

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD

Complainant

vs.

HAROLD G. WALSH, III,

Respondent.

Docket Number CG S&R 02-0125
CG Case No. 1603367

DECISION AND ORDER

Issued: July 3, 2002

Presiding: Hon. Parlen L. McKenna, Administrative Law Judge

All parties having jointly moved, by written motion dated June 28, 2002, and filed with the Administrative Law Judge on July 1, 2002, pursuant to 33 C.F.R. §20.502, for the approval of and entry of an agreed decision and order in this case, and the parties having stipulated and agreed to the below facts, the Administrative Law Judge makes the following findings of facts and conclusions of law:

1. Respondent Harold G. Walsh, III, ("Walsh"), at all material times, is and was the holder of U.S. Coast Guard Master's License No. 038881.
2. Walsh, at all material times, is and was a resident of Haleiwa, Hawaii.

3. On February 8, 2002, and prior thereto, Walsh was employed by Matson Navigation Company, ("Matson"), and served as Chief Mate aboard its inspected vessel, SS LIHUE, as required by law.

4. On February 8, 2002, SS LIHUE was moored at Berth 207, Los Angeles Harbor.

5. On February 25, 2002 the USCG Marine Safety Office, Honolulu, filed and properly served a complaint against Walsh under 46 U.S.C. §7703, which alleged that Walsh, on February 8, 2002, violated 33 C.F.R. §95.045 aboard SS LIHUE, by virtue of the allegations: (a) that Walsh was directed to submit to a reasonable cause breath alcohol test pursuant to 33 C.F.R. §95.035, and (b) that, pursuant to that test, the alcohol concentration in Walsh's blood was in excess of 0.04 percent, an alleged violation of 33 C.F.R. §95.045.

6. On March 21, 2002, Walsh filed and served a written answer to the above charges, in which he denied all material allegations related to the February 25, 2002 charge of violation of regulation, alleged forty-four (44) affirmative defenses, of fact or law, twenty (20) of which alleged that the alcohol breath test given Walsh on February 8, 2002 failed to comply with thirteen (13) breath test regulations in 49 C.F.R. part 40.

7. On April 29, 2002, the Coast Guard moved to amend the February 25, 2002 charge against Walsh by deleting it and substituting two (2) charges: (a) alleged misconduct on February 8, 2002 by Walsh while ashore under 46 C.F.R. §5.27, by virtue of the claim that he made decisions and gave orders to Matson Terminal's Night Superintendent while intoxicated, by observation of the Night Superintendent during phone conversations with Walsh, and (b) alleged violation of 33 C.F.R. §95.045 on February 8, 2002 by virtue of Walsh's being

aboard SS LIHUE while intoxicated, by observation of the Master and Chief Engineer of that vessel.

8. On May 17, 2002, Walsh, by written answer, denied all material allegations of the April 29, 2002 Coast Guard charges, and alleged twenty-five (25) affirmative defenses of fact or law to the charge of misconduct, and twenty-six (26) affirmative defenses of fact or law to the charge of violation of regulation.

9. On June 14, 2002, Walsh filed a Motion to Dismiss the Coast Guard's April 29, 2002 charges on numerous alternative defenses of fact and law.

10. On June 24, 2002, pursuant to the Administrative Law Judge's April 30, 2002 scheduling order, the hearing in this matter commenced in Honolulu, Hawaii, and continued on June 26, 2002 and June 27, 2002, with evidence having been submitted on each day.

11. On the morning of June 26, 2002, the parties, by written stipulation, filed with the Administrative Law Judge on that date, agreed to the dismissal with prejudice of the Coast Guard's February 25, 2002 breath test charge against Walsh.

12. On June 24, 2002, the Coast Guard presented testimony of Stevedore Services of America ("SSA") employees Robert Sponheim, Laura Pribanick, and Ryan Baird, who testified, among other things, that each had spoken by phone with Walsh on the evening of February 8, 2002, that Walsh was verbally abusive to each of them, and that Walsh's speech was slurred in his telephone conversations with them, which indicated to them that Walsh was under the influence of alcohol.

13. On June 26, 2002, the Coast Guard presented live testimony of Thomas M. Stapleton, ("Stapleton"), Master of SS LIHUE on February 8, 2002, who testified, among

other things, that he observed Walsh aboard SS LIHUE on that evening to be intoxicated. Thereafter, on June 26, 2002, the Coast Guard presented live testimony of Gary Fleegeer, Senior Vessel Manager of Matson on February 8, 2002, who testified, among other things, about phone conversations concerning Walsh with Stapleton, his wife, and Eileen Kuljis, Matson's Los Angeles terminal manager.

14. On June 27, 2002, Walsh presented video taped testimony of Barry Pettyjohn, a supervisor for Dockside Machinery, a Matson contractor, who testified, among other things, that he observed Walsh aboard SS LIHUE on the evening of February 8, 2002, and that Walsh did not appear to be intoxicated. Thereafter on June 27, 2002, Walsh presented the video taped depositions of Mike Minchinton, a friend of Walsh's and Brett Barnes, Manager of Duke's Restaurant. These witnesses testified, among other things, that they observed Walsh at Duke's Restaurant in the early to mid evening of February 8, 2002, and that Walsh did not appear intoxicated at that time.

15. On June 27, 2002, immediately prior to scheduled telephone testimony of Walsh's witness, Mark Martinson (who in his affidavit, filed with Walsh's Motion to Dismiss, stated, among other things, that he continually observed Walsh at Duke's Restaurant during the period 5:30-9:00 p.m. on February 8, 2002, and that Walsh was not intoxicated during that period), the parties orally agreed to a settlement of this matter for a dismissal with prejudice of the Coast Guard's April 29, 2002 charges, conditional upon Walsh's undergoing fifteen (15) hours of anger management counseling and successful completion of the Dale Carnegie course—"How to Win Friends and Influence People."

16. This proposed settlement is considered reasonable and acceptable under the circumstances of his case in light of the following facts:

a. Walsh's June 14, 2002 Motion to Dismiss raises significant legal and factual challenges to the Coast Guard's April 29, 2002 charges. The motion has yet to be responded to by the Coast Guard, pursuant to a ten (10) day extension of time to respond to the motion, granted by the Administrative Law Judge on June 24, 2002.

b. The evidence so far presented by both parties on the fact issue of whether Walsh was intoxicated on February 8, 2002, is highly conflicting, and subjective, and the outcome of that fact issue is based solely upon the Administrative Law Judge's determinations of the credibility of both side's witnesses.

c. The Coast Guard's evidence from the above SSA witnesses, who spoke by phone with Walsh on the evening of February 8, 2002, indicates that Walsh lost his temper and was verbally intemperate with these witnesses during some of those phone conversations, which Walsh does not dispute. Such conduct is not calculated to achieve harmonious relationships required for the safe loading and stowage of a container vessel. Walsh recognizes this fact and has voluntarily agreed to send written apologies to the affected SSA employees.

d. From and after March 5, 2002, it was not the intention of the Coast Guard to suspend or revoke Walsh's license, rather to document the incident through a warning or admonishment.

17. The agreed conditions to the dismissal of the April 29, 2002 charges will promote future safety in Walsh's future maritime employment, and are therefore in the public interest.

18. The parties, through their respective representatives, whose signatures appear below, stipulate and agree:



a) To waive: (i) any further procedural steps before the Administrative Law Judge, and (ii) all rights to seek judicial review, or otherwise challenge or contest the validity of this decision, and

b) That this decision will hold the same force and effect as would a decision made after a full hearing, and

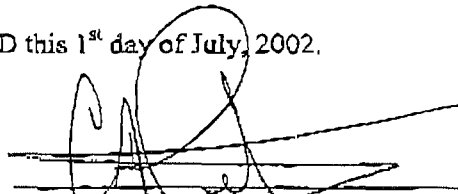
c) That this decision resolves all matters needed to be adjudicated.

Based on the foregoing, it is HEREBY ORDERED:

1. Upon Walsh's supplying the USCG Marine Safety Office, on or before June 30, 2003, with satisfaction documentary proof that he has successfully completed both (a) not less than fifteen (15) hours of anger management counseling by a qualified Hawaii counselor, and (b) the twelve (12) week Dale Carnegie course, "How To Win Friends and Influence People," both to be taken at Walsh's expense, the U.S. Coast Guard Marine Safety Office Honolulu, shall promptly file and serve in this case a certification that conditions (a) and (b) have been met, and

2. Upon the filing of said certification, the Coast Guard's April 29, 2002 charges against Walsh shall stand dismissed with prejudice, effective July 1, 2002.

AGREED TO and SO STIPULATED this 1st day of July, 2002.



LCDR. CRAIG PETERSEN USCG
Chief, Investigations Dept.
U.S Coast Guard Marine Safety Office,
Honolulu, Hawaii
For the U.S. COAST GUARD



GEORGE W. ASHFORD, JR.
Attorney for Respondent
HAROLD G. WALSH, III

DONE AND DATED on July 3, 2002
Alameda, California



HON. Parlen L. McKenna
Administrative Law Judge

