

UNITED STATES OF AMERICA

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

UNITED STATES COAST GUARD

Complainant

Vs.

ROY PAUL BOUDREAUX

Respondent

Docket No. CG S&R 05-0016

CG Case Number 2078998

Decision and Order

Order Dismissing Complaint

Issued: November 29, 2005

Issued by: Judge Jeffie J. Massey

BACKGROUND

On August 19, 2005, the undersigned issued an Order Denying Motions for Telephone Testimony filed by the United States Coast Guard ("USCG" herein) on August 10, 2005. As that Order explained, based on the past circumstances of this particular proceeding, the undersigned was exercising her discretion to require the witnesses in question to appear and give live testimony at the hearing previously scheduled to go forward on August 26, 2005, in Lafayette, Louisiana.¹

After the undersigned went on the record in this proceeding on August 26, 2005, the USCG moved for reconsideration of the Motions filed on August 10. The undersigned agreed to reconsider her ruling on the Motions, heard the oral arguments of the USCG and Respondent's Counsel, then re-affirmed the denial of the August 10 Motions. Thereafter, the USCG rested without calling any witnesses. The Respondent moved to dismiss the Complaint, and the undersigned granted Respondent's Motion.

DISCUSSION

The events that occurred on the record on August 26, 2005, can best be understood only after a complete review of the Motions, Responses, and Orders issued in this proceeding. While the undersigned could detail the history of this proceeding in this Order, no real purpose would be served by that litany. Any reviewing authority of this Order—which will take place after the USCG appeals this Order—will necessarily be

¹ In fact, the hearing in this matter was scheduled by way of Order issued on June 29, 2005.

required to review the entire record of this proceeding and consider it before said reviewing authority will be able to publish an informed review of this Order.

Instead, after much consideration and review, the undersigned has concluded that this Order should contain only a few salient points that expand on the comments made on the record on August 26, 2005.

First, the undersigned's review of the record in this proceeding, in preparation for the drafting of this Order, has reminded her of the obstructive posture maintained by the USCG in this proceeding from the early stages of this proceeding.² At the second Pre-Hearing Conference held in this proceeding (on February 16, 2005) the USCG indicated that it would not be complying with any subpoenas or interrogatories that the undersigned might require the USCG to answer. When asked to clarify exactly what those comments meant, the USCG representative would say only that "Once we get the order from you ma'am, you'll find out soon enough."

During that same Pre-Hearing Conference, the USCG referenced another proceeding where it had refused to comply with Orders issued by the undersigned. Respondent's Counsel asked for the name of the proceeding, and was given the information he requested.

In fact, the obstructive conduct followed by the USCG in this proceeding was similar to the obstructive behavior followed by the USCG in two other proceedings before the undersigned. All three of these proceedings involve the same Marine Safety

² The production of evidence made by the USCG on February 9, 2005, failed to include copies of all proposed exhibits. The accompanying handwritten note suggested that if the undersigned wanted a copy of a chart that would be an exhibit, she could purchase it herself. Additionally, if the undersigned wanted copies of photographs the USCG proposed to use as evidence in its case in chief, the USCG would forward the negatives to her, and she could get her own photographs made.

Office and the same Supervisory Investigating Officer. In fact, it was this Supervisory Investigating Officer who appeared on August 26 as the lead investigator for the hearing that was supposed to take place in this proceeding.

It is beyond belief to conclude that the coincidence of this SIO's appearance as lead investigator on August 26 and the USCG's failure to present any evidence in this proceeding was anything other than a carefully designed plan. Building on the tactics utilized by the USCG in the other two proceedings, the USCG took their obstructive behavior to a new level in this proceeding. Willfully refusing to present evidence when a case is called for hearing is, in the opinion of the undersigned, the ultimate act of disrespect that a government regulatory authority can show towards its own system of due process.³

Undoubtedly, the USCG will continue its planned irreverence towards the established system of due process by appealing this Order, claiming that it was compelled to follow the actions taken throughout this proceeding because the undersigned is or was biased, or prejudiced, or otherwise pre-disposed to prevent the USCG from having a fair opportunity to present its evidence in this proceeding. Similar claims have been made in the appeals of the two other proceedings where the USCG has chosen a path of obstruction.

The crux of their arguments will be that the undersigned must be biased because she entered Orders that were in contravention of what the USCG wanted to happen. A review of the USCG's positions in this proceeding reveal that anytime the USCG doesn't

³ Clearly, the regulations which establish the regulatory framework for Suspension and Revocation proceedings anticipate that the proceedings will be conducted so that both parties are assured the benefits of due process. See 46 USC §7702(a).

get their way, they scream prejudice and simply refuse to comply with any Order they don't agree with. The USCG has demonstrated that unless they can get things to go the way they want them to go, then they are not interested in allowing this proceeding to run its course.

As noted by my comments on the record, the conduct of the USCG in this proceeding constitutes the worst kind of gamesmanship that I have encountered in a regulatory proceeding. The USCG has failed the taxpayers. The USCG has betrayed the obligations it voluntarily undertakes when it files a Complaint against a citizen of the United States. The USCG has prevented the Respondent from having a fair opportunity to substantively clear his professional reputation of the allegations made against him by the USCG.⁴ The USCG will undoubtedly be fabricating allegations of unfairness as a cover for its pre-meditated decision to derail this proceeding.

The USCG's conduct in this proceeding is reminiscent of the scene in the Wizard of Oz where the "Wizard" uses loud noise, smoke and lights to distract Dorothy and the others from the reality of what is going on behind the curtain. For some time, the "Wizard" had been using trickery and illusion to convince others that he was all-knowing and powerful. But when the curtain was drawn back, he was revealed to be what he had been all along—a simple mortal who could not deliver on the boisterous claims he had been making.

When the USCG filed its Complaint against the Respondent on January 11, 2005, it claimed that it was ready to engage the Respondent in the due process system set up by

⁴ A Suspension and Revocation proceeding is defined as "a trial-type proceeding for the suspension or revocation of a merchant mariner's license, certificate of registry, or document issued by the Coast Guard that affords an opportunity for an oral, fact-finding hearing before an ALJ." 33 CFR §20.102

the regulations. Along the way, the USCG refused to meet the challenges it was given through discovery orders. Instead, it chose to blow smoke and make noise about the unfairness of the discovery process. Finally, when directly confronted with their obligation to present evidence supporting the allegations in the Complaint, they once again attempted to evade their responsibility with more smoke, lights and noise. By shouting "Look how unfair the judge is!" the USCG hopes to conceal the fact that they—when they appeared on August 26, 2005—never intended to let this proceeding go forward on the merits.

Well—the curtain was drawn back on August 26. An objective review of the transcript from August 26 reveals that the USCG never attempted to have its necessary witnesses present. Even though the Order issued on August 19 opened the door for the USCG to ask for a continuance if they needed it, they chose instead to show up on August 26, knowing they would not go forward with their case, hoping that the smoke, lights and noise that are their claims of unfairness will somehow resonate with the reviewing authority.⁵

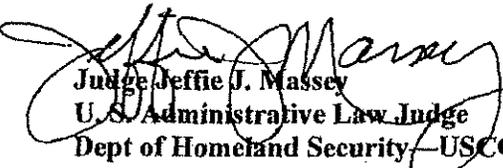
The USCG's attempts to excuse the inanity of their actions by placing blame on the undersigned should be exposed for the subterfuge that it is. The decision to grant the Respondent's Motion to Dismiss the Complaint was soundly grounded in the USCG's willful failure to present any evidence in this proceeding. The USCG's failure to present any evidence is the direct product of its continued refusal to comply with Orders it does not agree with. The USCG's continued refusal to comply with issued Orders is nothing

⁵ The reasons argued in support of their oral Motions to Reconsider were repetitious and specious. If the USCG had filed their Motions to Reconsider, in writing, in advance of August 26, the outcome would have been the same (denial). But, then they would have been denied the use of these Motions as smoke, lights and noise.

more than one particular SIO's campaign to demonize the undersigned in lieu of fully and fairly engaging in the due process system established for Suspension and Revocation proceedings by the regulations. The integrity of the USCG's Suspension and Revocation system will be judged by whether or not one SIO is allowed to defeat the system with smoke, lights and noise.

DISMISSAL WITH PREJUDICE

The Complaint filed in this proceeding on January 11, 2005, is hereby DISMISSED WITH PREJUDICE. Any party wishing to appeal this Order should consult the applicable regulations governing appeals. See Appendix A, attached hereto for preliminary guidance.


Judge Jeffie J. Massey
U.S. Administrative Law Judge
Dept of Homeland Security - USCG

Dated the 29th day of November, 2005

ATTACHMENT A

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CODE OF FEDERAL REGULATIONS
PART 20 RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR FORMAL
ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD
SUBPART J - APPEALS**

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 Sec. 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.

Certificate of Service

I hereby certify that I have forwarded the attached document by Facsimile to the following person:



I hereby certify that I have forwarded the attached document by Facsimile to the following person:

CWO Jason Boyer
Marine Safety Office Morgan City
800 David Drive, Room 232
Morgan City, LA 70380-1304
(Fax #) (985) 380-5379

A handwritten signature in cursive script that reads "Christine J. Heep".

Paralegal Specialist
ALJ Docketing Center

Dated on November 30, 2005
Baltimore, Maryland