

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

UNITED STATES COAST GUARD

Complainant

vs.

GEORGE L. LAW, JR.

Respondent.

Docket Number: CG S&R 05-0012
CG Case No. 2255025

Decision & Order

Issued: July 8, 2005

Issued by: James W. Lawson, Administrative Law Judge

Appearances

For Complainant

Jim Wilson, Assistant Senior Investigating Officer
ENS Timothy Tilghman, Investigating Officers
U.S. Coast Guard
MSO Morgan City
800 David Drive
Room 232
Morgan City, LA

For Respondent

pro se

PRELIMINARY STATEMENT

The United States Coast Guard (Coast Guard), through Marine Safety Office Morgan City, initiated this administrative action seeking six (6) months outright suspension of Coast Guard issued License No. 1045600 and the Merchant Mariner's Document (MMD) issued to George L. Law, Jr. (Respondent). The purpose of Coast Guard Suspension and Revocation proceedings is to ensure the safety of life and property at sea. 46 U.S.C. 7701(a). The legal authority in 46 U.S.C. 7703, 46 CFR Part 5, and 33 CFR Part 20 provided the substantive and procedural legal authority which allowed this action to commence.

On January 11, 2005, the Coast Guard Investigating Officers (IO) in Morgan City, Louisiana filed and personally served Respondent a copy of the Complaint which alleged misconduct under 46 CFR 5.27 for failure to disclose a prior criminal conviction in violation of 46 CFR 10.201(h). The jurisdictional allegations stated that Respondent was the holder of a Coast Guard issued License and MMD. Specifically, the Coast Guard alleged Respondent failed to disclose a prior conviction for battery on renewal of his license, MMD¹ and original application for a Seafarer's Training, Certification and Watchkeeping (STCW Certificate) dated October 18, 2002.² The Coast Guard stated that Respondent pled nolo contendere/no contest to the battery charge and was ordered to complete ten (10) hours of anger management classes and pay court fees. The application was filed with the U.S. Coast Guard Regional Exam Center, New Orleans, Louisiana. Respondent filed his written Answer to the Complaint on January 21,

¹ Respondent also indicated on his MMD renewal application that the he was seeking a duplicate MMD.

²Coast Guard form 719(B) Application for License as an Officer, Staff Officer, or Operator and for Merchant Mariner's Document.

2005, denying paragraphs one and three of the jurisdictional allegations³ and denying all of the factual allegations.

The Coast Guard filed a Motion to Amend Complaint (Motion) on March 23, 2005. The undersigned questioned the timing of the Motion and the Coast Guard asserted that the reason for the amendment was “out of courtesy” but an amendment was not necessary because the undersigned is required to revoke pursuant to Commandant Decisions on Appeal.⁴ The Motion purported to change the proposed order from six (6) months outright suspension to revocation. The undersigned denied the Coast Guard’s Motion to amend its Complaint on the grounds that the Motion was untimely because it did not allow Respondent the allotted period of response time under 33 CFR Part 20 prior to the scheduled hearing date of March 30, 2005.⁵ Under 33 CFR 20.305, a party shall amend a pleading upon learning of a material change that may affect the outcome of the administrative proceeding.⁶ The undersigned considered the proposed increased sanction a week before the hearing a material change.

At the hearing, the Coast Guard requested the undersigned to reconsider the Motion to Amend the Complaint. The Coast Guard argued the sanction is not part of the offense alleged, therefore the amendment was not a substantial change. Tr. 14-16. The undersigned denied the motion for reconsideration and the Coast Guard again requested reconsideration of the Amendment to the Complaint in their post-hearing Findings of Fact and Conclusions of Law. The Coast Guard argued that neither the charge nor specifications were changed, thus no substantial change to the Complaint would occur as a result of the amendment.

³ Paragraph one of the jurisdictional allegations is Respondent’s address and telephone number. Paragraph three alleges Respondent acted under the authority of his Coast Guard license and merchant mariner’s document (MMD) and engaged in official matters regarding his license and MMD when he applied for renewal.

⁴ See Pre Hearing Telephone Conference, March 23, 2005. Tr. 16-19.

⁵ See Order Denying Coast Guard’s Motion to Amend Complaint, dated March 24, 2005.

⁶ See Pre Hearing Telephone Conference, March 23, 2005. Tr.16

Again, the undersigned denies the Coast Guard's renewed request for reconsideration. The Motion to Amend filed a week before the hearing was untimely under 33 CFR 20.309, and failed to meet requirements of Section 20.307. Section 20.309 allows ten (10) days for a party to respond to a written motion and Section 20.307 requires the Coast Guard to include a proposed order for suspension or revocation in a Complaint. Therefore, granting the Motion would have caused delay and despite the Coast Guard's argument that a change in the proposed order is not a substantial change, the undersigned concludes a change of proposed sanction from six months to revocation is a material change a week before the hearing.

The hearing commenced as scheduled on March 30, 2005, at the United States District Courthouse, Houma, Louisiana. The Coast Guard offered two (2) exhibits into evidence, and no witnesses testified. See Attachment A. Respondent offered no exhibits into evidence, testified on his own behalf and was subjected to cross-examination by the Coast Guard. Once the parties rested, the undersigned advised both parties that they had the option to submit proposed findings of facts and conclusions of law by April 29, 2005. Only the Coast Guard submitted proposed Findings of Fact and Conclusions of Law.

After a careful review of the facts and applicable law in this case, I find that the Coast Guard established by a preponderance of reliable, probative, substantial and credible evidence that Respondent engaged in misconduct when he failed to report a prior conviction on his Application for License as an Officer, Staff Officer, or Operator and for Merchant Mariner's Document with the U.S. Coast Guard Regional Examination Center.

FINDINGS OF FACT

The Findings of Fact are based on a thorough and careful analysis of the entire record consisting of documentary exhibits and witness testimony.

1. Respondent is the holder of Coast Guard issued License No. 1045600 and MMD. Tr. 32.
2. On October 18, 2002, Respondent completed, signed and filed his application for renewal of his Coast Guard License, duplicate MMD and an original STCW certificate. IO Ex. 2.
3. In Section Three (page 2 of 4) of the renewal application, Respondent answered “no” to the question which asked, “Have you ever been convicted by any court—including a military court—for an offense other than a minor traffic violation?” IO Ex. 2.
4. Contrary to his signed and dated application, Respondent pled no contest to a 1999 charge of Battery/Domestic Violence in Escambia County, Florida. Tr. 50; IO Ex. 2.
Respondent battered his live-in girlfriend. IO Ex. 2.
5. According to the Docket Sheet, the county judge ordered Respondent to participate in ten (10) hours of an anger management course. Tr. 31; IO Ex. 1.
6. Respondent testified that the anger management course requirement was waived, and the county judge only ordered him to pay court costs. Tr. 31, 42.
7. Respondent contacted, by telephone, the county judge’s office regarding the discrepancy between the Escambia Court’s Docket Sheet which reflected an adjudication of anger management classes and the actual adjudication consisting of payment of court costs. Tr. 45-47, 52-53.⁷
8. Respondent testified that he was confused by the phrase “expunged conviction” in the application instructions found in Section Three of the application. Tr. 46.

⁷Respondent spent one night in jail as a result of the incident in June, 1999. Tr. 42.

9. Section Three of the Application for License as an Officer, Staff Officer, or Operator and for Merchant Mariner's Document defines the term "conviction" as follows: "Conviction means found guilty by judgment or by plea and includes cases of deferred adjudication (NOLO CONTENDERE, adjudication withheld, etc.) or where the court required you to attend classes, make contribution of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court finding. Expunged convictions must be reported unless the expungement was based upon a showing that the court's earlier conviction was in error."
10. Respondent understood the waiver of the anger management course as a dropping of the entire charge, despite his obligation to pay court costs, thus not requiring him to report the incident on his renewal application. Tr. 48-51.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is the holder of Coast Guard issued License No. 1045600 and a MMD.
2. On October 18, 2002, Respondent completed, signed and filed or submitted his application for renewal of his Coast Guard License, a duplicate MMD and an original STCW certificate.
3. In Section Three (page 2 of 4) of his signed application, Respondent answered "no" by initialing in the "No" column and box answering the question asking, "Have you ever been convicted by any court—including a military court—for an offense other than a minor traffic violation?"

4. Contrary to his signed and dated application, Respondent pled no contest to a 1999 charge of Battery/Domestic Violence. Tr. 50; IO Ex. 2. Respondent battered his live-in girlfriend. IO Ex. 2.
5. At the time Respondent completed his application for renewal, he mistakenly believed that because he pled no contest and was only charged court costs, that the battery conviction was not an incident that he was obligated to report.

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 [United States] 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 substantive and 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, substantial and probative evidence that Respondent more likely than not committed the violation charged.

Under 46 U.S.C. 7703, a mariner's license may be suspended or revoked if the holder of the license is acting under the authority of that license and at the same time the holder commits an act of misconduct. A mariner is considered to be acting under the authority of his license if the license is: (1) required by law or regulation; or (2) required by an employer as a condition of employment. See 46 CFR 5.57; see also Appeal Decision 2620 (COX) (2001). Furthermore, misconduct is defined as a "behavior which violates some formal, duly established rule. Such rules are found in . . . statutes, regulations, the common law, the general maritime law, . . . and similar sources. It is an act which is forbidden or a failure to do that which is required." 46 CFR 5.27.

Title 46 Parts 10 and 12 establish certain requirements for applying and/or renewing a license, MMD, or certificate. The purpose of regulations governing the issuance of licenses and certifications in Part 10 is to determine an applicant's qualifications and whether they are competent to serve in a particular position on a vessel. 46 CFR 10.101(a). On the other hand, the MMD requirements established in Part 12 serve as an adequate means of determining and verifying a mariner's identity, citizenship, nationality, and professional qualification prior to serving on a United States merchant vessel. 46 CFR 12.01-1(a). In particular, Parts 10 and 12, both require a criminal record review by the Officer in Charge of Marine Inspections. 46 CFR 10.201(h), 12.02-4(c). A mariner is required to provide written disclosure of all prior convictions at the time of filing an application. 46 CFR 10.2, 12.02-4(c). Certainly, both 46 CFR Part 10 and 12 criminal records examinations serve as a safety and security review.

Here, Respondent completed, signed, dated and filed a formal license renewal application on U.S. Coast Guard Form CG-719B on October 18, 2002. IO Ex. 2. According to 46 CFR 5.57(b) a person applying for a Coast Guard issued license renewal is acting under the authority

of that license when the individual is completing the application. As a result, Respondent was acting under the authority of his license when he completed and submitted his application for license renewal, duplicate MMD and STCW certificate.

In this case, Respondent initialed in the box marked “no” when asked on his application whether he had “ever been convicted by any court—including a military court—for an offense other than a minor traffic violation?” IO Ex. 2. The Coast Guard charged Respondent with misconduct for failing to disclose his conviction for battery which was required under 46 CFR 10.201(h) and 12.02-4(c). Respondent spent one night in jail and paid court costs as a result of the incident; his requirement of participation in an anger management course was waived by the court. Tr. 31, 42. Respondent failed to do what was required of him when, after reading the definition of the word “conviction” as defined on Respondent’s Coast Guard license renewal application form⁸, he failed to initial the box marked “yes” to disclose that he previously was convicted of a crime. Instead, Respondent initialed the box marked “no.” Because Respondent pled “no contest” to the battery charge against him, he was obligated to disclose the conviction to the Coast Guard. Tr. 44-47, 50. Respondent mistakenly believed that the matter “went away” because he only had to pay court costs. Tr. 47-48. Failing to disclose, and thereby hiding or keeping this information from the Coast Guard amounted to misconduct on the part of Respondent.

⁸ Section Three of the Application for License as an Officer, Staff Officer, or Operator and for Merchant Mariner’s Document defines the term “conviction” as follows: “Conviction means found guilty by judgment or by plea and includes cases of deferred adjudication (NOLO CONTENDERE, adjudication withheld, etc.) or where the court required you to attend classes, make contribution of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court finding. Expunged convictions must be reported unless the expungement was based upon a showing that the court’s earlier conviction was in error.”

SANCTION

The remaining issue to be decided by the undersigned is the appropriate sanction. The Respondent committed an act of misconduct and pursuant to 46 U.S.C. 7703 his documents may be suspended or revoked. The Coast Guard argued in its proposed Findings of Facts and Conclusions of Law that revocation instead of suspension should be granted for two reasons: (1) there is no difference between a fraudulent statement and a false statement because specific intent is not an element to be proved; and (2) the undersigned should reconsider Coast Guard's motion to amend the Complaint changing the sanction from six (6) months to revocation because the amendment was not a material change.

During the hearing, the Coast Guard relied heavily on the following statement from Appeal Decision 2613 (SLACK) (1999), "[W]here fraud in the procurement of a license is proved in a suspension and revocation hearing, revocation is the only appropriate sanction." See also Appeal Decision 2570 (HARRIS) (1995) (revocation appropriate sanction where fraud in procurement of license proved); Appeal Decision 2346 (WILLIAMS) (1984) (revocation affirmed for wrongful and fraudulent application submitted to Coast Guard); Appeal Decision (ROBLES) (1980) (fraud in procurement of license, revocation only appropriate disposition); Appeal Decision 2569 (TAYLOR) (revocation appropriate sanction for fraudulent application submitted for MMD).

Differences Between a Fraudulent Statement and a False Statement

A thorough analysis of appeal decisions issued by the Commandant reveals the difference between fraudulent statements and false statements. A "fraudulent statement" is one made by the respondent with either actual or constructive knowledge that the declaration is materially flawed or false. Appeal Decision 809 (MARQUES) (1955); Appeal Decision 2456 (BURKE)

(1987). Conversely, a “false statement” is an incorrect statement of material fact. Appeal Decision 1381 (CLINTON) (1963). The statements share the requirement of materiality, but only a fraudulent statement is made with knowledge of its falsity.

a. False statement is a lesser-included offense of fraud.

In Appeal Decision 2608 (SHEPPARD) (1999), the Coast Guard proved that the respondent was a user of dangerous drugs, committed misconduct and committed a violation of law. In its Complaint the Coast Guard alleged respondent submitted a “fraudulent” renewal application. However, the Coast Guard later amended the Complaint and alleged that Respondent submitted a “false” renewal application. Id. The effect of the amended charge resulted in the Commandant holding that submission of a false application is a lesser-included offense of submitting a fraudulent application. Id. In addition to the misconduct charge, the ALJ also found a charge of use of a dangerous drug proved and the ALJ stayed the order of revocation pending completion of cure. Id. It should be emphasized that revocation was based on the allegation of drug use and not Respondent’s misconduct resulting from submission of a false statement.

b. ALJs given discretion to suspend or revoke for a false statement.

Additionally, in Appeal Decision 2607 (ARIES) (1999), the Commandant affirmed the ALJ’s order imposing a sanction of revocation. The Commandant concluded that revocation of respondent’s license and MMD was not unduly harsh for misconduct arising from false statements on his renewal application. Id. This decision is significant because the Commandant recognized the ALJ’s discretion, after considering a variety of factors under 46 CFR 5.569(b), to order revocation as an appropriate sanction. Appeal Decision 2607 (ARIES) (1999). Moreover, the Commandant held the ALJ’s order would only be “modified on appeal if it [was] clearly

excessive or an abuse of discretion.” Id. Since the Commandant discussed the sanction in terms of the ALJ’s discretion to do less, this is further indication that a misconduct charge for “false statement” is a lesser-included offense for a “fraudulent statement.” The previously cited cases of HARRIS, WILLIAMS, and ROBLES strip ALJs of their discretion to order revocation when fraud is found. Additionally, the factors listed in 46 CFR 5.569(b) only apply to offenses in which revocation is not mandatory. Therefore, if misconduct based on a false statement were the same as misconduct based on fraudulent statement, the ALJ would not have been permitted by 46 CFR 5.569(b) to consider the listed factors, because revocation would have been mandatory under HARRIS, WILLIAMS, and ROBLES.

c. Knowledge or scienter not a requirement for a false statement.

Further distinctions between fraudulent and false statements are evident in Appeal Decision 2456 (BURKE) (1987). The Commandant rejected the element of scienter for a mariner who committed misconduct by submitting an application with false information. Id. The Commandant explained that 18 U.S.C. 1001 does not apply to Suspension and Revocation proceedings because the statute provides for criminal penalties. Id. Coast Guard Suspension and Revocation proceedings are remedial in nature and a mariner’s intent is not a required element of proof. Id. See also Appeal Decision 2607 (ARIES); Appeal Decision 2608 (SHEPHERD). Thus, the Commandant effectively removed any knowledge requirement for allegations of false statements. Id.

When Respondent initialed the box marked “no” when asked on his license renewal application whether he had “ever been convicted by any court—including a military court—for an offense other than a minor traffic violation” he answered thinking that his answer was correct, and not knowing that his statement was false. Respondent lacked the knowledge that his

statement was not accurate at the time he completed the license renewal application. He made a false statement, not a fraudulent statement, on his application because he made an incorrect statement of a material fact.

The Coast Guard's motion to amend its Complaint was denied prior to and again at the hearing. Tr. 8, 18. The Coast Guard argued in its proposed Findings of Fact & Conclusions of Law that revocation is the required sanction because "the criminal background of an applicant is a crucial factor for the Coast Guard in deciding whether to issue seaman's papers . . . [and] fraud in the procurement of any license, certificate, or document is a clear threat to the safety of life or property." (citing Appeal Decision 2569 (TAYLOR) (1995)). The Coast Guard's reliance on TAYLOR and SLACK involve cases with fraud or a fraudulent statement, not a false statement, thus the Commandant strong language requiring revocation as a sanction is not applicable here.

The authority to impose a sanction at the conclusion of a case is exclusive to the ALJ. Appeal Decision 2362 (ARNOLD) (1984). It is within the power of the ALJ to order any of a variety of sanctions, including revocation or suspension. See 46 CFR 5.569; see also Appeal Decision 2569 (TAYLOR). Title 46 of the Code of Federal Regulations Part 5 Section 569 provides the Table of Suggested Range of Appropriate Orders (Table) for various offenses. The purpose of the Table is to provide guidance to ALJs and promote uniformity in orders rendered. Appeal Decision 2628 (VILAS) (2002), *aff'd* by NTSB Docket ME-174. However, the ALJ is not bound by the Table and may exceed the suggested range or impose a sanction less severe when aggravating or mitigating factors are present. 46 CFR 5.569(b)(3).

In this case, the Coast Guard proved by a preponderance of reliable, probative, substantial and credible evidence, that Respondent committed misconduct by making a false statement on his renewal application. According to the Table, committing an act of misconduct generally

results in the suspension of a mariner's document ranging from one (1) to six (6) months.⁹ 46 CFR 5.569(d). The Table does not specifically suggest a sanction for misconduct as it relates to a mariner who makes a false statement on a Coast Guard application. Id. In consideration of the conviction not disclosed by Respondent, facts and testimony received about that conviction, the undersigned concludes a sanction at the higher end of the suspension range, that being six months, is appropriate.

ORDER

IT IS HEREBY ORDERED that U.S. Coast Guard License No. 1045600 and the Merchant Mariner's Document issued to Respondent George L. Law are hereby **SUSPENDED OUTRIGHT** for a period of **six months**. Respondent's license and MMD are to be surrendered immediately to the U.S. Coast Guard, MSO Morgan City, 800 David Drive, Morgan City, Louisiana. The time period for suspension does not commence until the license, certificate or document is surrendered to the Coast Guard. 46 CFR 5.567(d) and (e).

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. See Attachment B.

PLEASE TAKE FURTHER NOTICE that application and procedures for a temporary license are set forth in 46 CFR 5.707. See Attachment C.

Done and dated July 8, 2005.
Baltimore, Maryland

JAMES W. LAWSON
ADMINISTRATIVE LAW JUDGE
U.S. COAST GUARD

⁹ Except in cases of violent acts against other persons which the Table suggests four (4) to six (6) months suspension. In the case of use, possession or sale of dangerous drugs, revocation is mandatory.

ATTACHMENT A

WITNESS AND EXHIBIT LISTS

WITNESS LIST

COMPLAINANT'S WITNESSES

None

RESPONDENT'S WITNESSES

1. George L. Law, Jr., Respondent

EXHIBIT LIST

COMPLAINANT'S EXHIBITS

- IO Ex. 1 Certified Records of the Escambia County Florida Clerk of the Circuit Court
IO Ex. 2 Application for License as an Officer, Staff Officer, or Operator and for MMD

RESPONDENT'S EXHIBITS

None

ATTACHMENT B

NOTICE OF ADMINISTRATIVE APPEAL RIGHTS

33 CFR 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

33 CFR 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
 - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
 - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 CFR 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
 - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --

- (i) Basis for the appeal;
 - (ii) Reasons supporting the appeal; and
 - (iii) Relief requested in the appeal.
- (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
- (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
- (c) No party may file more than one appellate brief or reply brief, unless --
- (1) The party has petitioned the Commandant in writing; and
 - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
- (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

33 CFR 20.1004 Decisions on appeal.

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.

ATTACHMENT C

NOTICE OF TEMPORARY LICENSE APPLICATION AND PROCEDURE

§ 5.707 Stay of effect of decision and order of Administrative Law Judge on appeal to the Commandant; temporary license, certificate, or document.

(a) A person who has appealed from a decision suspending outright or revoking a license, certificate or document, except for revocation resulting from an offense enumerated in § 5.59, may file a written request for a temporary license, certificate or document. This request must be submitted to the Administrative Law Judge who presided over the case, or to any Officer in Charge, Marine Inspection for forwarding to the Administrative Law Judge.

(b) Action on the request is taken by the ALJ unless the hearing transcript has been forwarded to the Commandant, in which case, the Commandant will make the final action.

(c) A determination as to the request will take into consideration whether the service of the individual is compatible with the requirements for safety at sea and consistent with applicable laws. If one of the offenses enumerated in § 5.61(a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant. A temporary document or license may be denied for that reason alone.

(d) All temporary documents will provide that they expire not more than six months after issuance or upon service of the Commandant's decision on appeal, whichever occurs first. If a temporary document expires before the Commandant's decision is rendered, it may be renewed, if authorized by the Commandant.

(e) If the request for a temporary document is denied by the Administrative Law Judge, the individual may appeal the denial, in writing, to the Commandant within 30 days after notification of such denial. Any decision by the Commandant to deny is the final agency action.

(f) Copies of the temporary documents issued become a part of the record on appeal.