

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD**

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**UNITED STATES COAST GUARD**

**Complainant**

**vs.**

**GLORIA CHAPARRO**

**Respondent**

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**Docket Number: 2023-0303  
Enforcement Activity Number: 7770838**

**ORDER IMPOSING SANCTION**

This matter is before me on the parties' Joint Stipulation and Motion Requesting Issuance of an Order of Three (3) Months Outright Suspension (Joint Motion). For the reasons set forth below, I **DENY** the Joint Motion as to the sanction requested by the parties and impose an alternative sanction.

**I. PROCEDURAL HISTORY**

The United States Coast Guard (Coast Guard) filed a Complaint on August 18, 2023. The Complaint alleged one charge of misconduct arising from the intoxication of Gloria Chaparro (Respondent) while aboard the vessel NCL, PRIDE OF AMERICA (PRIDE OF AMERICA). See 46 U.S.C. § 7703(1)(B); 46 C.F.R. § 5.27. Specifically, the Complaint stated on August 14, 2023, Respondent, while serving as a crewmember, was intoxicated onboard the PRIDE OF AMERICA with a blood alcohol level (BAC)<sup>1</sup> greater than 0.04%, in violation of her employer's drug and alcohol policy. [Compl. at "Jurisdictional Allegations" #1-2, "Factual

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<sup>1</sup> The Complaint uses "BAC" as the acronym for "blood alcohol level." I interpret "blood alcohol level" to be synonymous with "blood alcohol concentration level," as defined in 33 C.F.R. § 95.010.

Allegations” #1-4]. For sanction, the Coast Guard proposed three months’ outright suspension of her Merchant Mariner Credential (MMC or credential).

On the same day she was served the Complaint, Respondent filed her Answer. Using the template form provided by the Coast Guard, she admitted all jurisdictional and factual allegations of the Complaint, stated no affirmative defenses, and checked the box agreeing with the Coast Guard’s proposed sanction of three months’ outright suspension.

I held pre-hearing conferences on November 8 and 16, 2023, to discuss the circumstances surrounding the submission of the Complaint and Answer. I then issued an Order on December 1, 2023, finding the charge of misconduct proved and directing the parties to submit evidence relevant to the selection of an appropriate sanction, or any appropriate motion, by December 15, 2023. On December 8, 2023, the parties filed the Joint Motion.

## **II. DISCUSSION**

As set forth in my December 1, 2023 Order, Respondent’s admissions to the allegations of the Complaint are sufficient to prove Respondent committed misconduct. Thus, the findings and conclusions set forth in the December 1, 2023 Order are adopted herein in their entirety. With the filing of the Joint Motion, in which the parties stipulated to facts for my consideration, I must now determine an appropriate sanction. See 46 C.F.R. §§ 5.567 to .569; 33 C.F.R. § 20.902(a).

### **A. Statement of Undisputed Facts**

The following are undisputed facts contained in either the Complaint or Joint Motion:

1. Respondent is the holder of U.S. Coast Guard-issued MMC No. [REDACTED] [Compl. at “Jurisdictional Allegations” #1].

2. Respondent acted under the authority of MMC No. [REDACTED] on August 14, 2023, by serving as a crewmember on the vessel PRIDE OF AMERICA. [Compl. at “Jurisdictional Allegations” #2].
3. Respondent was subject to NCL (Bahamas) LTD. Drug and Alcohol Policy (company policy), which applied to employees onboard the PRIDE OF AMERICA on August 14, 2023. [Compl. at “Factual Allegations” #1, 2].
4. On August 14, 2023, NCL (Bahamas) LTD. had a company policy prohibiting employees onboard the vessel PRIDE OF AMERICA from being intoxicated with a BAC greater than 0.04%. [Compl. at “Factual Allegations” #2].
5. On August 14, 2023, Respondent was intoxicated onboard the vessel PRIDE OF AMERICA with a BAC greater than 0.04%. [Compl. at “Factual Allegations” #3].
6. Respondent was employed as a cook on the vessel PRIDE OF AMERICA on August 14, 2023. [Joint Motion at “Stipulation as to Sanction” #4].
7. As a cook, Respondent did not have any navigational or engineering duties on the vessel. [Joint Motion at “Stipulation as to Sanction” #9].
8. Respondent was intoxicated after returning from shore leave. [Joint Motion at “Stipulation as to Sanction” #2].
9. The Human Resources Director of the vessel PRIDE OF AMERICA notified the Coast Guard of Respondent’s intoxication on or about August 16, 2023. [Joint Motion at “Stipulation as to Sanction” #3].
10. Respondent has no prior history of suspension or revocation administrative actions against her Coast Guard credential. [Joint Motion at “Stipulation as to Sanction” #5].
11. Respondent fully cooperated with the Coast Guard’s investigation of this incident, as well as throughout the entirety of this proceeding. [Joint Motion at “Stipulation as to Sanction” #7].
12. Respondent was terminated from her position as a cook for the violation of the company policy. [Joint Motion at “Stipulation as to Sanction” #4].
13. Respondent deposited her MMC with Coast Guard Sector Honolulu on August 18, 2023. The Coast Guard returned Respondent’s MMC to her on November 18, 2023. [Joint Motion at “Stipulation as to Sanction” #15].

**B. Parties’ Request for Sanction**

The Coast Guard and Respondent “may suggest an order and present argument in support of this suggestion during the presentation of aggravating or mitigating evidence.” 46 C.F.R. §

5.569(a). Pursuant to this provision, the parties request through their Joint Motion that I impose a sanction of three months' outright suspension. The parties also stipulate that Respondent deposited her credential with the Coast Guard on August 18, 2023, the same day she signed and filed her Answer, and the Coast Guard returned her credential on November 18, 2023. [Joint Motion at "Stipulation as to Sanction" #15]. As such, they request I credit Respondent for the three-month deposit period so that, if the Joint Motion is granted, the proposed three months' outright suspension is satisfied upon the issuance of this Order.

### **C. Selection of Appropriate Order**

In Coast Guard suspension and revocation (S&R) cases, the authority to impose a sanction lies exclusively within the discretion of the Administrative Law Judge (ALJ). Appeal Decision 2730 (BLAKE), 2020 WL 4516474 at \*6 (citing Appeal Decision 2680 (MCCARTHY), 2008 WL 5765849 at \*1 (citing 46 C.F.R. § 5.569(a); Appeal Decision 1998 (LEBOUEF), 1974 WL 174990 at \*2 (aff'd, NTSB Order No. EM-205, 2008 WL 4898624))). Furthermore, the ALJ is not bound to follow the recommendation of the Coast Guard, even if uncontested by a respondent. See Appeal Decision 2628 (VILAS), 2002 WL 32061803 at \*12 (citing Appeal Decision 2632 (ARNOLD), 1984 WL 564475, at \*4; Appeal Decision 2173 (PIERCE), 1979 WL 197835, at \*3).

To assist in the selection of an order, Coast Guard regulations set forth ranges of orders it considers appropriate for various types of offenses. Table 5.569 to 46 C.F.R. § 5.569(d). As stated in the regulation itself, "[t]his table should not affect the fair and impartial adjudication of each case on its individual facts and merits." 46 C.F.R. § 5.569(d). "Mitigating or aggravating factors may make an order greater or less than the given range appropriate." Id.

Unlike certain offenses, the misconduct found proved in this case does not require a mandatory order under the applicable statutes or regulations. See e.g. 46 U.S.C. § 7704(b), 46 U.S.C. § 7704a(b); 46 C.F.R. § 5.59; Table 5.569 to 46 C.F.R. § 5.569(d). In cases where a mandatory order is not required, the ALJ may impose an admonition, suspension with or without probation, or revocation. 46 C.F.R. § 5.567(a). Coast Guard regulations also list several factors for consideration by the ALJ when determining an appropriate order, including any remedial actions undertaken independently by Respondent, Respondent's prior record, and any other mitigating or aggravating evidence within the record. 46 C.F.R. § 5.569(b). Finally, the sanction selected by the ALJ must be tailored towards the goal of remediation, in order to promote and "maintain standards for competence and conduct essential to the promotion of safety at sea." 46 C.F.R. § 5.5. Thus, I must consider these factors and the facts of this case when determining an appropriate order.

**1. Type of Offense Under Table 5.569 that Applies to Respondent's Misconduct**

In my analysis, I must first determine the category of offense in Table 5.569 that best describes Respondent's misconduct, which will define the boundaries of an appropriate order. Table 5.569 to 46 C.F.R. § 5.569(d). The Coast Guard and Respondent stipulate that Table 5.569 suggests a sanction of one to three months' outright suspension for Respondent's offense. [Joint Motion at "Stipulation as to Sanction" #13]. Table 5.569 lists two offenses under "Misconduct" that carry a suggested outright suspension period of one to three months: "Failure to obey master's/ship officer's order," and "Failure to comply with U.S. law or regulations." Table 5.569 to 46 C.F.R. § 5.569(d). Although the parties do not specify which of these two

offenses apply to the misconduct committed by Respondent, the charge and stipulations suggest Respondent's offense falls within the category of disobeying a master's or ship officer's order.<sup>2</sup>

I note the central allegation in the Complaint is that Respondent violated her employer's drug and alcohol policy by being intoxicated onboard the PRIDE OF AMERICA with a BAC greater than 0.04%. [Compl. at "Factual Allegations" #2-3]. However, a violation of company policy does not appear as a specific offense in Table 5.569. Considering the misconduct, I find a violation of a company's written drug and alcohol policy is most akin to a master's written instruction. See United States Coast Guard v. Blake, Docket No. 2017-0058, 2019 WL 8643828 at \*3 (finding a violation of company policy to be "most closely related to the offense of failing to obey a master's written instruction"), aff'd on other grounds, Appeal Decision 2730 (BLAKE), 2020 WL 4516474.<sup>3</sup> Therefore, I find the appropriate range of outright suspension applicable to Respondent's misconduct is two to four months. Table 5.569 to 46 C.F.R. § 5.569(d).

## **2. Consideration of Factors Set Forth in 46 C.F.R. § 5.569(b)**

Having determined the applicable range of appropriate suspension, I now turn to consideration of the factors set forth in 46 C.F.R. § 5.569(b). I will address each factor in turn.

### **i. Remedial Actions Undertaken Independently by Respondent**

Although the Coast Guard charged Respondent for violating her employer's company policy, the underlying misconduct involved Respondent's intoxication onboard the vessel PRIDE OF AMERICA by having a BAC in excess of 0.04%. As discussed above, S&R proceedings are

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<sup>2</sup> The Coast Guard charged Respondent with misconduct based on a violation of her employer's company policy, although her actions may have also fit within a "violation of law or regulation," for violation of marine safety regulations related to consumption of intoxicants. See 46 U.S.C. § 7703(1)(A); 46 C.F.R. § 5.33; 33 C.F.R. § 95.045. Given the Coast Guard's charge of misconduct in this case, analysis of a range of orders applicable to a violation of law or regulation is not necessary.

<sup>3</sup> Although not controlling, ALJ Decisions and Orders are persuasive authority.

remedial in nature, and are meant to return the mariner to the level of competency and conduct essential to promoting safety at sea. 46 C.F.R. § 5.5. Here, the parties did not provide evidence that Respondent made any independent effort towards remediation. Thus, there is no evidence to consider under this factor.

**ii. Prior Disciplinary Record of Respondent**

With respect to Respondent's prior disciplinary record, the parties stipulated Respondent has "no prior history of suspension or revocation administrative actions with the Coast Guard." [Joint Motion at "Stipulation as to Sanction" #5]. I consider the absence of any prior S&R administrative action as mitigating. I note, however, the parties did not provide any evidence of other prior disciplinary records permitted under the regulations, such as any "final judgment of conviction in Federal or State courts," or "written warnings." See 33 C.F.R. § 20.1315(a). Prior disciplinary records apart from S&R activities are relevant in the determination of an appropriate order. As there is no additional evidence here, however, I will not consider its absence as either aggravating or mitigating.

**iii. Evidence of Mitigation or Aggravation**

Finally, the parties stipulated to several facts for my consideration. Respondent served as a cook onboard the vessel PRIDE OF AMERICA and, thus, did not have navigational or engineering duties on the vessel. [Joint Motion at "Stipulation as to Sanction" #4, #9]. I have considered Respondent's role on the vessel. I also note Respondent was required to hold a credential pursuant to law or regulation. [Compl. At "Jurisdictional Allegations" #2]. Even in the absence of navigation or engineering duties, Respondent had a duty to observe company and vessel policies and all marine safety laws and regulations. Should an emergency occur on the

vessel, as a credentialed mariner serving in a safety-sensitive position, Respondent must be ready and able to assist.

Also, the parties indicate Respondent returned to the vessel intoxicated. [Joint Motion at “Stipulation as to Sanction” #2]. I have considered this fact, although I note the record is unclear regarding the circumstances surrounding the discovery of her intoxication or the level of her intoxication. It is not clear whether the misconduct was discovered the moment Respondent embarked the vessel after returning from shore leave, or whether Respondent returned from shore leave and began performing her duties as a cook when the misconduct was discovered. Nevertheless, given the parties’ stipulations, it is reasonable to conclude Respondent became intoxicated while on shore leave and returned to the vessel where, at some point, her misconduct was discovered. Id.

Finally, I note Respondent was cooperative during the Coast Guard’s investigation of the incident, as well as throughout the course of this proceeding. [Joint Motion at “Stipulation as to Sanction” #7].

### **3. Analysis and Determination of Appropriate Order**

I have considered and weighed all information provided by the parties. As stated above, the remedial purpose behind S&R proceedings is to “maintain standards for competence and conduct essential to the promotion of safety at sea.” 46 C.F.R. § 5.5. In addition to the goal of remediation, an order less than revocation “levies accountability on a mariner and deters that mariner and others from similar conduct, without permanently removing that mariner from service at sea.” Appeal Decision 2707 (CHESBOROUGH), 2015 WL 525653 at \*1.

As discussed above, Table 5.569 at 46 C.F.R. § 5.569(d) suggests a suspension of two (2) to four (4) months for “failure to obey master’s written instruction.” I find a penalty within this



range to be appropriate considering the record as a whole. Nothing in the record indicates Respondent has an S&R history relating to intoxication in violation of an employer's drug and alcohol policy while serving on a vessel. Nevertheless, given the information provided, the remedial purpose of these proceedings demands Respondent does not commit further misconduct in this regard. Accordingly, I **DENY** the Joint Motion with regard to the sanction requested by the parties and will impose a sanction consistent with my analysis and considerations.

Respondent's MMC is suspended outright for three (3) months, and suspended for a further one (1) month remitted on three (3) months' probation. During the period of probation, Respondent shall refrain from committing any additional offenses under 46 USC § 7703(1) or any regulation promulgated thereunder. Respondent's probationary period shall commence on the date of issuance of this Order.

As stipulated by the parties, Respondent deposited her credential with the Coast Guard for a period of three months, from August 18, 2023, through November 18, 2023. Respondent shall receive credit for the three-month period that her MMC was on deposit with the Coast Guard. It is worth noting, however, the deposit was not pursuant to an order.<sup>4</sup> The practice of depositing a credential prior to the issuance of an ALJ's sanction order is a precarious one; a respondent should be aware that leaving his or her MMC on deposit with the Coast Guard could result in a respondent giving up use of the MMC for a period longer than necessary if the ALJ imposes a sanction less than that proposed by the Coast Guard. Alternatively, a respondent may be required to give up the MMC for a period longer than anticipated if the ALJ imposes a suspension period longer than that proposed by the Coast Guard.

WHEREFORE,

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<sup>4</sup> Respondent's deposit was also not pursuant to a negotiated settlement agreement pending approval by an ALJ.

## **ORDER**

**IT IS HEREBY ORDERED**, Respondent's MMC is suspended outright for three (3) months, and suspended for a further one (1) month remitted on three (3) months' probation.

**IT IS FURTHER ORDERED**, Respondent is granted credit for the three-month period between August 18, 2023, and November 18, 2023, that her MMC was on deposit with the Coast Guard. Therefore, the period of outright suspension is considered served.

**IT IS FURTHER ORDERED**, Respondent shall be on a placed on three (3) months' probation commencing on the **date of issuance of this Order**.

**IT IS FURTHER ORDERED**, during the probationary period, Respondent shall not commit any additional offenses that would serve as the basis for the revocation or suspension of her credentials under 46 U.S.C. § 7703(1) or any regulation promulgated thereunder.

**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 remaining one-month suspension period. 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 Respondent violated the terms of probation. Failure to submit a written request within ten (10) days of service of the Notice of Violation of Probation will result in waiver of the opportunity to request a hearing.

**PLEASE TAKE NOTICE**, the parties may appeal this Order by following the procedures set forth in **Attachment A**.

Done and dated February 6, 2024  
Baltimore, Maryland

A handwritten signature in black ink, reading "Lineka N. Quijano", with a long, sweeping flourish extending to the right.

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**HON. LINEKA N. QUIJANO  
ADMINISTRATIVE LAW JUDGE  
UNITED STATES COAST GUARD**