

UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF HOMELAND SECURITY  
**UNITED STATES COAST GUARD**

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UNITED STATES COAST GUARD

Complainant

vs.

**CHRIS ASSAVEDO**

Respondent.

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Docket Number: CG S&R 04-0426

CG Case No. 2141602

**DECISION AND ORDER**

**Issued: October 29, 2004**

**Issued by: Jeffie J. Massey, Administrative Law Judge**

**Appearances:**

LTJG Steve Koch

LT Boris Towns

U.S. Coast Guard

800 David Drive

Morgan City, LA

**For the Coast Guard**

Chris Assavedo, Pro Se

**For the Respondent**

## PRELIMINARY STATEMENT

On August 12, 2004, the United States Coast Guard (“USCG” herein) initiated an administrative proceeding against credentials issued to Chris Assavedo by the USCG. On August 16, 2004, Respondent’s Answer was received by the Docketing Center. In his Answer Respondent denied the bulk of the factual allegations, admitted the jurisdictional allegations, and stated the following, as an affirmative defense: “Employer made a clerical error on sea time letter.”

A hearing was duly scheduled and convened in New Orleans, Louisiana on October 22, 2004. Shortly before the hearing date (September 23, 2004 and October 15, 2004) the USCG filed two separate Motions to Amend the Complaint. After going on the record, the undersigned denied the first Motion to Amend Complaint as moot (it concerned only a proposed change in the hearing location, and was superseded by the latter filing). The latter Motion to Amend the Complaint was granted. The Respondent was asked to enter an oral answer to the Amended Complaint, which he did. The substance of his oral answer was the same as his written answer. The USCG called one witness, Richard Wells. The Respondent called one witness, Fred Willhoft.

At the end of the testimony, the evidentiary record was closed, and the undersigned announced her decision on the record. Further, the undersigned informed the parties that this written rendition of the findings of fact and conclusions of law announced on the record would be issued.

### **FINDINGS OF FACT**

1. From May 10, 2001 to June 10, 2004, Respondent was a holder of a Merchant Mariner's License issued by the USCG.
2. From May 10, 2001, to June 10, 2004, Respondent was employed by Crescent Ship Services, Inc., in compliance with his Merchant Mariner's license.
3. From May 10, 2001 to June 10, 2004, Respondent's employment was under the authority of and pursuant to the provisions of his Merchant Mariner's license.
4. During the period May 10, 2001 to June 10, 2004, the Respondent did *not* serve as Captain aboard the vessel MR. LUCIEN for 61 days; did *not* serve as Captain aboard the vessel MR. FATS for 57 days; did *not* serve as Captain aboard the vessel MR. GORDON, JR for 64 days; and, did *not* serve as Captain aboard the vessel MR. DOC for 51 days.

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### **ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. From May 10, 2001 to June 10, 2004, Respondent was employed with Crescent Ship Services, during which time he was acting under the authority of his Merchant Mariner's License issued by the USCG.
2. From May 10, 2001, to June 10, 2004, Respondent held a Merchant Mariner's License which limited him to serving as a master of steam or motor vessels of not more than 50GRT upon inland waters.
3. During the period May 10, 2001, to June 10, 2004, Respondent did not serve as Captain on board any vessel that was greater than 50 GRT.

4. The USCG failed to prove by a preponderance of the evidence that sanctions are warranted against Respondent's Coast Guard issued license(s) under 46 U.S.C. 7703, because the evidence failed to prove a violation of law or regulation by the Respondent during the period May 10, 2001 to June 10, 2004.

### **DISCUSSION**

The Administrative Procedure Act (APA), 5 U.S.C. 551-59, governs Coast Guard suspension and revocation hearings. 46 U.S.C. 7702(a). The APA only authorizes sanctions to be imposed if, upon consideration of the record as a whole, the charges are supported by reliable, probative, and substantial evidence. 5 U.S.C. 556(d). "The term substantial evidence is synonymous with preponderance of the evidence as defined by the Supreme Court." Appeal Decision 2477 (TOMBARI) (1998). The burden of proving a claim by a preponderance of the evidence "simply requires the trier of fact 'to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence.'" Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 622 (1993)(citing In re Winship, 397 U.S. 358, 371-72 (1970)(Harlan, J., concurring)(brackets in original)). Under Coast Guard procedural regulations, the Coast Guard bears the burden of proving the charges by a preponderance of the evidence. 33 CFR 20.701, 20.702(a). Therefore, the Coast Guard must prove with reliable and probative evidence that Respondent more likely than not committed the violations charged.

Title 46 U.S.C. §7703(1)(a) provides that a license, certificate of registry, or merchant mariner's document may be suspended or revoked if the holder when acting under the authority

of his license, certificate, or document violates or fails to comply with subtitle II of Title 46 of the United States Code, a regulation prescribed under subtitle II of the Title 46 of the United States Code, or any other law or regulation intended to promote marine safety or to protect navigable waters.

A person employed in the service of a vessel is considered to be acting under the authority of his/her license, certificate, or MMD when the holding of that license, certificate, or MMD is required by law, regulation, or by the employer as a condition of employment. 46 CFR §5.57(a). If law, regulation, or condition of his employment did not require the Respondent to have a license or MMD, then the Coast Guard does not have jurisdiction under 46 CFR §5.57(a) over the alleged violation of law. See Appeal Decision 2620 (COX) (2001). Therefore, the Coast Guard must prove Respondent was employed in the service of a vessel when he committed a violation of law and Respondent's merchant mariner's credentials were either (1) required by law or regulation or (2) as a condition of his employment.

In this case, the evidence clearly showed that during the period May 10, 2001 to June 10, 2004, Respondent was acting under the authority of his Merchant Mariner credentials because he was employed by Crescent Ship Services, Inc. in a position that required him to hold such a license. In this case, the issue in dispute revolves around what kind of vessels the Respondent worked on during the above-referenced period. The witness presented by the USCG did not have personal knowledge as to what kind of vessels the Respondent Captained during this period. Mr. Wells' testimony was limited to events that occurred at the Regional Exam Center, and an explanation of the processes by which the Respondent sought to (1) renew his license as a master of steam or motor vessels of not more than 50 GRT upon inland waters; and (2) raise the grade of his license to the level of master of steam or motor vessels of 100 GRT (See Exhibit IO-

8). Mr. Wells' testimony was very helpful in that he was able to complete the record in this case as to these key aspects of the renewal process. While I find his testimony entirely credible, it simply was not dispositive of the ultimate issue before me.

This case would not have been brought but for the issues raised by a "sea time letter" submitted by the Respondent's employer, in conjunction with Respondent's January 2004 application for renewal and upgrade of his license (See Exhibit IO-09). On its face, that letter indicates that during the period May 10, 2001 to January 12, 2004 (the date of this sea time letter), the Respondent was employed outside of the purview of his license. Despite the fact that Respondent's employer contacted the USCG by way of letter dated July 30, 2004, and explained that he had made a clerical error when he wrote the January 12, 2004, letter (Exhibit IO-11), the USCG decided to proceed with the initiation of this administrative action against the Respondent's license.

Respondent chose not to testify in his own behalf. Instead, his employer, Fred Willhoft, the author of the letters in question testified. I find Mr. Willhoft's testimony to be entirely credible. I find that his January 12, 2004, letter was factually incorrect. I find that his subsequent written attempts to clarify the issue to the satisfaction of the USCG (Exhibits IO-11 and Respondent's Exhibit 1, another letter from Mr. Willhoft dated July 26, 2004) are entirely corroborated by his testimony at the hearing.

Finding Mr. Willhoft's testimony to be entirely credible leads me to the conclusion that, at no time during the period in question, did Mr. Willhoft assign the Respondent to work, or allow him to work, on any vessel that was in violation of his license. Accordingly, I find that the USCG failed to prove, with reliable and probative evidence, that Respondent more likely than

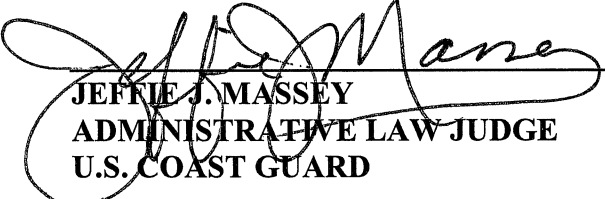
not committed a violation of law or regulation by operating a vessel outside of the purview of his license during the period May 10, 2001 to June 10, 2004.

**ORDER**

**IT IS HEREBY ORDERED** that the administrative action against Respondent Chris Assavedo's Coast Guard issued licenses shall be dismissed and removed from the docket.

**PLEASE TAKE NOTICE** that service of this Decision on the parties and/or parties' representative(s) serves as notice of appeal rights set forth in 33 CFR 20.1001 – 20.1004. (Attachment A).

Done and dated October 29, 2004  
New Orleans, Louisiana



**JEFFREY J. MASSEY**  
**ADMINISTRATIVE LAW JUDGE**  
**U.S. COAST GUARD**