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A Primer:

By Walter J. Brudzinski

To promote safety at sea, Congress authorized the U.S. Coast Guard to suspend or revoke Merchant Mariner Credentials for acts of incompetence, misconduct, negligence, violations of law or regulation, and use of dangerous drugs. The Coast Guard initiates 400-600 suspension and revocation (S&R) cases each year. Full understanding of the suspension and revocation (S&R) process should therefore be more than a casual requirement for the working professional mariner.

Suspending or revoking Credentials is a formal, administrative process concerning a mariner's Credential, the right to hold that Credential, and the right to serve under that Credential. Because a mariner's Credential is a property right, the Constitution, the Administrative Procedure Act, and Coast Guard regulations provide due process protections when the government proposes suspending or revoking that Credential.

To that end, the S&R hearing process is very similar to a civil trial in state or federal court without a jury but with streamlined discovery rules to ensure a just, speedy, and inexpensive determination. The hearing is not a criminal trial and the Administrative Law Judge (ALJ) cannot sentence a mariner to incarceration or impose a fine. Rather, these administrative proceedings are remedial in nature and are intended to help maintain standards for competence and conduct essential to the promotion of safety at sea.

Administrative Law Judges

The Coast Guard is one of 30 federal agencies administering laws requiring adjudication be conducted by Administrative Law Judges appointed under 5 U.S.C. § 3105, which is part of the Administrative Procedure Act. This is called formal adjudication. There are approximately 1,700 Administrative Law Judges in the federal government with most being in the Social Security Administration, Medicare Appeals, and the Department of

Labor. The Coast Guard is currently authorized 6 ALJs and one Chief Judge. The ALJs are located in New York, Baltimore, New Orleans, Galveston, Alameda, and Seattle. The Chief Judge is located at Coast Guard Headquarters in Washington, DC.

ALJs are required to follow the law and case precedent as well as their own agency's regulations and appeal decisions. Within that framework, ALJs have decisional independence which enables them to review the evidence, find facts, and issue decisions free from pressures of the parties or officials within the agency. To ensure decisional independence, the Office of Personnel Management's regulations prohibit agencies, including the Coast Guard, from controlling ALJ's salaries, conducting performance evaluations on them, or providing monetary/honorary awards to ALJ's.

Pursuant to Memorandum of Agreement, Coast Guard ALJs also adjudicate cases for agency components of the Department of Homeland Security such as the Transportation Security Administration. As time and availability permit, Coast Guard ALJs also adjudicate cases for other agencies on a reimbursable basis in support of the Office of Personnel Management's ALJ Loan Program. For example, Coast Guard Judges assisted the Special Master of the 9/11 Victim Compensation Fund in adjudicating claims arising from the September 11, 2001 terrorist attacks.

The Complaint

A Coast Guard Investigating Officer initiates S&R proceedings by filing a Complaint with the ALJ Docketing Center and serving it on the mariner who is the subject of the Complaint. That mariner is referred to as the Respondent. The Complaint will allege the type of case, the statute or regulation claimed to be violated, the pertinent alleged facts, and the proposed order of suspension or revocation; that is, the proposed sanction.



U.S. Coast Guard Suspension and Revocation of Merchant Mariner Credentials

The Complaint will also propose a place and date for hearing and advise Respondent of the right to be represented. Once a Complaint is filed and docketed, an ALJ is assigned to the case.

Right to Counsel

The Respondent has a right to be represented by an attorney or a duly authorized representative. The Respondent may also self-represent. Because these proceedings are administrative and not criminal in nature, the Coast Guard does not provide the Respondent with representation. A Respondent may retain an attorney at his or her own expense or look into obtaining representation from a legal services clinic. A Respondent may also seek assistance from a non-attorney who has some expertise in S&R proceedings.

If the Respondent is without means to retain an attorney, free legal representation may be available. The Coast Guard's Office of the Chief Administrative Law Judge website at <http://www.uscg.mil/alj> contains a list of attorneys that may be available to represent respondents at no cost or at reduced cost if the mariner cannot afford an attorney. Respondents unable to afford attorney representation are urged to consult that website.

The Answer

After the Investigating Officer files the Complaint, the Respondent must file a written Answer within 20 days of being served. In the Answer, the Respondent must admit or deny each numbered paragraph in the Complaint. If the Answer states the Respondent lacks sufficient knowledge or information to admit or deny a particular numbered paragraph, it denies that paragraph. If the Answer does not otherwise specifically deny a particular numbered paragraph, it admits that paragraph. If the Respondent fails to file an Answer within 20 days the Respondent risks being found in Default.

Being found in default constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. In other words, if the Respondent does not file an Answer, he or she risks having the proposed sanction implemented upon application of the Investigating Officer and Order of the Administrative Law Judge.

The Hearing

If the Respondent does not admit to the allegations and proposed sanction the case will proceed to hearing. In anticipation of the hearing, parties will routinely participate in a pre-hearing teleconference with the Administrative Law Judge. During the teleconference, the ALJ will set the date and place of hearing as well as dates for the exchange of exhibit and witness lists, additional discovery, motions, and other matters that may arise. The ALJ will ordinarily issue orders deciding motions prior to the hearing and the case will then proceed to hearing unless the parties reach a settlement.

Hearings typically last for one day or less and some can last for several days. Present at the hearing is a court reporter who records and transcribes all testimony and statements. At the beginning of the hearing, the parties may give an opening statement. Opening statements are an opportunity for the parties to tell the ALJ what the evidence will show. The Coast Guard's representative, who ordinarily is an attorney will then call witnesses and introduce exhibits.

The Coast Guard presents its evidence first because it has the burden to prove the allegations in the Complaint by the preponderance of the evidence; that is, it is more likely than not that the allegations in the Complaint are true. The Respondent or the Respondent's representative will have an opportunity to question the Coast Guard's witnesses. The ALJ will rule on any questions whether evidence ought to be admitted for consideration.

Once the Coast Guard has called all of its witnesses

and introduced all of its exhibits, the Respondent or the Respondent's attorney will have the opportunity to call witnesses and introduce exhibits. The Coast Guard representative will have the opportunity to cross-examine and will also have the opportunity to rebut Respondent's evidence in response to any new matters the Respondent's evidence raises.

The Decision & the Appeal Process

The Coast Guard and Respondent have the right to submit closing briefs as well as proposed findings of fact and conclusions of law after the court reporter has transcribed the proceedings and the transcript is made available to them. If the parties choose to waive their rights to submit proposed findings and conclusions the ALJ may, under appropriate circumstances, render the decision orally from the bench. Otherwise, once closing briefs and proposed findings and conclusions are submitted to the ALJ, the record is closed. The ALJ will then carefully review the evidence presented by both parties and prepare the decision and order with findings of fact, analysis, and conclusions of law.

If the Coast Guard proves its case, the ALJ will prepare an order imposing an appropriate sanction; that is, admonition, suspension with or without probation, or revocation. If the Coast Guard does not prove its case, the ALJ will issue an order dismissing the proceeding with or without prejudice to re-file.

Assuming the case against the mariner is not otherwise settled and eventually proceeds to a full evidentiary hearing, the ALJ will hear the evidence and issue a decision and order. The mariner can appeal that decision and order to the Commandant of the Coast Guard. The Commandant's decision may be appealed to the National Transportation Safety Board. The Board's decision can be appealed to the appropriate U.S. Circuit Court of Appeals and ultimately to the Supreme Court of the United States.

Conclusion

Congress established S&R proceedings to promote safety at sea. These proceedings are not penal in nature; that is, they do not constitute punishment. Rather, they are remedial to help maintain standards for competence and conduct essential to the promotion of safety at sea. Because a Merchant Mariner's Credential is a property right, a mariner cannot be deprived of that property without due process of law as guaranteed by the Constitution, the Administrative Procedure Act, and Coast Guard regulations.

Editor's Note

The statutory authority for S&R proceedings is found at 46 U.S.C. §§ 7701-7705. S&R procedural regulations are found at 33 C.F.R. Part 20. Substantive S&R regulations are found at 46 C.F.R. Part 5 and Part 16 (drug testing requirements). National Transportation Safety Board Rules are found at 49 C.F.R. Part 825. These regulations may be accessed at <http://www.ecfr.gov>. General information on S&R as well as ALJ decisions, Commandant Decisions on Appeal, and NTSB decisions, among other things, can be found at <http://www.uscg.mil/alj>.

The Author

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