

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

UNITED STATES COAST GUARD

Complainant

vs.

JOHNNY L. KNOTT

Respondent.

Docket Number CG S&R 02-0105
CG Case No. 1486575

DECISION AND ORDER

Issued: November 2, 2002

Issued by: Archie R. Boggs, Administrative Law Judge

APPEARANCE:

LT Chris Dougherty
United States Coast Guard
Marine Safety Office New Orleans
1615 Poydras Street
New Orleans, LA 70112

And

Mr. Robert W. Foster, Senior Investigating Officer
United States Coast Guard
Marine Safety Office Mobile
150 N. Royal Street
Mobile, AL 36602

For the Coast Guard

Mr. & Mrs. Johnny L. Knott

For the Respondent

PRELIMINARY STATEMENT

The United States Coast Guard (“Coast Guard” or “USCG”) initiated this administrative action seeking revocation of Merchant Mariner License Number 847354 (“license”) issued to Respondent Johnny L. Knott by filing a complaint dated February 14, 2002. The complaint alleges that the Respondent committed two counts of violation of law or regulation under 46 USC 7703 and 46 CFR 5.53. Both allegations stem from the Respondent’s operation of the M/V MS PAULA (an uninspected towing vessel) on September 12, 2001 while the Respondent’s license was on deposit with the Coast Guard pending completion of a drug rehabilitation program (commonly referred to as “cure”) in accordance with a December 1999 Consent Order and Settlement Agreement entered into between the parties to resolve another case captioned USCG v. Johnny L. Knott, 99-0250 (USCG ALJ Consent Order Dec. 27, 1999), involving the Respondent’s alleged refusal to submit to random drug testing.

The factual allegations in the complaint read as follows:

Violation of Law or Regulation Specification 1

The Coast Guard alleges that the Respondent:

1. On September 22, 1999, wrongfully refused to submit a urine specimen for a random drug test ordered by Mike Hooks Inc., a marine employer.
2. On December 16, 1999, executed a settlement agreement and good faith deposit of his license (847345). The good faith deposit expressly stated that:

“In accordance with the attached Consent Order, I am depositing my Coast Guard issued license with the Coast Guard. I understand that by depositing this document with the Coast Guard I am demonstrating that I will not be employed in any position requiring said document. This is a temporary agreement that may be terminated at any time by either the Coast Guard or myself. By entering into this agreement I do not waive my rights.”

3. On December 27, 1999, Administrative Law Judge Archie R. Boggs issued a consent order approving the settlement agreement executed on December 16, 1999. The consent order revoked the Respondent’s license, but stayed revocation while he was pursuing cure.

4. At approximately 3:00 A.M. on September 12, 2001, was serving as operator onboard the M/V MS. PAULA (293720) when it struck a submerged pipeline and subsequently sank.
5. This constitutes a violation of Title 46 United States Code 8904 and Title 46 Code of Federal Regulations Section 15.610 since the Respondent had direction and control of a vessel which is required to be operated by a person licensed by the United States Coast Guard.

Violation of Law or Regulation Specification 2

The Coast Guard alleges that the Respondent:

1. At approximately 3:00 A.M. on September 12, 2001, was serving as operator onboard the M/V MS. PAULA (293720) when it struck a submerged pipeline and subsequently sank.
2. The Respondent did not display his Coast Guard license (847354), within 48 hours after employment, on said vessel for which it was required.
3. This constitutes a violation of Title 46 United States Code 7110.

On March 8, 2002, the Respondent filed an answer denying all jurisdictional and factual allegations and raised the following arguments as a defense:

1. According to the contract specifications of contract DACW01-01-D0004 administered by the U.S. Army Corps of Engineers, a non-licensed operator may operate a vessel 26 feet or longer used at the job site only within 1 mile of the dredge operations.
2. His supervisor instructed him to operate the dredge tender at the work site in the Apalachicola River from nautical mile 36.0 to nautical mile 39.0.
3. The employer assumed that the Corps of Engineers had been granted a specific job site variation from the Coast Guard since all contracts contain a clause authorizing non-licensed operators to operate vessels within 1 mile of the job site.
4. He has complied with consent order and settlement agreement issued in December 1999.

This case was subsequently assigned to this judge for adjudication. A hearing was held in this matter on 20 September 2002 in Mobile, Alabama. The hearing was conducted in accordance with the Administrative Procedure Act, as amended and codified at 5 U.S.C. §§ 551-559, and Coast Guard procedural regulations located at 33 C.F.R. Part 20.

After opening statements by both sides, the Coast Guard introduced the telephonic testimony of three witnesses:

- 1) Chief Petty Officer Jim Fayard of the USCG Marine Safety Security Team in Galveston, TX, who investigated the casualty on September 12, 2001 when the M/V MS. PAULA struck the submerged pipeline;
- 2) LT(jg) Charles C. Culotta of the USCG Marine Safety Office in New Orleans, who served as the Investigating Officer in the prior case involving the consent order and settlement agreement between the Coast Guard and Respondent Knott in USCG v. Johnny L. Knott, 99-0250 (USCG ALJ Consent Order Dec. 27, 1999);
- 3) Wolfgang R. Muller, Supervisory Construction Representative for the U.S. Army Corps of Engineers; and
- 4) Thomas J. Beckham, Civil Engineer for the U.S. Army Corps of Engineers.

Six (6) Coast Guard exhibits were also introduced and admitted into evidence as follows:

Agency Exhibit 1 - Statement by CPO Jim Fayard dated November 5, 2001

Agency Exhibit 2 - Statement of Timothy J. Dykes dated September 13, 2001

Agency Exhibit 3 - Statement of Timothy J. Dykes (undated)

Agency Exhibit 4 - U.S. Certificate of Documentation for the M/V MS. PAULA

Agency Exhibit 5 - Excerpts from the M/V MS. PAULA logbook between the dates of July 24, 2001 and September 9, 2001

Agency Exhibit 6 - USCG Memorandum dated July 12, 2002 regarding Licensing Requirements for Towing Vessels Employed as Dredge Tenders

At the hearing, the Respondent testified on his own behalf and five (5) Respondent's exhibits were introduced and admitted into evidence:

Respondent Exhibit A - Pay Record and schedules for Inland Dredging Co., LLC

Respondent Exhibit B - Dredging Chain of Command/Job Descriptions of Inland Dredging Co., LLC

Respondent Exhibit C - Statement of Wolfgang R. Mueller

Respondent Exhibit D - Excerpt from Contract DACW01-01-D-0004

Respondent Exhibit E - Letter dated March 6, 2002 from James E. Mohead,
President of Inland Dredging Co., LLC.

After careful review of the facts in this case, I find that the Coast Guard has proved the allegations in the complaint by a preponderance of reliable and credible evidence. However, for reasons stated herein, I decline to revoke Respondent Knott's license.

The facts of this case are as follows:

FINDING OF FACT

1. Respondent Johnny L. Knott is the holder of Merchant Mariner's License number 847354, authorizing him to serve as a master of steam or motor vessels of not more than 100 gross tons upon Inland waters.
2. Respondent Knott has held a Coast Guard license for approximately fifteen (15) years.
3. Pursuant to a consent order approving a settlement agreement to resolve USCG v. Johnny L. Knott, 99-0250 (USCG ALJ Consent Order Dec. 27, 1999) involving the Respondent's alleged refusal to submit to drug testing, the Respondent's license was on good faith deposit with the Coast Guard pending completion of cure.
4. In entering into the settlement agreement and good faith deposit, the Respondent promised that he would not be employed in any position requiring use of a Coast Guard issued license.
5. The Coast Guard returned Respondent's license to him in April 2002, following completion of cure. Said license is up for renewal on October 30, 2002.
6. Respondent Knott is employed as a Deck Captain/Mate at Inland Dredging Company, LLC. (*Respondent Exhibit ("Ex. ") E*).

7. On September 12, 2001, while his license was on deposit with the Coast Guard and upon the request of his supervisor, Respondent Knott served as a dredge tender operator on board the M/V MS. PAULA in the Apalachicola River between Mile Markers 36.0 and 39.0. During which time the vessel hit a submerged pipeline and sank. (*Agency Ex. 1; Respondent Ex. C, E*).
8. The M/V MS. PAULA is a 47.9-foot U.S. documented uninspected towing vessel owned by Choctaw Transportation Co., Inc. bearing Official Number 293720 with a coastwise endorsement. The vessel is used in support of dredging operations and engages in moving pontoon barges, crane barges, and pipe barges up and down the river. (*Agency Ex. 4, 5*).
9. Clause 19b of Contract DACW01-01-D-0004, between Inland Dredging Company, LLC and the U.S. Army Corps of Engineers, provides in pertinent part:
 - b. All boat operators of boats 26 feet or longer and while used in a towing status for towing operations shall possess a current operator's license issued by the U.S. Coast Guard. **Vessels used at the job site only, within 1 mile of the dredge, shall not require a licensed operator** but, beyond this range, a licensed operator shall be required.(*Respondent Ex. D*) (Emphasis added).
10. Neither the U.S. Army Corps of Engineers nor Inland Dredging Company, LLC sought or applied for a job site specific variation from the Coast Guard, which would authorize an exemption from the manning requirements. (*Respondent Ex. E*).
11. Since institution of this administrative action and after learning that the terms of the dredging operation contract conflicts with Coast Guard law and regulations, the U.S. Army Corps of Engineers is modifying all of its dredging operation contracts and will eliminate the exemption that allowed non-Coast Guard licensed operators to operate vessels used within 1 mile of the job site.

12. The U.S. Army Corps of Engineers defines the job site as the area beginning from the Kelly dredge at Mile Marker 36.6 to the discharge site at Mile Marker 38.8 on the Apalachicola River, including the pipeline.

CONCLUSION OF LAW

1. Respondent Johnny L. Knott, and the subject matter of this hearing are within the jurisdiction of the United States Coast Guard in accordance with 46 USC 7703.
2. On September 12, 2001, Respondent Knott was the holder of License Number 847354 that was on good faith deposit with the Coast Guard pending completion of cure ordered in USCG v. Johnny L. Knott, 99-0250 (USCG ALJ Consent Order Dec. 27, 1999).
3. Specification 1 under the allegation of Violation of Law or Regulation is **PROVED**.
4. Specification 2 under the allegation of Violation of Law or Regulation is **PROVED**.

DISCUSSION

A. RESPONDENT KNOTT VIOLATED 46 USC 8904 AND 46 CFR 15.610 BY OPERATING THE M/V MS. PAULA WHILE HIS LICENSE WAS ON GOOD FAITH DEPOSIT WITH THE COAST GUARD PENDING COMPLETION OF CURE

For the most part, the facts of this case are not in dispute. During the hearing, Respondent Knott acknowledged that on September 12, 2001, his license was on deposit with the Coast Guard pending completion of cure. He also acknowledged that on September 12, 2001, he operated the M/V MS. PAULA on the Apalachicola River between Mile Markers 36.0 and 39.0. However, the Respondent argues that pursuant to clause 19b of Contract DACW01-01-D-0004 a Coast Guard license was not required for operation of the M/V MS. PAULA within 1 mile of the job site and that the vessel was operated pursuant to his supervisor's instruction. The Respondent's arguments are unavailing.

Pursuant to 46 USC 8904(a) and its implementing regulations codified at 46 CFR 15.610(a), any “towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding sheer) shall be operated by an individual licensed by [the Coast Guard].” This requirement is mandatory not discretionary. Insurance Co. of North America v. John J. Bordlee Contractors, Inc., 532 F. Supp. 774, 782 (E.D. La. 1982), *aff’d* 733 F.2d 1161 (5th Cir. 1984)(interpreting 46 USC 405, which is the precursor statute to 46 USC 8904). However, not all towing vessels at least 26 feet in length are subject to the manning requirements established in 46 USC 8904.

Under Coast Guard regulations, there are two exceptions to the manning requirement for towing vessels. The manning requirement “does not apply to any vessel engaged in assistance towing, or to any vessel of less than 200 gross register tons engaged in exploiting offshore minerals or oil if the vessel has sites or equipment so engaged as its place of departure or ultimate destination.” 46 CFR 15.610(a). Moreover, contrary to the Coast Guard 8th District’s position in its memorandum dated July 12, 2002 (see Agency Ex. 6), there is a work boat exclusion recognized by the Commandant for certain towing vessels. See Marine Safety Manual (“MSM”), Volume III, Marine Personnel, at p. 26-2, COMDT INST M16000.8B.

Primarily relying on the legislative history of the precursor statute to 46 USC 8904 (see U.S. Senate Committee on Commerce Report of June 27, 1972, H.R. 92-125, 92nd Cong., 1st Sess., 3), the Commandant has held that, as determined on a case-by-case basis:

Towing vessels not specifically engaged in the commercial towing service, **operating solely as work boats in dredging operations may be exempt from the manning requirements of 46 U.S.C. 8904.**

Marine Safety Manual (“MSM”), Volume III, Marine Personnel, at p. 26-2, COMDT INST M16000.8B (Emphasis added). However, this exclusion is narrowly construed. The caveat is that “vessels engaged to perform towing services, however intermittently, [are] required to be

operated by licensed individuals.” *Id.* A vessel is considered to be performing towing services if it is “engaged in or intending to engage in the service of pulling, pushing, or hauling alongside, or any combination of pulling, pushing, or hauling along side.” 46 USC 2101(40) (defining towing vessel). In Appeal Decision 2566 (WILLIAMS), the Commandant held that a vessel that was used “off shore and outside towing, ship assists in [the] harbor, and to tow petroleum barges” is a “towing vessel” within the meaning of 46 USC 8904(a) and thus required licensed personnel on board since the vessel was over 26 feet in length.

Based on the facts and circumstances of this case, the work boat exclusion is an unavailable defense. A review of the logbook for the M/V MS. PAULA indicates that the vessel was not operated solely as a “work boat.” See Agency Ex. 5. On the contrary, the M/V MS. PAULA was primarily used to tow pontoon barges, crane barges, and pipe barges up and down the river. *Id.* Therefore, in light of its size and manner in which it was used, the M/V MS PAULA was required to have a Coast Guard licensed individual in the capacity of Master or Mate on board while navigating the Apalachicola River.

Under 46 CFR 5.57(a), “[a] person employed in the service of a vessel is considered to be acting under the authority of a license . . . when the holding of such license . . . is required by law or regulation.” The Commandant has made it perfectly clear that it is unlawful for a respondent to serve under the authority of his license during the period of cure. See Appeal Decision 2634 (BARRETTA).

Mistake of law based upon a good faith reliance on the terms clause 19b of Contract DACW01-01-D-0004 is not a defense exonerating Respondent Knott from violating Coast Guard law and regulations. The fact that the respondent relied on a misstatement of law by public officials in a contract is not an excuse, unless the reliance was: (a) reasonable; (b) occurred in

good faith; and (c) the authority making the statement had actual authority to do so. See generally United States v. Gebhart, 441 F.2d 1261, 1265 (6th Cir. 1971); United States v. Barker, 546 F.2d 940, 946-947 (D.C. Cir. 1976); United States v. Tallmadge, 829 F.2d 767, 778 (9th Cir. 1987).¹

In this case, the U.S. Army Corps of Engineers has no authority to bind the Coast Guard. Therefore, the Coast Guard is not bound by the terms of clause 19b of Contract DACW01-01-D-0004. Likewise, the mere fact that Respondent Knott was merely acting on the behest of his supervisor when he operated the M/V MS. PAULA is no excuse. The Commandant has previously rejected a similar argument raised by a respondent in Appeal Decision 2524 (TAYLOR), where, as in this case, the evidence showed that the respondent assumed full navigational control of the vessel and its tow.

Consequently, I find that the Coast Guard has established by a preponderance of reliable evidence that Respondent Knott violated 46 USC 8904 AND 46 CFR 15.610 by operating the M/V MS. PAULA while his license was on good faith deposit with the Coast Guard pending completion of cure.

B. RESPONDENT KNOTT VIOLATED 46 USC 7110 BY FAILING TO DISPLAY HIS LICENSE WITHIN 48 HOURS AFTER EMPLOYMENT ON THE MV MS. PAULA

The Coast Guard has also established by a preponderance of reliable and credible evidence that Respondent Knott violated 46 USC 7110.

Under 46 USC 7110, “[e]ach holder of a license . . . shall display, within 48 hours after employment on a vessel for which that license is required, the license in a conspicuous place on the vessel.” Since Respondent Knott’s license was on deposit with the Coast Guard pending

¹ While the rule that ignorance of the law is no excuse typically involve criminal cases, the rule applies equally in civil cases. Barlow v. United States, 32 U.S. 404, 411 (1833).

completion of cure, he could and did not display his license on the vessel in a manner consistent with the requirements of 46 USC 7110.

C. REVOCATION IS NOT AN APPROPRIATE ORDER

Although the Coast Guard has established the allegations in the complaint, I decline to revoke Respondent Knott's license. I note that revocation is not a mandatory sanction.

Under 46 USC 7703 a license may be suspended or revoked "if the holder when acting under the authority of that license . . . has violated or fails to comply with . . . any law or regulation intended to promote marine safety or to protect navigable waters." The Table of Suggested Range of an Appropriate Order ("Table") codified at 46 CFR 5.569(d) suggests 1-3 months suspension for failure to comply with U.S. law or regulations. The Table serves as information and guidance intended to promote uniformity in orders rendered. 46 CFR 5.569(d). In determining the appropriateness of a sanction, exclusive authority and discretion rests with the ALJ. See 46 C.F.R. § 5.569(a); see also Appeal Decision 2427 (JEFFRIES), Appeal Decision 2452 (MORGANDE). Both aggravating and mitigating factors are considered when fashioning an appropriate order. See 46 C.F.R. 5.569(b).

Although mistake of fact is not a defense excusing a violation of Coast Guard laws and regulations, it has been recognized as a mitigating factor justifying a lesser order where the respondent makes a mistake while acting in good faith. In Appeal Decision 1277 (OLSON), the Commandant modified an order of revocation and ordered a 12-month outright suspension where a respondent stood an oiler watch on board a merchant vessel while his document was suspended. In reducing the order, the Commandant noted that the union and the shipowner were contributory at fault for not requiring the respondent to produce his document as a condition of employment and the respondent made a mistake while acting in good faith.


While the fact that Respondent Knott was operating the M/V MS. PAULA at a time when his license was on deposit with the Coast Guard pending cure is a serious offense, I am not insensitive that Respondent Knott made a mistake while acting in good faith. The evidence shows that Respondent Knott, his employer, and the U.S. Army Corps of Engineers all mistakenly believed that a Coast Guard issued license was not required to operate the M/V MS. PAULA a short distance at the job site. This is supported by the fact that Contract DACW01-01-D-0004 had a clause that specifically exempted vessels operating within 1 mile of the job site from the Coast Guard licensing requirements. Consequently, an order less than revocation will be issued in this case.

ORDER

IT IS HEREBY ORDERED that license number 847354 and all other valid license and documents issued to you by the United States Coast Guard, or any predecessor authority, now held by you, be and the same, are hereby suspended Outright, effective as of the date on which you deposit your license with the U.S. Coast Guard.

The said Outright suspension shall remain in effect for two (2) months.

The rules governing appeals are attached hereto.


ARCHIE R. BOGGS
Administrative Law Judge
New Orleans, LA 70130-3396

Done and dated this 20th day of November 2002