additional 12 months' probation**. The entire 24-month period of stayed revocation is subject to the following terms: Respondent shall not commit any disqualifying violation as described in Table 46 C.F.R. § 10.211(g) and Table 46 C.F.R. § 10.213(c), nor shall he engage in any behavior that could result in an administrative action against his credential as described in 46 C.F.R. §§ 5.27 – 5.35.<sup>5</sup> Respondent's stayed revocation commences upon immediate deposit of all his Coast Guard issued credentials with the Coast Guard.

---

<sup>5</sup> These Tables regulations may be accessed through the internet at <http://ecfr.gpoaccess.gov>.

## **VI. ORDER**

**IT IS HEREBY ORDERED**, Respondent's MMC No. 000320608 is **REVOKED but the REVOCATION IS STAYED for a period of 24 months** commencing with **TWELVE (12) MONTHS' OUTRIGHT SUSPENSION followed by TWELVE (12) MONTHS' PROBATION**. After completion of twelve (12) months' outright suspension, Respondent's credential shall be returned. During the twenty-four (24) month stayed revocation, Respondent shall not commit any disqualifying violation as described in Table 46 C.F.R. § 10.211(g) and Table 46 C.F.R. § 10.213(c), nor shall he engage in any behavior that could result in an administrative action against his credential as described in 46 C.F.R. §§ 5.27 – 5.35.

**IT IS FURTHER ORDERED**, if the Coast Guard determines that Respondent has violated the terms of the stay, the Coast Guard shall provide notice of intent to execute revocation of Respondent's credentials. Within twenty (20) days of service of the Notice of Violation of Probation, Respondent may submit a written request to the ALJ Docketing Center, with a copy to the Coast Guard Investigating Officer, requesting a hearing before an ALJ solely for determining whether the terms of the stay have been violated. Failure to submit a written request within twenty (20) days of service of the notice of violation of probation waives the opportunity to request a hearing.

**IT IS FURTHER ORDERED**, Respondent shall immediately deposit all Coast Guard issued credentials with the United States Coast Guard Investigating Officer. The period of outright suspension commences on the date Respondent's credentials are deposited. 46 C.F.R. §§ 5.567(d) and (e).

**PLEASE TAKE NOTICE**, service of this Decision and Order on the parties and/or parties' representative(s) serves as notice of the appeal rights set forth in 33 C.F.R. §§ 20.1001 – 20.1004 (See **Attachment C**).

\_\_\_\_\_/s/\_\_\_\_\_  
**Michael J. Devine**  
**Administrative Law Judge**  
**U.S. Coast Guard**

July 11, 2019  
Date:

## **ATTACHMENT A**

### **Coast Guard's Witnesses**

1. Michael Perez.
2. Jorge L. Estrada.
3. Fulgencio Anavitate.
4. Alex Cruz.
5. Patrick G. Martinez.

### **Coast Guard's Exhibits**

- CG Exhibit 1: Copy of Respondent's MMC (1 page).
- CG Exhibit 2: Coast Guard Investigative Service Case Management Report prepared by Michael Perez (15 pages).
- CG Exhibit 3: December 2, 2016 Application for Merchant Mariner Credential (41 pages).
- CG Exhibit 4: Photo of text message exchange (1 page).
- CG Exhibit 5: Affidavit of Patrick G. Martinez (2 pages).
- CG Exhibit 6: Affidavit of Jorge L. Estrada (3 pages).
- CG Exhibit 7: Pilot Activity Report of Alex Cruz (27 pages).
- CG Exhibit 8: Pilot Activity Report of Fulgencio Anavitate (26 pages).
- CG Exhibit 9: Pilot Activity Report of Patrick G. Martinez (15 pages).
- CG Exhibit 10: June 14, 2016 Application for Merchant Mariner Credential (55 pages).
- CG Exhibit 11: August 7, 2015 Application for Merchant Mariner Credential (64 pages).
- CG Exhibit 12: Service Report for Diego Hatch Garcia (1 page).
- CG Exhibit 13: SANS Vessel Details (40 pages).
- CG Exhibit 14: Hatch Timeline prepared by Michael Perez (1 page).
- CG Exhibit 15: Satellite image of Puerto Rico (1 page).

CG Exhibit 16: Pilotage Rules and Requirements (38 pages).

**Respondent's Witness**

1. Armando Garayua.

**Respondent's Exhibits**

Resp. Exhibit A: Trip Sheets for Patagoniagas inbound 01/07/2015 and Patagoniagas outbound 01/08/2015 (1 page). (After objection this exhibit was not offered for admission and was not admitted into evidence).

Resp. Exhibit B: Commandant Change Notice 16000 (5 pages).

Resp. Exhibit C: Marine Personnel Evaluation Reports for Diego Hatch (2 pages).

**Court's Exhibit**

ALJ Exhibit I: Joint Stipulation of Fact (4 pages).



## ATTACHMENT B

### Coast Guard's Proposed Findings of Fact

1. Respondent is a holder of U.S. Coast Guard-issued Merchant Mariner Credential (MMC) No. 000320608. **(Accepted and incorporated)**.
2. On September 16, 2015, Respondent was issued a duplicate MMC 000320608 with an expiration date of February 9, 2020. **(Accepted but not incorporated as a finding of fact)**. The weight of any evidence including testimony during the hearing is to be determined by the court. Some of the evidence may be accepted, some may be rejected, and some may be considered immaterial.
3. On or about December 2, 2016, Respondent submitted an Application for MMC (CG-719B) to the U.S. Coast Guard National Maritime Center (NMC), via USCG Regional Examination Center Miami, Florida's Monitoring Unit San Juan, Puerto Rico, for a New Endorsement, First Class Pilot of Bahia de Ponce, vessels unlimited tonnage. **(Accepted and incorporated)**.
4. On or about June 14, 2016, Respondent submitted an Application for MMC (CG-719B) to the USCG NMC, via USCG Regional Examination Center Miami, Florida's Monitoring Unit San Juan, Puerto Rico, for a New Endorsement, First Class Pilot of Bahia de Jobos, First Class Pilot of Arecibo, and First Class Pilot of Tallaboa. **(Accepted and incorporated)**.
5. Respondent has no previous disciplinary history with the USCG. **(Accepted and incorporated)**.
6. On or about December 2, 2016, Respondent met with the Coast Guard legal instrument examiner Mr. Jorge Estrada at the Coast Guard Regional Exam Center (REC) Miami, Monitoring Unit located in San Juan, Puerto Rico to discuss Respondent's submission of his Application for Merchant Mariner Credential (MMC) (CG-719B) New Endorsement, First Class Pilot of Bahia de Ponce ("December 2016 Application"). (Tr. at 34, 85, CG-03). **(Accepted and incorporated)**.
7. MMC Applications for a New Endorsement of First Class Pilot require documentary evidence of service showing specific information that a mariner seeking the endorsement was on the bridge during the vessels passage over the route and was observing the handling of the vessel, the aids to navigation and the hazards of the route. (CG-16). **(Accepted but not incorporated as a finding of fact)**. The weight of any evidence including testimony during the hearing is to be determined by the court. Some of the evidence may be accepted, some may be rejected, and some may be considered immaterial.
8. The documentary evidence of service ("Pilot Trip Tickets") required to support an MMC Application for a New Endorsement must be signed by the Pilot, Master or other person in charge of the navigation for the vessel. (Tr. at 32; 172 CG-16 ). **(Accepted but not incorporated as a finding of fact)**. The weight of any evidence including testimony during

the hearing is to be determined by the court. Some of the evidence may be accepted, some may be rejected, and some may be considered immaterial.

9. On or about December 2, 2016, Mr. Estrada questioned the Respondent if all of the signatures on the Pilot Trip Tickets submitted in support of the December 2016 Application were the original signatures and not falsified photocopies. (Tr. at 39, 98). (**Accepted and incorporated**).
10. On or about December 2, 2016, Respondent assured Mr. Estrada all the signatures were original in the December 2016 Application. (Tr. at 39, 98). (**Accepted and incorporated**).
11. On or about December 2, 2016, Per Coast Guard protocol, Mr. Estrada scanned the December 2016 Application for transmission to the National Maritime Center (NMC) and then returned the original December 2016 Application to Respondent in part, retaining the sections of the application Mr. Estrada suspected were fraudulent. (Tr. at 40, 101-102, 122). (**Accepted and incorporated**).
12. On or about December 2, 2016, Mr. Estrada conducted an in depth review of the suspected fraudulent signatures of the December 2016 Application and based on his training in detecting fraud, determined the suspect signatures on the application were photocopies and not the original signatures required for First Class Pilot Endorsement Applications. (Tr. at 98, 100-101). (**Accepted but not incorporated as a finding of fact**). The weight of any evidence including testimony during the hearing is to be determined by the court. Some of the evidence may be accepted, some may be rejected, and some may be considered immaterial.
13. On or about December 2, 2016, Mr. Estrada contacted Captain Patrick Martinez regarding possible falsification of his signature on the December 2 2016 Application, and requested Capt. Martinez meet with him at the REC. (Tr. at 33; 174; CG-05). (**Accepted but not incorporated as a finding of fact**). The weight of any evidence including testimony during the hearing is to be determined by the court. Some of the evidence may be accepted, some may be rejected, and some may be considered immaterial.
14. On or about December 2, 2016, Captain. Martinez spoke with Respondent by telephone and Respondent apologized for falsifying Captain Martinez's signature on the Pilot Trip Tickets. (Tr. at 34-35; 175; CG-05) (**Accepted and incorporated**).
15. On or about December 6, Respondent texted an apology to Captain Martinez. (Tr. at 35; 36, 176-177; CG-04). (**Accepted and incorporated**).
16. On or about December 6, 2016, Respondent contacted Mr. Estrada and requested his application be withdrawn. (Tr. at 40, 102, 105; CG-03). (**Accepted and incorporated**).
17. MMC Applications are deemed submitted to the Coast Guard when received at the REC and transmitted to the NMC. Respondent's December 2016 Application was submitted on December 2, 2016. (Tr. at 40, 102-103, 105). (**Accepted but not incorporated as a finding of fact**). The weight of any evidence including testimony during the hearing is to be

determined by the court. Some of the evidence may be accepted, some may be rejected, and some may be considered immaterial.

18. On or about December 6, 2016, Mr. Estrada met with Special Agent (S/A) Michael Perez of the Coast Guard Investigative Service (CGIS) to notify CGIS of suspected fraudulent signatures on Pilot Trip Tickets contained in Respondent's December 2016 Application. (Tr. at 29-30, 33, 39; CG-06). **(Accepted but not incorporated as a finding of fact)**. The weight of any evidence including testimony during the hearing is to be determined by the court. Some of the evidence may be accepted, some may be rejected, and some may be considered immaterial.
19. On or about December 6, 2016, S/A Perez began his investigation of Respondent's fraudulent statements. (Tr at 30, 33; CG-02). **(Accepted and incorporated)**.
20. Based on S/A Perez's review and comparison of Respondent's December 2016 Application, interviews with Puerto Rico Harbor Pilots Captain Martinez, Captain Fulgencio Anivitate and Captain Alex Cruz and their associated Pilot Activity Reports, S/A Perez determined at least seven (7) of the pilot endorsements in the December 2016 Application were fraudulent. (Tr. at 50-52; CG-02). **(Accepted but not incorporated as a finding of fact)**. The weight of any evidence including testimony during the hearing is to be determined by the court. Some of the evidence may be accepted, some may be rejected, and some may be considered immaterial.
21. On or about January 9, 2017, S/A Perez coordinated with Mr. Estrada to investigate suspected fraud contained in Respondent's June 14, 2016, Application for MMC (CG-719B) New Endorsement, First Class Pilot of Bahia de de Jobos, First Class Pilot of Arecibo and First Class Pilot of Tallaboa ("June 2016 Application"). (Tr. at 53; CG-10). **(Accepted but not incorporated as a finding of fact)**. The weight of any evidence including testimony during the hearing is to be determined by the court. Some of the evidence may be accepted, some may be rejected, and some may be considered immaterial.
22. Based on S/A Perez's review and comparison of the June 2016 Application, interviews with Puerto Rico Harbor Pilots Captain Martinez, Captain Anivitate and Captain Cruz, their associated Pilot Activity Reports, Respondent's December 2014 to November 2016 Sea Service Report with Crowley Towing, and advanced notice of arrivals for the Crowley Marine Tugboats submitted to the Coast Guard National Vessel Movement Center, S/A Perez determined at least three (3) of the pilot endorsements in the June 2016 Application were fraudulent. (Tr. at 68, 87; CG-02). **(Accepted but not incorporated as a finding of fact)**. The weight of any evidence including testimony during the hearing is to be determined by the court. Some of the evidence may be accepted, some may be rejected, and some may be considered immaterial.

### Coast Guard's Proposed Conclusions of Law

1. Respondent and the subject matter of this hearing are properly within the jurisdiction of the U.S. Coast Guard and the Administrative Law Judge in accordance with 46 U.S.C. § 7703(1)(B), 46 C.F.R. Part 5, and 33 C.F.R. Part 20. **(Accepted and incorporated)**.
2. At all relevant times, Respondent was the holder of MMC # 000320608 (Credential offered at hearing). **(Not accepted as a conclusion of law, but accepted as a finding of fact)**.
3. Respondent acted under the authority of his MMC on June 14, 2016, by engaging in an official matter related to that MMC, to wit: applying for a new pilot endorsement on his existing MMC. **(Accepted and incorporated)**.
4. In support of Respondent's June 2016 Application, Respondent fraudulently submitted to the Coast Guard, pilot trip forms as proof for entering the Ports of Bahia de Jobos, Arecibo, and Tallaboa, with at least one trip containing falsified pilot and/or master's signature, in violation of 18 U.S.C. § 1001. (CG-10). **(Accepted and incorporated)**.
5. Respondent acted under the authority of his MMC on December 12, 2016, by engaging in an official matter related to that MMC, to wit: applying for a new pilot endorsement on his existing MMC. **(Accepted and incorporated)**.
6. In support of Respondent's December 2016 Application for a new pilot endorsement, Respondent fraudulently submitted to the Coast Guard, pilot trip forms as proof for entering the Port of Ponce, with at least one trip containing a falsified pilot signature, in violation of 18 U.S.C. § 1001. (CG-3) **(Accepted and incorporated)**.
7. Violation of 18 U.S.C. §1001 is violation of a duly established rule as described by 46 C.F.R. § 5.27. **(Accepted and incorporated)**.
8. Violation of a duly established rule is misconduct under 46 U.S.C. § 7703(1)(B) and defined by 46 CFR §5.27. **(Accepted and incorporated)**.
9. Respondent has committed fraud in the procurement of an MMC and revocation is the only appropriate sanction. **(Rejected in Part. Questions of law are for the Court to decide. As discussed in the Decision and Order based on applicable law and regulation the ALJ has discretion to impose an appropriate sanction of either revocation or suspension or otherwise within the authority of 46 C.F.R. § 5.569)**.

## ATTACHMENT C

### **Notice of Appeal Rights**

33 CFR 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022 . The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
  - (1) Whether each finding of fact is supported by substantial evidence.
  - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
  - (3) Whether the ALJ abused his or her discretion.
  - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

33 CFR 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
  - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
  - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 CFR 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
  - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --

- (i) Basis for the appeal;
  - {j) Reasons supporting the appeal; and
  - (k) Relief requested in the appeal.
- (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
- (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
- (c) No party may file more than one appellate brief or reply brief, unless -
- (1) The party has petitioned the Commandant in writing; and
  - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
- (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

33 CFR 20.1004 Decisions on appeal.

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.