

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA *
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Docket No. 00-0813
Case Number PA00001529

vs. *

WILLIAM C. HAUCK *

DECISION AND ORDER

PETER A. FITZPATRICK
Administrative Law Judge

APPEARANCES

FOR THE COAST GUARD

LT Steven R. Keel
LT Mark Hammond
United States Coast Guard
Marine Safety Office Miami
100 MacArthur Causeway
Miami, Florida 33101-6940

FOR THE RESPONDENT

William C. Hauck, Pro Se

I.

PRELIMINARY STATEMENT

This case began on March 20, 2001 when the United States Coast Guard filed a Complaint against William C. Hauck which contained the following Jurisdictional and Factual Allegations:

JURISDICITONAL ALLEGATIONS

The Coast Guard alleges that:

1. Respondent's address is 10711 2nd Avenue, Marathon, FL 33050.
2. Respondent holds the following Coast Guard-issued credential(s): License Number 811332.
3. Respondent acted under the authority of that license, certificate or document on July 29, 2000, by serving as Master aboard the vessel ST. LUCIE, O.N. D1036416, as required by law or regulation.

FACTUAL ALLEGATIONS – Negligence

1. On July 29, 2000, Respondent was acting as Master of the M/V ST. LUCIE, when said vessel allided with Bethel Bank Daymarker Number 19 (LLNR 12497), Marathon, FL.
2. While transiting the channel, Respondent failed to properly navigate said vessel with due caution, contributing to an allision with above charted aid to navigation causing substantial damage. For example: The respondent failed to provide charts of the local area on board the vessel and he failed to exercise due caution with existing weather conditions.

FACTUAL ALLEGATIONS – Violation of Law or Regulation

3. On July 29, 2000, Respondent failed to maintain a proper look-out for the prevailing circumstances and conditions, in accordance with 33 U.S.C. 2005, resulting in the allision with the charted aid to navigation, causing substantial damage.

FACTUAL ALLEGATIONS – Violation of Law or Regulation

1. On July 29, 2000, Respondent allided with Bethel Bank Daymarker Number 19 (LLNR 12497), Marathon, FL, in violation of 33 C.F.R. 70, causing substantial damage.

FACTUAL ALLEGATIONS – Violation of Law or Regulation

1. On July 29, 2000, Respondent, as the Marine Employer and owner of Key West Steamboat Company, Inc., failed to ensure compliance with 46 C.F.R. 16 by failing to enroll one of his crew members, Ms. Chatlada Ketkaew, in a chemical testing program in accordance with 46 C.F.R. 16.

The relief sought by the Coast Guard is an “Order in accordance with 46 C.F.R. Table 5.569.” The hearing was sought to be held in March at Key West, FL.

On April 10, 2001, Mr. Hauck submitted his Answer (Response to Factual Allegations) and responded by denying the factual allegations. The jurisdictional allegations were not addressed.

The case was assigned to the Chief Judge by Order dated April 10, 2001 and to this Judge on May 1, 2001. The matter was set for hearing on June 21, 2001 at Key West by Order dated May 10, 2001. On June 6, 2001, the Investigating Officer filed the Witness and Exhibits List. The witnesses identified included: Douglas R. Campbell, Steven J. Golden, William Hauck, Bryan C. McCloskey, Bradley W. Venendaal, Bruce Lord, Chatlada Ketkaew, Lisa Noverola, Kevin Koch, and Edward Crittenden. The Respondent did not file a list of witness and exhibits.

The hearing was held as scheduled and the Investigating Officers and the Respondent (without counsel) appeared. The Coast Guard sponsored eight witnesses, including Mr. Hauck himself. During the hearing, the Coast Guard offered thirteen

exhibits which were admitted on the record (Exhibits IO 1-13). Mr. Hauck sponsored one witness and three exhibits were admitted (Exhibits Respondent A-C). During the hearing, an issue arose as to the exact location of the replaced Bethel Bank Daymarker No. 19. In order to settle the controversy, I ordered the Investigating Officer to have the Coast Guard pinpoint the coordinates of the marker and submit the result in evidence. On June 29, 2001 that data was submitted and served on the Respondent. No objection to that ten page document has been received. Accordingly, it is marked as Exhibit IO-14 and admitted.

In the Briefing Order issued July 19, 2001 initial briefs were due for filing on August 23 and replies on September 7, 2001. The Investigating Officer submitted an Initial Brief by facsimile on August 17, 2001. The Respondent did not submit an Initial Brief but he submitted a Reply Brief on September 6, 2001.

II.

STATUTES AND REGULATIONS INVOLVED

1. This proceeding is governed by the Administrative Procedure Act pursuant to 46 U.S.C. 7702, which reads:

§ 7702. Administrative procedure

(a) Sections 551-559 of title 5 apply to each hearing under this chapter about suspending or revoking a license, certificate of registry, or merchant mariner's document.

2. 46 U.S.C. §§ 7701-7705 sets out the general procedures governing the suspension and revocation of merchant mariners' licenses and documents. 46 U.S.C. § 7703 provides in pertinent part:

§ 7703. Bases for suspension or revocation

A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder—

- (1) when acting under the authority of that license, certificate, or document—
 - (A) has violated or fails to comply with this subtitle [46 USCS §§ 2201 et seq.], a regulation prescribed under this subtitle [46 USCS §§2101 et seq.], or any other law or regulation intended to promote marine safety or to protect navigable waters; or
 - (B) has committed an act of incompetence, misconduct, or negligence; . . .

3. The term Negligence is defined at 46 C.F.R. § 5.29 as follows:

§ 5.29 Negligence.

Negligence is the commission of an act which a reasonable and prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonable and prudent person of the same station, under the same circumstances, would not fail to perform.

4. Navigation equipment is discussed in pertinent part in the following relevant regulations of 46 C.F.R.:

Subpart D—Navigation Equipment

§ 184.402 Compasses.

(a) Except as otherwise provided in this section every vessel must be fitted with a suitable magnetic compass designed for marine use, to be mounted at the primary operating station.

§ 184.420 Charts and nautical publications.

(a) As appropriate for the intended voyage, a vessel must carry adequate and up-to-date:

- (1) Charts of large enough scale to make safe navigation possible.

5. The Inland Navigational Rules, which were enacted on December 24, 1980 and became effective on December 24, 1981, provide in part at 33 USC § 2005:

§ 2005. Look-out (Rule 5)

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

6. 33 C.F.R. § 70 (Interference with or Damage to Aids to Navigation) provides in part:

Subpart 70.05—Collision With or Damage to Aids to Navigation

§ 70.05-1 General provisions

No person shall take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any aid to navigation established and maintained by the United States.

7. Part 16 of Title 46 Code of Federal Regulations describes the minimum standards to be used to test for the use of dangerous drugs in the maritime industry. The following rules provide in part:

§ 16.105 Definitions of terms used in this part.

(b)(4) *Marine employer* means the owner, managing operator, charterer, agent, master, or person in charge of a vessel, other than a recreational vessel.

§ 16.210 Pre-employment testing requirements

(a) No marine employer shall engage or employ any individual to serve as a crewmember unless the individual passes a chemical test for dangerous drugs for that employer.

§ 16.230 Random testing requirements.

(a) Marine employers shall establish programs for the chemical testing for dangerous drugs on a random basis of crewmembers on inspected vessels who:

- (1) Occupy a position, or perform the duties and functions of a position, required by the vessel's Certificate of Inspection;
- (2) Perform the duties and functions of patrolmen or watchmen required by this chapter; or,

(3) Are specifically assigned the duties of warning, mustering, assembling, assisting, or controlling the movement of passengers during emergencies.

§ 16.240 Serious marine incident testing requirements.

The marine employer shall ensure that all persons directly involved in a serious marine incident are chemically tested for evidence of dangerous drugs and alcohol in accordance with the requirements of 46 C.F.R. 4.06.

III.

FINDINGS OF FACT

1. William C. Hauck is the holder of Merchant Mariner's License Number 811332 issued by the United States Coast Guard on April 23, 1997. It authorizes Mr. Hauck to serve as "MASTER NEAR COASTAL STEAM OR MOTOR VESSELS OF NOT MORE THAN-100-GROSS TONS."

2. The M/V ST. LUCIE (D1036416) is 64.5 feet in length which displaces 51 gross tons (Exhibit IO-11). The vessel is owned and operated by Key West Steamboat Co. Inc., Marathon, FL. A Certificate of Inspection was issued to the vessel on November 9, 1999. The manning requirements set out thereon include a Coast Guard licensed Master and two authorized deckhands. The vessel is configured as a paddle wheel steamboat and is restricted to operation in the "... Atlantic Ocean and Gulf of Mexico between Melbourne, Key West and Cape Romano Florida, not more than three (3) miles from shore." (Id.)

3. Mr. Hauck is the owner of Key West Steamboat Co. Inc. and the ST. LUCIE. (Exhibit IO-13 and Transcript (hereinafter TR.) at 176-77, 213).

4. On July 29, 2000 the vessel departed the Buccaneer Resort in Marathon, FL for a two-hour sunset cruise to Moser Channel at approximately 1905 hours. (Exhibit IO-12 and TR. 150). The Master of the ST. LUCIE during the excursion was William C. Hauck. (TR. 150).

The other members of the crew were Bruce A. Lord and Chatlada Ketkaew. (Exhibit IO-1 and TR.104, 114).

5. There were six other persons aboard the vessel including four "paying" passengers and two "free" riders. (TR 175).

6. Captain Hauck was in the wheelhouse and in command of the vessel as the ST. LUCIE proceeded three to four miles toward Moser Channel where the passengers "watched the sunset." Then the vessel "turned around and came back." (TR. 62, 106). During the excursion a squall was encountered and the crew took shelter behind the wheelhouse. (Tr. 105-106). Neither of the crew members were called to assist the Master in the wheelhouse or ordered to act as a lookout prior to the allision. (TR. 106, 115).

7. The weather became windy and rainy and the Master closed the pilothouse windows on the port side. (TR. 151). He proceeded to steer the vessel with his head out the starboard windows. There were no windshield wipers on the vessel. (TR. 152). At that point the vessel which was proceeding at approximately six knots, hit the Bethel Bank Daymarker No. 19 on the starboard quarter causing the vessel to list. (TR. 73). The Daymarker was bent over and impaled into the vessel at a 30-40 degree angle. (TR. 32-33).

8. The Bethel Bank Daymarker is marked on NOAA Chart 11452 Florida Keys Alligator Reef to Sombrero Key, 19th Edition, November 22, 1997. (Exhibit IO-2). The marker had been on station since at least October 20, 1997 when Officer Stephen Golden, Florida Fish and Wildlife Conservation Commissioner entered its coordinates into his GPS. (TR 62).

9. Immediately after the allision, the Respondent notified the Coast Guard Station at Marathon. BM2 Bryan McCloskey received the call at approximately 9:00 PM. Five minutes later two response vessels got underway including a 21-foot rigid hull inflatable and a 41-foot

utility boat. (TR. 72). McCluskey arrived on the scene approximately 13 minutes after he received the call. (TR. 85). During this time, the weather was clear, it was dark and the seas were less than a foot. (TR. 73).

10. At the scene, the Coast Guard took nine people off the vessel while one of the officers went aboard the ST. LUCIE to inspect the damage. (TR. 73). The passengers wore life jackets, were nervous, and seemed to be inebriated. (TR. 73-74).

11. LT Douglas Campbell, Supervisor of Marine Safety Detachment Marathon, was notified of the incident at approximately 22:00 and arrived on scene approximately 1-1.5 hours later. (TR. 38-39). At that time, the weather was clear with a light breeze and intermittent clouds. Evidence of passing thunderstorms could be seen in the distance. (TR. 33). LT Campbell did an inspection of the entire vessel and stated, “. . . I didn’t notice any charts out, I didn’t notice any spotlights, any additional equipment that night.” (TR. 34).

12. The ST. LUCIE did not have a compass on board at any time during the excursion prior to the allision. (TR. 157).

13. Chatlada Ketkaew, a member of the crew, did not have a drug free certificate at the time of the excursion and had not taken a pre-employment drug test. (TR. 116). She took the drug test a few days later on August 2, 2000 after the incident here. (Exhibit IO-3).

14. The vessel was ultimately towed to a shipyard at Ft. Lauderdale where the damage to the vessel from the allision amounted to \$124,458.75. (TR. 96).

15. The cost of replacement of the Bethel Bank Daymarker No. 19 was \$12,869.46. (Exhibit IO-10).

16. No persons were injured in the allision and no oil was spilled into the water.

IV.

OPINION

A. General

The Coast Guard has jurisdiction over Respondent and this matter pursuant to 46 U.S.C. § 7703, which states that a Merchant mariner's document may be suspended or revoked for negligence and violation of law or regulation. The Coast Guard has the burden of proving the allegations of the Complaint. 33 C.F.R. § 20.702. The standard of proof applicable to this proceeding is that the case must be proved by a preponderance of the evidence. 33 C.F.R. § 20.701. See also Appeal Decision Nos. 2468 (LEWIN); 2477 (TOMBARI); Dept. of Labor v. Greenwich Collieries, 512 U.S. 267 (1994); Steadman v. SEC, 450 U.S. 91, 101-103 (1981). The proceeding is conducted under the provisions in 33 C.F.R. Parts 20, 46 C.F.R Part 5, and the Administrative Procedure Act, 5 U.S.C. § 551 *et. seq.*

B. Allegations of Negligence

1. The first allegation is that the "Respondent was acting as Master of the M/V ST LUCIE, when said vessel allided with Bethel Bank Daymarker Number 19." There is no serious doubt on this record that William C. Hauck was the Master of the ST. LUCIE at all pertinent times. Indeed, Respondent candidly admitted that he was the Master of the vessel during the voyage. (TR. 149-150). Mr. Hauck holds a 100 ton Master's License issued by the Coast Guard. (TR. 149). The Certificate of Inspection (hereafter COI) of the vessel requires that it be manned by an appropriately licensed Master. Thus, Respondent was serving under the authority of his license aboard the ST: LUCIE and in command and control of the vessel when the allision occurred.

2. It is now well established that where a moving vessel collides with a fixed object, such as a daymarker, a presumption arises to establish a prima facie case of negligence against the moving vessel. See Woods v. U.S., 681 F.2d 988 (5th Cir. 1982); Commandant v. Murphy, NTSB Order No. EM-139 (1987); Appeal Decisions 2594 (GOLDEN)(1997) p. 3; 2211 (DUNCAN), 2418 (DOUGHERTY), 2455 (WARDELL), 2457 (YOUNG), 2524 (TAYLOR), *aff'd*, NTSB Order No. EM-174 (1993). As the Vice Commandant stated in GOLDEN, “. . . allisions ‘simply do not occur in the ordinary course of things unless the vessel has been mismanaged.’” See also Patterson Oil Terminals v. The Port Covington, 109 F.Supp. 953, 954 (E.D. Pa. 1952), *aff'd*, 208 F.2d 694 (3d Cir. 1953). Moreover, this presumption has been upheld in Coast Guard suspension and revocation proceedings against the navigation of a vessel involved in an allision. See (GOLDEN) *supra*. The Respondent can rebut this presumption by showing a “‘credible, nonfault explanation’ for the allision.” 2588 (LASCORA) (1997). p. 3. See also Commandant v. Murphy, NTSB Order No. EM-139 (1987).

On the record here, it is clear that the Respondent, while serving as Master of the ST. LUCIE on July 29, 2000 at approximately 21:15 allided with Bethel Bank Daymarker No. 19 causing severe damage to the vessel and destroying the marker. See “Florida Boating Accident Investigation” (Exhibit IO-1); “Report of Marine Accident, Injury or Death” (Exhibit IO-12); Testimony of LT Douglas Campbell (TR. 32-33); Bryan McCluskey (TR. 73); and William Hauck (TR. 151). Thus, the Coast Guard has successfully raised the presumption of negligence adverse to the Respondent in this case.

The Respondent has claimed that during the voyage the weather became stormy and he did not see the daymarker due to heavy rain and wind. He testified that the ST. LUCIE did not have windshield wipers and thus he had to position his head out the starboard window in the

wheelhouse in order to see forward. (TR. 151). Yet there were two other crew members on the vessel at the time and neither was ordered to render assistance by serving as a look-out. Indeed, both crew members were huddled behind the wheelhouse out of the rain with no opportunity to see ahead of the vessel. The Respondent's difficulty seeing out the wheelhouse windows made it imperative that a look-out be stationed to warn of obstacles or traffic ahead. Clearly the Respondent's failure to do so and to proceed blindly ahead constituted negligence under these circumstances.

The Respondent has not come forward with any reasonable, no fault explanation for his failure to abide by this most basic maritime requirement, i.e. to have the ability to see ahead in a storm while underway and in command of a passenger vessel.

3. The Respondent has urged that he was operating a "promotional sunset cruise" and that there were no paying passengers. (TR. 152, 175). That position directly conflicts with his own written statement submitted to the Coast Guard immediately after the casualty that there were "4 passengers (paid) - 2 free - 3 crew." (Exhibit IO-12). In any event, the law is clear, that the ST. LUCIE is a certificated passenger vessel and when underway, must comply with requirements of its Certificate of Inspection. Indeed, as the Investigating Officer points out in his post-hearing pleading (p. 8), any departure from the vessel's COI involving excursions with six or less passengers must be specifically provided on the Certificate as a specific endorsement. See 46 C.F.R. § 176.114. There is no such endorsement on the ST. LUCIE's Certificate of Inspection. See Exhibit IO-11. This vessel was operating under its Certificate of Inspection at the time the allision occurred.

4. With regard to the question of whether Respondent had appropriate charts on the vessel at the time of the incident, I am not persuaded that the evidence in this regard meets the

standard of proof applicable to this proceeding: namely, that the allegations be proven by a preponderance of the evidence. The Coast Guard's evidence in this regard is founded on the testimony of LT Campbell as follows (TR. 33-34):

Q. When you did your walk around the vessel, what type of navigation equipment or navigation tools did you see or did you not see?

A. We conducted a complete walk through the vessel, starting with the structural damage, inspecting all the compartments, doing a base walk, and then moving up top, went inside the bridge area. I just noticed the standard equipment that was available during normal inspection, which was a radio, you know, light switch. I think – I didn't notice any charts out, I didn't notice any spotlights, any additional equipment that night.

On the other hand, Respondent testified that he did have a chart (TR. 157):

Q. What were you navigating with? What were you using to guide you, to navigate, while you were making your voyage?

A. Flat seat of the pants, as it said in my answer to you.

Q. So did you have a chart in front of you?

A. Yes, I had a chart in front of me. But I don't have any GPS or loran that's required to be on the boat, or a compass for that matter to aid me in utilizing the chart.

LT Campbell's failure to notice any charts does not, of itself, prove that there were no charts aboard the vessel. He should have asked Respondent to produce the charts or received a denial in connection with that request. It should be noted however, that the vessel did not have a compass, GSP or loran and thus Hauck's use of the chart would have severely been limited. Also, the Respondent testified that he was not using a chart as follows: "I was terminating an unsafe voyage due to heavy weather, with absolutely no navigation aids whatsoever, flat seat of

the pants” (TR. 157). In view of the specific factual allegation asserted here however, regarding the absence of charts on the vessel, that assertion is not proved.

C. Allegations of Violation of Laws or Regulations

1. The first allegation under this charge is that Respondent “failed to maintain a proper look-out for the prevailing circumstances and conditions, in accordance with 33 U.S.C. 2005, resulting in the allision” The Vice Commandant has held that the adequacy of a look-out is a question of fact to be determined by the facts and circumstances of each case. See Appeal Decision 2581 (DRIGGERS) (1996) p. 5. And there are instances when a Master can serve as his own look-out. However, that was not the case under the circumstances here. The Respondent testified that (TR. 151):

The weather got lousy, gusts to 40-plus knots. I slid the pilothouse windows closed on the port side because the rain was blowing in through the windows. I had my head out the starboard windows. Give or take, I felt it was time to terminate an unsafe voyage as it required I need to do. With that particular vessel and the trade she is in, she is a handful in the wind. And we struck -- I struck marker -- Bethel Bank Marker 19.

Two crew members testified that they were stationed behind the wheelhouse and neither was asked to act as look-out. (TR. 105-06, 115). They could not see forward from where they were stationed. (TR. 105).

In light of the allision with the fixed and charted daymarker, the presence of a look-out to aid the Master under these conditions was imperative and probably could have avoided the allision. The Respondent’s actions violated Rule 5 of the Inland Navigation Rules. See Appeal Decisions 2576 (AILSWORTH) (1996) pp. 13-14 and 2587 (HUDSON) (1997) p. 3.

2. The record in this case is clear that Captain Hauck, while in command of the ST. LUCIE, hit Bethel Bank Daymarker Number 19. Indeed the Respondent himself testified that he struck the marker as alleged by the Coast Guard. (TR. 151). Additionally, LT Douglas

Campbell testified that when he arrived on scene, the ST. LUCIE was impaled on the daymarker and “the vessel sustained damage to the port side on the forward railing.” (TR. 32). The damage to the daymarker amounted to \$ 12,869.46. (Exhibit IO-10). Indeed, the marker was so severely damaged that it had to be replaced.

Moreover, 33 C.F.R. § 70.05 provides that “No person shall . . . destroy . . . injure . . . or in any manner whatever impair the usefulness of any aid to navigation established and maintained by the United States.” Clearly, Respondent violated this provision too as described above.

3. The final allegation alleges that Respondent failed to ensure compliance with 46 C.F.R. § 16 by failing to enroll Chatlada Ketkaew in a chemical testing program. That provision states that “No marine employer shall engage or employ any individual to serve as a crewmember unless the individual passes a chemical test for dangerous drugs. . . .” 46 C.F.R. § 16.210. A marine employer is defined as the “owner, managing operator, charterer, agent, master, or person in charge of a vessel, other than a recreational vessel.” 46 C.F.R. § 16.105. The vessel involved here is the ST. LUCIE and that vessel holds a Certificate of Inspection authorizing it to engage in passenger service. The manning requirements require a licensed master and two deckhands. (Exhibit IO-11). On July 29, 2000 and all pertinent times, Ms. Chatlada Ketkaew was serving as a deckhand aboard the vessel. She testified that she had been hired by Respondent who paid her to serve as a member of the crew. (TR. 114-118). She testified further that she had not taken a chemical test for dangerous drugs prior to the time of the allision. (TR. 116). She also testified that Respondent was the person operating the vessel at the time of the allision. (TR. 114). The Respondent therefore failed to enroll this crewmember in a

chemical testing program as required by 46 C.F.R. § 16.210 and thus, unlawfully employed Ms. Ketkaew on this excursion.

Mr. Hauck asserts that Ms. Ketkaew is somehow an independent agent and he was not responsible for her enrollment in a drug program. Under the regulations cited above and the Certification of Inspection issued to the vessel, she was serving as a crew member and the chemical testing provisions imposed by the Coast Guard on the owner, master or operator of a vessel apply to him in these circumstances.

D. Other Matters

1. In his reply brief filed on September 6, 2001, Mr. Hauck objects to the testimony of Officer Steven Golden and LT Douglas Campbell for the alleged reason they were not identified on the witness list served prior to hearing. That assertion is incorrect since both individuals were identified on that list. Additionally, Mr. Hauck himself did not submit a witness or exhibit list yet he was allowed to sponsor witnesses and did in fact call LT Steven Keel. Additionally, I entered into evidence three exhibits which Mr. Hauck offered.

2. With regard to NOAA Chart 11452, Alligator Reef to Sombrero Key, 19th edition, printed 1997, the Investigating Officer submitted a motion at the hearing to add this chart to his exhibits. (TR. 13). Mr. Hauck did not object to that request at the time and it was granted. In fact, when the chart was admitted, Mr. Hauck was asked whether he had any questions about the chart and he replied "None whatsoever." (TR. 184). His objection on reply brief is untimely.

3. Mr. Hauck also asserts in his reply brief that there may have been a mechanical failure which caused the allision. See Reply Brief at page 2. There is no evidence on this record of any mechanical failure. Mr. Hauck never made that assertion at the hearing or in the report filed at the time of the incident.

4. Mr. Hauck claims that the location of Bethel Bank Daymarker No. 19 was uncertain since various charts and reports indicate different locations. However, Mr. Hauck stated to Officer Golden at the scene of the incident immediately after the allision that he “didn’t know marker #19 was there and was not even looking for it when he struck it.” (Exhibit IO-1 and TR. 62). Moreover, immediately before the allision Mr. Hauck was navigating “Flat seat of the pants” (TR. 157). He also admits that the vessel did not have a compass or other navigation aids so that his use of the chart would have been severely limited. (Id). Finally, there was no indication prior to the allision that the marker was off station. Nor is there any reliable evidence submitted at the hearing that the location of the marker on NOAA Chart 11452 was incorrect. See Government’s Proposed Findings of Fact and Conclusions of Law, p. 2.

V.

ULTIMATE FINDINGS AND CONCLUSIONS OF LAW

1. The allegation of Negligence against the Respondent for failure to properly navigate the ST. LUCIE with due caution contributing to the allision of the vessel with the charted Daymarker #19 and resulting in substantial damage is PROVED by a Preponderance of the Evidence.

2. The allegation that the Respondent failed to maintain a proper lookout for the prevailing circumstances and conditions in violation of 33 USC 2005 is Proved by a Preponderance of the Evidence.

3. The allegation that the Respdnent allided with the Bethel Bank Daymarker #19 in violation of 33 CFR 70 is Proved by a Preponderance of the Evidence.

4. The allegation that the Respondent as Marine Employer and owner of Key West Steamboat Company Inc. failed to ensure compliance with 46 CFR 16 by failing to enroll one of

his crew members, Ms. Chatlada Ketkaew, in a chemical testing program in accordance with 46 CFR 16 is Proved by a Preponderance of the Evidence.

VI.

ORDER

1. **IT IS HEREBY ORDERED** that the Respondent's Coast Guard License No. 811332 and all other licenses, documents, and authorizations whatsoever used to him by the Coast Guard are hereby Suspended **OUTRIGHT** for twelve (12) months.

2. **IT IS FURTHER ORDERED** that the Respondent is to surrender his Coast Guard License and all Coast Guard authorizations to the Coast Guard at Marathon or Key West immediately. He is no longer authorized to operate any vessel under the authority of that license. Failure to comply with this order immediately will subject the Respondent to civil and criminal penalties.


PETER A. FITZPATRICK
Administrative Law Judge
United States Coast Guard

Done and dated October 2, 2001 at
Norfolk, Virginia