

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

UNITED STATES COAST GUARD

Complainant

vs.

NATHAN RILEY WILSON

Respondent

Docket Number 2021-0453
Enforcement Activity No. 7275325

DECISION AND ORDER

Issued: December 21, 2022

By Administrative Law Judge: Honorable Michael J. Devine

Appearances:

**LT KYLE BURNS
Sector Jacksonville**

and

**ANDREW MYERS, ESQ.
USCG S&R NCOE**

for the Coast Guard

NATHAN R. WILSON, *Pro se*

Respondent

I. PROCEDURAL HISTORY

The United States Coast Guard (Coast Guard) initiated this case on August 25, 2021, by filing a Complaint seeking revocation of Nathan R. Wilson’s (Respondent) merchant mariner credential (MMC). The Complaint contained two charges: 1) conviction under National Driver Register Act, under 46 U.S.C. § 7703(3), and 2) conviction that would preclude the issuance of an MMC, under 46 U.S.C. § 7703(2).

Specifically, the Coast Guard asserted in Charge 1 that Respondent was convicted in a Florida state court of violating Florida statute “S316.193(1)(A), DUI – Under Influence of Alcohol or Chemical Substance; Faculties Impaired.”¹ The Complaint also alleged Respondent’s conviction is an offense described in the National Driver Register Act, codified at 49 U.S.C. § 30304(a)(3)(A), as identified in 46 U.S.C. § 7703(3).

Next, the Coast Guard asserted in Charge 2 that Respondent was convicted in a Florida state court of violating Florida statute “S784.03(1)(A), Battery - Cause Bodily Harm – Domestic.”² The Complaint further alleged Respondent’s conviction is “an offense that would prevent the issuance or renewal” of an MMC, under 46 U.S.C. § 7703(2).

On September 8, 2021, Respondent filed an Answer denying all jurisdictional and factual allegations. Respondent also set forth an “affirmative” defense, asserting “unrepeatable circumstances and extenuating” and requested a hearing and settlement discussions.

¹ The citation to the statute is Fl. Stat. Ann. § 316.193(1)(a), but court documents show the conviction as “S316.193(1)(A).”

² The citation to the statute is Fl. Stat. Ann. § 784.03(1)(a).

Thereafter, the ALJ convened several pre-hearing telephonic conferences. The general subject matter of those conferences was to discuss scheduling and other procedural matters. The Coast Guard filed a Motion for Partial Summary Decision on November 30, 2021, requesting the ALJ find both charges in the Complaint proved, leaving only the issue of an appropriate sanction to go to hearing. On December 29, 2021, the ALJ issued an Order Partially Granting and Partially Denying Coast Guard's Motion for Partial Summary Decision, finding Charge 1 proven, and finding the Coast Guard failed to present sufficient undisputed facts to prove Charge 2.

On January 25, 2022, the ALJ conducted a hearing on Charge 2 and the appropriate sanction, using the Zoom for Government video-conferencing application. Andrew Myers, Esq., and LT Kyle Burns represented the Coast Guard. Respondent appeared on his own behalf. During the hearing, the Coast Guard called two witnesses and offered eleven exhibits, seven of which were admitted and four were rejected. See Attachment A "List of Exhibits and Witnesses." Respondent testified on his own behalf and offered one exhibit, which was admitted.³ After the hearing, the ALJ issued a briefing order providing a copy of the transcript and allowing both parties to file post-hearing briefs. The Coast Guard submitted its brief on March 30, 2022. To date, Respondent has not submitted a post-hearing brief.

This matter is now ripe for decision. In the Order of December 29, 2021, the ALJ found Charge 1 proven, so this decision addresses the merits of Charge 2 and the determination of an appropriate sanction. After considering the entire record as a whole, the ALJ finds the Coast Guard **PROVED** the allegations in Charge 2 of the Complaint by

³ The Coast Guard's objection to the exhibit was initially sustained but the exhibit was subsequently admitted when Respondent testified.

a preponderance of the evidence. After consideration of all of the evidence in the record, including matters of aggravation and mitigation, I find that the appropriate sanction is **revocation of Respondent's MMC, with the sanction of revocation STAYED for a period of 24 months' probation, with an immediate outright suspension for the first 12 months of the 24-month period.**

II. FINDINGS OF FACT

After considering the record as a whole, including the hearing transcript and post-hearing brief, the ALJ finds the following facts proved by a preponderance of the evidence:

1. Respondent has held a Coast Guard-issued MMC since 2015. [Tr. at 23-24; Ex. CG-001].
2. Respondent currently holds MMC Number [REDACTED]. [Tr. at 90; Ex. CG-001].
3. On December 3, 2020, the Circuit Court for Duval County, Florida, convicted Respondent of driving under the influence of alcohol or chemical substance, under Florida Statute Ann. § 316.193(1)(a). [Tr. at 60; Exs. CG-007, CG-008].
4. On January 16, 2020, the Circuit Court for Duval County, Florida convicted Respondent of battery (domestic) under Florida Statute Ann. § 784.03(1)(a). [Tr. at 60; Exs. CG-002, CG-004].

III. DISCUSSION

Coast Guard Suspension and Revocation (S&R) proceedings are remedial, not penal, in nature, and are intended to promote safety at sea. 46 U.S.C. § 7701(a); 46 C.F.R. § 5.5. Pursuant to 46 C.F.R. § 5.19, an ALJ holds the authority to suspend or revoke a mariner's MMC in a hearing for violations arising under 46 U.S.C. § 7703.

A. Jurisdiction

Jurisdiction is a question of fact and must be determined before the substantive issues of the case are decided. Appeal Decision 2620 (COX) (2001). For actions based on charges under 46 U.S.C. §§ 7703(2) (conviction of an offense that would prevent issuance or renewal of an MMC) and 7703(3) (conviction of an offense under 49 U.S.C. § 30304(a)(3)(A) or (B)), the Coast Guard must establish the mariner was a holder of an MMC at the time he or she was convicted of the alleged offenses, and must demonstrate that the mariner was convicted of offenses within the scope of 46 U.S.C. § 7703(2) or 46 U.S.C. § 7703(3). See e.g., Appeal Decision 2717(CHESBROUGH) (2017) and Appeal Decision 2563 (EMERY) (1995).

As noted above, I found Charge 1 proven in the December 29, 2021 Order Partially Granting and Partially Denying Coast Guard’s Motion for Partial Summary Decision. In cases brought pursuant to 46 U.S.C. § 7703(3), jurisdiction exists if the mariner is a holder of an MMC and the conviction occurred within the three-year period preceding the initiation of the S&R proceeding. See e.g., Appeal Decision 2563 (EMERY) (1995).

In regard to Charge 2, 46 U.S.C. § 7703(2) makes clear “[a]...merchant mariner’s document...may be suspended or revoked if the holder...is convicted of an offense that would prevent the issuance or renewal of [the document].” In cases brought under 46 U.S.C. § 7703(2), jurisdiction exists if the respondent is a holder of an MMC at the time the alleged conviction occurred. See e.g., Appeal Decision 2717 (CHESBROUGH) (2017).

At the hearing, the Coast Guard presented evidence of Respondent holding an MMC continuously from 2015 through the present. [Tr. at 23-24; Ex. CG-001]. The Coast Guard first issued Respondent MMC No. [REDACTED] on June 11, 2015, with an expiration date of June 11, 2020. [Ex. CG-001]. Due to the COVID-19 pandemic, the Coast Guard extended the deadline for renewal of MMCs, allowing Respondent's MMC No. [REDACTED] to remain valid for an additional year, *i.e.*, through June 11, 2021. See Marine Safety Information Bulletin No. 08-20, Change 5, issued Dec. 22, 2020 (attached as Enclosure 7 to Coast Guard's Motion for Partial Summary Decision). The Coast Guard then granted Respondent renewal MMC No. [REDACTED] on April 9, 2021, and this MMC remains valid until April 9, 2026. [Ex. CG-001]. Respondent did not raise any objection to this evidence and during the hearing verified he currently holds MMC No. [REDACTED], as required by 46 C.F.R. § 5.521. [Tr. at 90]. The Coast Guard initiated these proceedings within three years of the conviction alleged in Charge 1, and Respondent held an MMC when the state of Florida convicted him of the offenses specified in Charges 1 and 2. Therefore, jurisdiction is proper in this case.

B. Burden and Standard of Proof

The Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559, applies to Coast Guard S&R hearings before United States ALJs. 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). “The term ‘substantial evidence’ is synonymous with preponderance of the evidence as defined by the U.S. Supreme Court.” Appeal Decision 2477 (TOMBARI) (1988) at *3; see also Steadman v. Securities and Exchange Commission, 450 U.S. 91, 107 (1981). Under

Coast Guard procedural rules and regulations, the burden of proof is on the Coast Guard to prove the charges are supported by a preponderance of the evidence. 33 C.F.R. §§ 20.701, 20.702(a). Similarly, a respondent bears the burden of proof in asserting any affirmative defense by a preponderance of the evidence. 33 C.F.R. §§ 20.701, 20.702; Appeal Decisions 2640 (PASSARO) (2003), 2637 (TURBEVILLE) (2003).

The burden of 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 Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal., 508 U.S. 602, 622 (1993) (citing In re Winship, 397 U.S. 358, 371–72 (1970) (Harlan, J., concurring) (brackets in original)).

For Charge 2, 46 U.S.C. § 7703(2) specifies that a mariner’s credential may be suspended or revoked if that mariner was convicted of a criminal offense that would have prevented the original issuance or renewal of an MMC. Therefore, the Coast Guard must prove by a preponderance of the evidence that Respondent was convicted of a criminal offense that would prevent the issuance or renewal of an MMC.

C. The Coast Guard Proved Respondent Was Convicted of an Offense that Would Prevent the Issuance or Renewal of an MMC

Pursuant to 49 U.S.C. § 7703(2), “A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder...is convicted of an offense that would prevent the issuance or renewal of a license, certificate of registry, or merchant mariner's document.” To help interpret § 7703(2), the Coast Guard promulgated regulations addressing criminal history checks and issuance of MMCs. See 46 C.F.R. Part 10, Subpart B, including 46 C.F.R. §§ 10.211 and

10.213.⁴ However, these regulations focus on applications for new credentials or renewal of credentials and do not provide specific guidance for a violation charged under 46 U.S.C. § 7703(2). They are, however, instructive.

A review of some Commandant Decisions on Appeal (CDOAs) provides limited information for charges under this provision. See e.g., Appeal Decision 1440 (HANDLEY) (1964); Appeal Decision 2717 (Chesbrough) (2017). There are some ALJ decisions concerning this issue, which provide persuasive authority. See e.g., USCG v. Blackwell, Docket No. 2011-0047 (2011); USCG v. Mitchell, Docket No. 2016-0315 (2017). With these authorities in mind, the ALJ turns to the case at bar to determine whether Respondent’s criminal conviction constitutes an “offense that would prevent the issuance or renewal of” an MMC. 49 U.S.C. § 7703(2).

1. Respondent’s Conviction for Battery (Domestic) Qualifies as an Offense Contemplated by 46 U.S.C. § 7703(2)

Many of the facts of Charge 2 were uncontested at the hearing. The Coast Guard presented a certified copy of the disposition record from the Circuit Court for Duval County, Florida, showing Respondent was convicted⁵ on January 16, 2020, of battery (domestic), which is codified at Florida Stat. Ann. § 784.03(1)(a). [Ex. CG-002]. See Miles v. State, 94 Co.3d 662, fn 2 (2012). The Coast Guard also presented a copy of the Arrest and Booking Report for the domestic violence incident that gave rise to the

⁴ Attachment B includes a copy of Table 1 to § 10.211 and Table 1 to § 10.213.

⁵ Though the disposition record states “ADJUDICATION WITHHELD,” this action constitutes a conviction under 46 C.F.R. § 10.107, as “conviction” under the regulation includes instances where a defendant is granted deferred adjudication on the condition that he or she complete probation, attend classes, receive treatment, etc. The disposition record shows Respondent was originally ordered to submit to probation and attend parenting skills classes, but that he later violated probation and was sentenced to 43 days in jail for this offense. [Ex. CG-002].

conviction. [Ex. CG-004]. Respondent did not dispute the authenticity of these records, nor did he deny that he engaged in the actions that led to the convictions.

Florida Stat. Ann. § 784.03(1)(a) is a state law prohibiting the actual or intentional touching or striking of another person against that person's will, and the intentional causation of bodily harm to another person. In general, the Coast Guard argued this Florida conviction qualifies under 49 U.S.C. § 7703(2) because it shows Respondent is an unsafe and unsuitable mariner, and indicates he is unwilling to conduct himself lawfully. Respondent argued he has been a safe mariner for 10 years and the conviction is not one that should affect his MMC. Respondent also argued the facts surrounding the conviction would not be repeated.

In support of its case, the Coast Guard produced two witnesses during the hearing: LT Kyle Burns, who obtained the documentation regarding Respondent's convictions and other alleged aggravating matters; and Mr. Steven Baker, the Acting Supervisor of the Safety and Suitability Evaluation Branch at the Coast Guard's National Maritime Center (NMC), who performed a safety and suitability evaluation regarding Respondent.

LT Kyle Burns is a Coast Guard Investigating Officer (IO) and Chief of the Investigations Division at Coast Guard Sector Jacksonville. [Tr. at 21]. LT Burns is the IO who conducted a criminal background investigation on Respondent. [Tr. at 22-23]. In the course of the investigation, LT Burns obtained court records pertaining to Respondent from the Circuit Court for Duval County, Florida, as well as arrest records from the Sheriff's office. [Tr. at 24-25; Exs. CG-002, CG-004, CG-007, CG-008, CG-011].

Mr. Baker explained the Coast Guard NMC's criminal record review process. When an IO becomes aware that a mariner has a conviction that may be within 46 U.S.C. § 7703(2), the IO requests NMC to undertake an analysis of whether the respondent would have been granted or denied an MMC had the respondent been convicted of the criminal offense at the time he or she applied for the original issuance or renewal of that MMC. [Tr. at 45-46]. Mr. Baker explained that the purpose of the criminal record review is to determine whether an applicant is a "safe and suitable" mariner. [Tr. at 43-44]. 46 C.F.R. § 10.211(a).⁶

Mr. Baker stated the Coast Guard relies on the definition of a "safe and suitable person" found in 46 C.F.R. § 10.107(b), which provides that a "safe and suitable person means a person whose prior record, including but not limited to criminal record and/or [National Driving Record], provides no information indicating that his or her character and habits of life would support the belief that permitting such a person to serve under the MMC and/or endorsement sought would clearly be a threat to the safety and security of life or property, detrimental to good discipline, or adverse to the interests of the United States." This definition requires that the Coast Guard demonstrate a connection between the individual's criminal record and the interest of the Coast Guard in maintaining good order, discipline, and safety at sea when determining whether a conviction is one that would prevent the issuance of an MMC.

Not all offenses qualify as one that would prevent the issuance or renewal of an MMC. Mr. Baker testified that the Coast Guard refers to 46 C.F.R. § 10.211 for guidance. That regulation includes Table 1 which lists major categories of criminal

⁶ See also 46 U.S.C. §§ 7101 – 7706.

activity, along with minimum and maximum “assessment periods,” which are time frames during which the Coast Guard will not grant an application for a credential. Section 10.211(g) expressly provides that Table 1 “lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the Coast Guard will establish an appropriate assessment period using the list as a guide.”

Table 1 does not list “battery” as one of the offenses, but as discussed above, the list of criminal activity is not all-inclusive. Mr. Baker reviewed the court records from Florida that described the charge as battery (domestic) and considered the conviction in this case was comparable to simple assault, which is listed on Table 1. [Tr. at 47-48, 52-55; Exs. CG-002 – CG-004]. Mr. Baker testified that he considered a 2017 fighting offense (mentioned in the Complaint as a matter in aggravation) along with the two offenses contained in Charges 1 and 2. Mr. Baker considered Respondent’s conviction for domestic battery to be one that would be subject to the assessment period for simple assault (one to five years), and relevant to whether Respondent was a safe and suitable person for holding an MMC. [Tr. at 46-48, 52-55; Ex. CG-003]. In Mr. Baker’s view, Respondent’s record of convictions rendered him unable to be “entrusted with the duties and responsibilities of an MMC,” and the convictions “would prevent the issuance of an MMC.” [Ex. CG-003].

In its post-hearing brief, the Coast Guard argued that provisions of the Coast Guard’s Marine Safety Manual, including the factors described in Volume III (Marine Industry Personnel) and sanction guidance in Volume V (Investigation and Enforcement), should be considered in this matter. The Coast Guard did not move for admission of any

excerpts or parts of the Marine Safety Manual into evidence and did not provide copies of any of the referenced provisions of the manual in discovery to Respondent. As a matter of best practices, the Coast Guard should have provided excerpts of the Marine Safety Manual in discovery to a self-represented respondent if it was intended to be used as a reference. See e.g., Appeal Decision 2733 (SCHWIEMAN) (2020). Moreover, it is a guidance document and does not have the force or effect of a statute or a regulation. See Perez v. Mort. Bankers Ass'n, 575 U.S. 92, 97 (2015). Internal guidance is not binding. See United States v. Caceres, 440 U.S. 741 (1979).

Mr. Baker testified he considered Respondent's 2017 violation of a Florida municipal ordinance prohibiting fighting when he was making his determination. [Tr. at 47]. He also acknowledged he would need to consider it differently if the 2017 incident was only a civil matter and not a criminal offense. [Tr. at 51]. However, the conviction for battery may be considered separately as an offense that would preclude the issuance of an MMC. As discussed above, Respondent was convicted under Florida Statute Ann. § 784.03(1)(a), which criminalizes the actual or intentional touching or striking of another person against that person's will, and the intentional causation of bodily harm to another person. Mr. Baker concluded this conviction was akin to "simple assault" under the regulation at 46 C.F.R. § 10.211.

The terms "battery" and "assault" are often used interchangeably when referring to the act of intentionally making contact with another person in order to inflict harm (striking, shoving, etc.); however, the traditional common law defined assault as an attempt to commit a battery, or an intentional act which puts another in apprehension of an immediate and harmful or offensive contact, while battery involves the actual harmful

or offensive contact with another person and is sometimes thought of as the successful completion of common law assault. See Restatement (First) of Torts § 21 (1934); U.S. v. Dupree, 544 F.2d 1050, 1051 (1976); U.S. v. Delis, 558 F.3d 177, 181 (2009). Many jurisdictions have merged battery and assault in their criminal codes. For example, 18 U.S.C. § 113(a)(5), the federal law criminalizing “simple assault” within maritime and territorial jurisdiction, prohibits actions that constitute both common law assault and common law battery, such as shoving, grappling, striking, etc. U.S. v. Delis, 558 F.3d at 181. See also Appeal Decision 2512 (OLIVO) (1990). Therefore, the Florida statute under which Respondent was convicted for battery fits within the meaning of “simple assault” under 46 C.F.R. § 10.211.

After concluding the conviction would have prevented the issuance of a credential to Respondent, Mr. Baker also explained the Coast Guard would normally then employ an “assessment period” as a tool to evaluate that mariner’s suitability, in light of the regulatory criteria. [Tr. at 42-44]. This assessment period begins to run from the date of the applicant’s criminal conviction, or from the date the applicant is released from incarceration, whichever is later. [Tr. at 42-44]. Mr. Baker further explained that the Coast Guard evaluates the applicant’s record and any mitigating factors, including conduct during the assigned assessment period. [Tr. at 42-47, 50-55]. Given the offense in this case was akin to an assault, Mr. Baker noted the assessment period would have been a minimum of one year and a maximum of five years. 46 C.F.R. § 10.211(g). Id. Mr. Baker also indicated there is no guidance for non-criminal municipal violations, but having more than one offense could increase the assessment period. Id.

All mariners are bound to follow the laws and comply with regulations for the safety of others. The merchant marine industry is highly regulated for the benefit and safety of the public. Failure to comply with the law or regulations raises the risks of collisions, allision, or other problems, which may cause substantial harm to person's property or the environment. See e.g., In re Complaint of the City of New York, As Owner and Operator of M/V Andrew J. Barberi, 534 F.Supp.2d 370 (E.D.N.Y. 2008) (allision of the Andrew J. Barbieri in New York); Exxon Shipping Company v. Baker, 128 S.Ct. 2605 (2008) (describing 1989 grounding which resulted in \$507.5 million punitive damage award). While Respondent's conviction was not for conduct that occurred while serving under his MMC, it is reasonable for the Coast Guard to consider such an offense to raise concerns regarding the safety of other persons. Moreover, Respondent's conviction for battery (domestic) under Florida Statute Ann. § 784.03(1)(a) fits within the meaning of "simple assault" in Table 1 of 46 C.F.R. § 10.211, and is thus a conviction which would result in an assessment period of one to five years being applied if he were to apply for the issuance of an MMC. Upon considering the evidence as a whole, including reviewing this evidence, the materials cited in Mr. Baker's testimony, and the court records for the conviction for domestic battery, I find Respondent's conviction raises a concern of whether he is a safe and suitable person to be entrusted with merchant mariner credentials. Therefore, Respondent's conviction is within the scope of 46 U.S.C. § 7703(2), and is an offense which would prevent the issuance or renewal of a license.

2. Respondent's Defenses

Respondent argued he is not a risk to safety at sea. [Tr. at 64-68]. He contended he pursued rehabilitation treatment and that the aggravation evidence offered by the

Coast Guard should not be considered in regard to his retention of his MMC. [Tr. at 64-75]. In support of his argument, Respondent relies on his own testimony and the unsigned July 23, 2021 letter from Beaches Recovery which was admitted into evidence as Exhibit A. [Tr. at 64-67; Ex. R-A]. Respondent's testimony primarily stated efforts in rehabilitation regarding substance abuse and anger management. [Tr. at 64-72]. Respondent's testimony and evidence does not present any facts to dispute Respondent's convictions as stated in Charges 1 and 2 and is therefore not a defense. However, matters that do not constitute a defense may be considered in mitigation. See e.g. Appeal Decision 2308 (GRAY) (1983); Appeal Decision 2730 (BLAKE) (2020).

As discussed above, the Coast Guard proved in its case-in-chief that Respondent's conviction under Florida Statute Ann. § 784.03(1)(a) is an offense that would prevent the issuance or renewal of an MMC. Respondent's testimony and proffered exhibit did not provide any facts to negate that conclusion, however his testimony and Exhibit A can be considered in regard to mitigation of the sanction.

After considering the entire record as a whole, the ALJ finds the Coast Guard **PROVED** the allegations in Charge 2 of the Complaint by a preponderance of the evidence. Having now determined the Coast Guard met its burden to prove both Charge 1 and Charge 2, I now turn to the appropriate sanction in this case.

IV. SANCTION

Title 46 U.S.C. § 7703(2) provides that a mariner's credential may be suspended or revoked if the holder is convicted of an offense that would prevent issuance or renewal of a credential. Likewise, under 46 U.S.C. § 7703(3), a mariner's credential may be

suspended or revoked if the holder is convicted of an offense described in the National Driver Register Act, 49 U.S.C. § 30304(a)(3)(A) or (B).

The authority to impose sanctions at the conclusion of a case is exclusive to the ALJ. 46 C.F.R. §§ 5.567; 5.569(a); Appeal Decision 2362 (ARNOLD) (1984). The nature of this remedial, non-penal administrative proceeding is to “promote, foster, and maintain the safety of life and property at sea.” 46 U.S.C. § 7701; 46 C.F.R. § 5.5; Appeal Decision 1106 (LABELLE) (1959).

The Coast Guard seeks revocation of Respondent’s credential. In determining an appropriate sanction for offenses for which revocation is not mandatory, an ALJ should consider: 1) any remedial actions undertaken by a respondent; 2) respondent’s prior record; 3) and evidence of mitigation or aggravation. 46 C.F.R. § 5.569(b)(1)-(3).

A. Remedial Action Undertaken by Respondent

Respondent asserted he has attended treatment for substance abuse and anger management, and should retain his MMC. [Tr. at 64-67]. In this case, Respondent testified on his own behalf regarding his recent efforts in rehabilitation and his years of service as a mariner without prior discipline. [Tr. at 64-67, 85-86]. I have considered Respondent’s evidence and given it some weight in determining the sanction. See Appeal Decision 2730 (BLAKE) (2020).

B. Respondent’s Prior Record and Mitigation

The Coast Guard did not provide any evidence of previous adverse Coast Guard S&R proceedings in relation to Respondent’s record before this case. Respondent testified he has not had any S&R matters with the Coast Guard in the almost ten years he has held an MMC. [Tr. at 85]. Lack of prior S&R actions is considered in Respondent’s

favor when determining an appropriate sanction. 46 C.F.R. § 5.569(b)(2). In summary, Respondent's testimony regarding his treatment for substance abuse and anger management, the Beaches Recovery letter, and his service as a mariner with no previous S&R proceedings, has been considered in mitigation and given some weight in determining the sanction.

C. Aggravation

The Coast Guard alleged matters “[i]n aggravation” in both Charges 1 and 2 of the Complaint, and attempted to enter court and arrest records related to these allegations into evidence. During the hearing, I found the Coast Guard's aggravation exhibits were not admissible in the case-in-chief and noted that there were limits on what the Coast Guard may present in keeping with 33 C.F.R. §§ 20.1309 and 20.1315. Additionally, these matters essentially are allegations of bad acts that fit within the prohibition of Federal Rule of Evidence 608, which limits when character evidence should be considered. Exhibits 5, 6, 9, 10, and 11 were not admissible as evidence in the Coast Guard's case-in-chief. Such evidence may only be considered relevant if Respondent testifies as a witness or presents a proper basis within 33 C.F.R. §§ 20.1309 and 20.1315. After a witness testifies, the matter may be inquired on in cross-examination, but the use of extrinsic evidence is not permitted. See Fed. R. Evid. 608(b).

In Charge 1, the Coast Guard alleged, as a matter in aggravation, that Respondent was convicted on March 22, 2021, of “Florida Court Statute S322.03, Knowingly Drive While License Suspended, Cancelled or Revoked.” In support of that allegation, the Coast Guard offered as an exhibit an Arrest and Booking Report dated January 29, 2021

(Ex. CG-009); a Florida Uniform Traffic Citation dated January 29, 2021 (Ex. CG-010); and a disposition record from the Circuit Court for Duval County, Florida (Ex. CG-011).

I determined that Ex. CG-009, which is as an arrest and booking report for alleged offenses that had not yet been adjudicated at the time of the hearing, could not be used as aggravation evidence. Mere charges or arrests cannot be used as aggravation evidence. Appeal Decision 2454 (LYON) (1987). Pursuant to 33 C.F.R. § 20.1315(a)(4), only “final judgment[s] of conviction in Federal or State courts” are proper as aggravation evidence; an arrest or pending charges do not qualify as a final judgment of conviction. Therefore, Ex. CG-009 remains rejected. Similarly, the Florida Uniform Traffic Citation is not a final judgment of conviction, and thus Ex. CG-010 remains rejected. Therefore, neither of these exhibits were considered in determining the sanction.

Coast Guard’s Ex. CG-011 was not admissible in the Coast Guard case-in-chief. However, after Respondent testified, the Coast Guard again requested admission of Ex. CG-011. At that point, the exhibit is properly presented to the record for consideration as impeachment and rebuttal evidence under 33 C.F.R. §§ 20.1309(c) and 20.1315(c). Therefore, Ex. CG-011 is admitted to the record and has been considered in aggravation regarding Respondent’s efforts in rehabilitation and his contention that he remains a safe and suitable mariner.

The Coast Guard also sought to use Exs. CG-005 and CG-006 as evidence in aggravation. Exhibit CG-005 is a probation order, and Ex. CG-006 is a disposition record showing Respondent’s 2017 violation of “M614.123,” which is Jacksonville Municipal Code § 614.123. This evidence is rejected because it is not proper aggravation under Coast Guard regulations. Under Florida law, this is only a municipal ordinance violation, and

as such, is not a “conviction” within the meaning of the Coast Guard’s regulations. 46 C.F.R. § 10.107; 33 C.F.R. § 20.1315; Jacksonville Mun. Code § 614.123; Fl. Stat. Ann. § 775.08(2). Therefore, Exs. CG-005 and 006 have not been considered in determining a sanction.

D. Selection of an Appropriate Order

As noted above, the authority to impose sanctions at the conclusion of a case is exclusive to the ALJ. The Coast Guard regulates the maritime industry on behalf of the people of the United States and public safety. The safety and suitability considerations contained in 46 C.F.R. §§ 10.211 and 10.213 are used by the Coast Guard to determine whether to approve an application for an initial issuance or renewal of an MMC.

Whether to suspend or revoke an MMC is a separate matter under 46 C.F.R. Part 5. The charges in this case are based on self-executing parts of 46 U.S.C. § 7703. The regulations include Table 5.569 of 46 C.F.R. § 5.569, which provides a range of sanctions for violations listed in the table but does not provide any specific guidance or range of sanctions for violations under 46 U.S.C. § 7703(2) or 46 U.S.C. § 7703(3). However, some of the violations listed in Table 5.569 may be considered comparable.

Domestic battery is comparable to violent actions against other persons in Table 5.569, with a sanction range of 4 months’ suspension to revocation; and the DUI conviction would be comparable to misconduct by failure to comply with U.S. law or regulations, with a sanction range of 1 to 3 months’ suspension. Id.

The question of whether to suspend or revoke Respondent’s credential is the sole province of this ALJ, subject to further review by the Commandant of the Coast Guard on appeal, and the NTSB, before reaching the federal judiciary. Respondent’s conduct

underlying his criminal convictions may be considered in regard to a determination of whether he is a safe and suitable person for renewal of his credentials. The same evidence is considered in regard to 46 C.F.R. Part 5 proceedings, but revocation is not mandated and an appropriate sanction must be based on the evidence in the record. The regulations provide that these proceedings are remedial and not punitive. 46 C.F.R. § 5.5. The primary question is what sanction will meet the regulations' intent to maintain standards of conduct and safety at sea, without being punitive. Considering all of the evidence presented, I find that the appropriate sanction under the circumstances is **revocation of Respondent's MMC, with the sanction of revocation stayed for a period of 24 months' probation**, during which Respondent's MMC will be suspended outright for the first 12 months, and will then be returned to Respondent, subject to the probationary terms, for the last 12 months. If Respondent successfully completes the 24-month probationary period, the sanction of revocation shall be remitted.

ORDER

IT IS HEREBY ORDERED, all Merchant Mariner Credentials issued by the U.S. Coast Guard to Nathan Riley Wilson are hereby **REVOKED**; however, **REVOCATION IS STAYED** and will be remitted pending successful completion of a period of **TWENTY-FOUR (24) MONTHS' PROBATION**. Respondent's MMC shall be **SUSPENDED OUTRIGHT for the first TWELVE (12) MONTHS** of the probationary period, and will be returned to Respondent for the remaining twelve (12) months, subject to the probationary terms.

IT IS FURTHER ORDERED, during the probationary period, Respondent shall not engage in any conduct that would serve as a basis for the revocation or suspension of

his credentials under 46 U.S.C. § 7703 or 7704, or the regulations of 46 C.F.R. Part 5. Further, Respondent shall not be found guilty, or proven to have violated, any law listed in Table 1 of 46 C.F.R. § 10.211 or Table 1 of 46 C.F.R. § 10.213(c).

IT IS FURTHER ORDERED, during the probationary period, Respondent shall attend Alcoholics Anonymous (AA) meetings twice per month and shall provide documentary evidence to the Investigating Officer of attendance at such AA meetings for the initial twelve (12) months of the probationary period.

IT IS FURTHER ORDERED, if the Coast Guard determines Respondent has violated the terms of probation within the probationary period, the Coast Guard may provide notice of intent to execute the stayed revocation of Respondent's credentials. Within ten (10) 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, for an ALJ hearing solely to determine whether the terms of probation have been violated. Failure to submit a written request within ten (10) days of service of the Notice will result in waiver of the opportunity to request a hearing, and the Coast Guard may execute the order to revoke.

IT IS FURTHER ORDERED, Respondent shall immediately deposit his credentials with LT Kyle Burns, Coast Guard Sector Jacksonville, 10426 Alta Drive, Jacksonville, Florida 32226. If Respondent knowingly continues to use the credentials before completion of the period of outright suspension, he may be subject to criminal prosecution.

IT IS FURTHER ORDERED, Respondent is prohibited, commencing on the date of this Order and continuing for the entire period that the Coast Guard retains

custody of his credentials, from serving aboard any vessel requiring a Merchant Mariner Credential issued by the U.S. Coast Guard.

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**).



Michael J. Devine
US Coast Guard Administrative Law Judge

Michael J. Devine
Administrative Law Judge
United States Coast Guard

Done and dated December 21, 2022
Baltimore, MD

ATTACHMENT A

List of Exhibits and Witnesses

Coast Guard's Witnesses

1. LT Kyle Burns
2. Steven W. Baker

Coast Guard's Exhibits

- Ex. CG-001: Merchant mariner credentials issued to Nathan R. Wilson (**admitted**)
- Ex. CG-002: Florida court record for Jan. 16, 2020 battery conviction (**admitted**)
- Ex. CG-003: Memorandum re: Mariner Safety and Suitability Evaluation from Steven W. Baker (**admitted**)
- Ex. CG-004: Arrest and Booking Report dated Jul. 20, 2019 (**admitted**)
- Ex. CG-005: Order Placing Defendant on Probation dated Aug. 21, 2017 (**rejected**)
- Ex. CG-006: Florida court record for Aug. 21, 2017 conviction for fighting (**rejected**)
- Ex. CG-007: Arrest and Booking Report dated April 21, 2020 (**admitted**)
- Ex. CG-008: Judgment and Sentence dated Dec. 3, 2020, for DUI conviction (**admitted**)
- Ex. CG-009: Arrest and Booking Report dated Jan. 29, 2021 (**rejected**)
- Ex. CG-0010: Florida Uniform Traffic Citation dated Jan. 29, 2021 (**rejected**)
- Ex. CG-0011: Florida court record for Mar. 22, 2021 conviction for "no valid driver's license" (**admitted**)

Respondent's Witness

1. Nathan R. Wilson (Respondent)

Respondent's Exhibit

- Ex. R-A: Beaches Recovery letter dated Jul. 23, 2021 (**admitted**)

ATTACHMENT B

TABLE 10.211(G)—GUIDELINES FOR EVALUATING APPLICANTS FOR MMCs WHO HAVE CRIMINAL CONVICTIONS

Crime ¹	Assessment periods	
	Minimum	Maximum
Assessment Periods for Officer and Rating Endorsements		
Crimes Against Persons:		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Robbery	5 years	10 years.
Other crimes against persons ²		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highways	1 year	2 years.
Other vehicular crimes ²		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety ²		
Dangerous Drug Offenses³⁴⁵		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions ⁶		
Assessment Periods for Officer Endorsements Only		
Criminal Violations of Environmental Laws		
Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials	1 year	10 years.

Crimes Against Property		
Burglary	3 years	10 years.
Larceny (embezzlement)	3 years	5 years.
Other crimes against property ²		

¹Conviction of attempts, solicitations, aiding and abetting, accessory after the fact, and conspiracies to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

²Other crimes will be reviewed by the Coast Guard to determine the minimum and maximum assessment periods depending on the nature of the crime.

³Applicable to original applications only. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (f) of this section. Note: Applicants for reissue of an MMC with a new expiration date including a renewal or additional endorsement(s), who have been convicted of a dangerous drug offense while holding a license, MMC, MMD, STCW endorsement or COR, may have their application withheld until appropriate action has been completed by the Coast Guard under the regulations which appear in 46 CFR part 5 governing the administrative actions against merchant mariner credentials.

⁴The Coast Guard may consider dangerous drug convictions more than 10 years old only if there has been another dangerous drug conviction within the past 10 years.

⁵Applicants must demonstrate rehabilitation under paragraph (l) of this section, including applicants with dangerous drug use convictions more than 10 years old.

⁶Other dangerous drug convictions will be reviewed by the Coast Guard on a case by case basis to determine the appropriate assessment period depending on the nature of the offense.

TABLE 10.213(C)—GUIDELINES FOR EVALUATING APPLICANTS FOR MMCs WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL¹

Number of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years	Application will be processed, unless suspension, or revocation ² is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than 3 years old	Not necessary unless suspension or revocation is still in effect.
2 or more	Any less than 3 years old	1 year since last conviction and at least 3 years from 2nd most recent conviction, unless suspension or revocation is still in effect.
2 or more	All more than 3 years old	Application will be processed unless suspension or revocation is still in effect.

¹Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (f) of this section.

²Suspension or revocation, when referred to in table 10.213, means a State suspension or revocation of a motor vehicle operator's license.

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;
 - (ii) Reasons supporting the appeal; and
 - (iii) 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.