

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

UNITED STATES COAST GUARD

Complainant

vs.

THOMAS H. MEREDITH

Respondent.

Docket Number: CG S&R 06-0092
CG Case No. 2595549

DECISION AND ORDER

Issued: December 5, 2006

Issued by:

**Hon. Parlen L. McKenna
Administrative Law Judge**

Appearances:

For Complainant

James W. Crouse, Chief Warrant Officer
United States Coast Guard
Investigations Department
Marine Safety Office
Coast Guard Island, Bldg 14
Alameda, CA 94501

For Respondent

Thomas H. Meredith, Pro Se

PRELIMINARY STATEMENT

The United States Coast Guard ("Coast Guard") initiated this administrative action seeking three (3) months suspension of the Merchant Mariner's License and Document ("Coast Guard Credentials") issued to Thomas H. Meredith ("Respondent"). This case was brought pursuant to the legal authority contained in 46 U.S.C. 7703 and its underlying regulations codified in 46 CFR Part 5.

On March 8, 2006, Respondent was charged with violation of law or regulation under 46 CFR 5.33. The Coast Guard alleged that Respondent violated 33 CFR 100.1105(b)(2) and (c)(3) by wrongfully failing to comply with the requirements of the Special Local Regulated Navigation Area for San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration 2005; and by wrongfully refusing to comply with the instructions of competent authority not to loiter in Regulated Area "Bravo". The alleged violation occurred at 1530 Daylight Time on October 9, 2006 in San Francisco Bay California.¹

Respondent admitted the jurisdictional allegations, and denied the factual allegations. At the hearing, Respondent raised several arguments: 1) he was unaware of and never received any notices of the Regulated Area; and 2) he complied with the Coast Guard's instructions.²

¹ The Coast Guard mistakenly cited Misconduct under 46 CFR 5.27 as the regulatory authority applicable in this case but the factual allegation section of the complaint read "Violation of Law or Regulation." The complaint also made no reference to Regulated Area "Bravo". At the hearing conducted on June 6, 2006, the complaint was amended by the judge to clarify the applicable regulatory authority and to clarify that Respondent is charged with wrongfully refusing to comply with the instructions prohibiting loitering in Regulatory Area "Bravo". See Transcript ("Tr.") at 7:4 – 8:8, 61:25 – 62:16; 33 CFR 20.100.1105 (following the hearing the complaint was further amended to track the language of the regulations). Amendments such as these are not unprecedented. They are permissible so long as the respondent has notice and an opportunity to litigate the amended allegations. Appeal Decision 2630 (BAARSVIK) (2002). This is especially true where the amendment is made to correct minor errors or to conform the allegations to proof. Id.

² In his answer dated March 20, 2006, Respondent admitted the jurisdictional allegations but only denied paragraph 2 of the factual allegations. At the hearing, Respondent's answer was amended to reflect that paragraph 2 and 3 of the complaint were being denied.

On June 6, 2006, the hearing commenced in Alameda, California. The hearing was conducted in accordance with the Administrative Procedure Act as amended and codified at 5 U.S.C. 551-59, and Coast Guard procedural regulations set forth in 33 CFR Part 20.

At the hearing, the Coast Guard presented the testimony of one (1) witness and moved for the admission of six (6) exhibits. Respondent testified on his own behalf and moved for the admission of three (3) exhibits. Because of the amendments to the complaints, an opportunity was provided to Respondent to submit additional witness testimony and documentary evidence. At some point after the hearing but before June 27, 2006, Respondent submitted ten (10) additional pieces of documentary evidence, which were all admitted into evidence. See Order Denying Request for Continuance, dated June 27, 2006. The list of witnesses and exhibits is contained in Attachment A.

After careful review of the entire record, including documentary evidence and witness testimony, the Coast Guard is found to have proved by a preponderance of reliable and credible evidence that Respondent committed a violation of law or regulation by loitering in Regulated Area "Bravo" and by failing to comply with the instructions of a Coast Guard patrol officer both in violation of 33 CFR 100.1105(c)(2) and (c)(3).

FINDINGS OF FACT

1. At all relevant times, Respondent Thomas Howell Meredith was the holder of a Merchant Mariner's Document and Merchant Mariner's License Number [REDACTED] (*Coast Guard ("CG") Ex. 6; Tr. at 22:8 – 23:16*). The license authorizes him to serve as a Master of Steam or Motor Vessels of not more than 100 Gross Registers Tons upon near Coastal Waters. (*CG Ex. 6*). Respondent has been a license holder for over fifty (50) years, since 1952. (*Tr. at 17-18*).

2. On October 7 and 9, 2005, Respondent was acting under the authority of his license when he served as master aboard the commercial vessel CAPT JOEY (O.N. 562433). (See Entire Record).
3. The CAPT JOEY is a fifty (50) foot long 30 passenger vessel, which is required by its Certificate of Inspection to have two crewmembers on board. (*Respondent's ("Resp.") Ex. A, F, and M; CG Ex. 3; Tr. at 9*).
4. The CAPT JOEY was observed loitering in Regulated Area "Bravo" on October 7 and 9, 2005. (*CG Ex. 5; Resp. Ex. F-H; Tr. at 42: 9, 43:18*). This area is within the San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration ("Fleetweek") Regulated Navigation Area established under 33 CFR 100.1105 and includes:

The waters of San Francisco Bay bounded by a line connecting the following points:

Latitude	Longitude
37degrees 48' 27.5"N	122degrees 24' 04"W
37degrees 49' 31"N	122degrees 24' 18"W
37degrees 49' 00"N	122degrees 27' 52"W
37degrees 48' 19"N	122degrees 27' 40"W

and thence along the pierheads and bulwarks to the point of beginning.

(See CG Ex. 2 and 4; Resp. Ex. D).

5. Title 33 CFR 100.1105(c)(2) prohibits a vessel from entering and remaining within regulated area "Bravo" during Fleetweek unless specifically authorized by the Coast Guard Patrol Commander ("PATCOM"). (*CG Ex. 2*).
6. Title 33 CFR 100.1105(c)(3) requires a vessel to come to a complete stop and comply with all directions given when hailed or signaled by an official patrol vessel during Fleetweek (*Id.*).

7. Fleetweek occurs in early October annually. The exact dates and times of Fleetweek Regulated Areas are announced in the Local Notice to Mariners and the Federal Register. (*Id.*)
8. In 2005, the Coast Guard advised all vessels that the Regulated Areas established under 33 CFR 100.1105 would be enforced from 9:30 am to 5:00 pm on October 6; 11:00 am to 5:00 pm on October 7 and 8; and 12:00 pm to 5:00 pm on October 9. The Coast Guard ordered the vessels not to enter Regulated Area Alpha or Bravo unless permission is received from PATCOM and mariners were advised to use caution when transiting the Regulated Areas. This announcement was published in the week 39/05 weekly edition of the Local Notice to Mariners issued on or about September 27, 2005 (“Local Notice”). (*CG Ex. 1 at 13; Tr. at 20:20-24.*)
9. The Local Notice was published on the local Coast Guard website and was broadcasted through the Water Area Enforcement Branch of Sector San Francisco and the vessel traffic service. (*Tr. at 14:19 – 15:4; CG Ex. 1.*)
10. Respondent testified that he was unaware of the information contained in the Local Notice. (*Tr. at 10:3 – 11:10, 16:8-15, 20:17-19.*)
11. When the CAPT JOEY was first observed within Regulated Area “Bravo” on October 7, 2005, the Coast Guard advised Respondent that the area between points Alpha and Delta was for complete east or westbound transit only; it was not an area to hangout to watch the air show or otherwise loiter. (*CG Ex. 5; Resp. Ex. F at 2, H; Tr. at 43: 9, 43:18, 44:7 – 45:8.*)

12. Two days later, on October 9, 2005 at approximately 1430, the CAPT JOEY departed Fisherman's Wharf to participate in the Fleetweek activities. (*Resp. Ex. A and M*). Twenty-seven (27) passengers were on board the vessel. (*Resp. Ex. A, F and M; CG Ex. 3*).
13. The CAPT JOEY proceeded southwest through Regulated Area "Bravo" at a speed between two (2) to four (4) knots. The vessel was part of a caravan comprised of four (4) other vessels: CHUCKY'S PRIDE, SILVER FOX, LOVELY MARTHA, and BASS TUB. The vessels were led by the CHUCKY'S PRIDE and the CAPT JOEY was the second vessel in the line. (*Resp. Ex. A, B, I, K-M*).
14. At approximately 1500 on October 9, 2005, PATCOM observed the CAPT JOEY with passengers for hire loitering within the regulated area somewhere between Gas House Cove and Saint Francis Yacht breakwater. (*Resp. Ex. G*).
15. PATCOM instructed the waterfront enforcement division commander to notify the CAPT JOEY that the area was designated for transit only and loitering was prohibited. (*Resp. Ex. G*).
16. The operator of the CHUCKY'S PRIDE relayed the Coast Guard's instructions to Respondent, who was operating the CAPT JOEY. The vessels were instructed to transit the area in a straight line past Crissy Field at 245° then turn around and return at 65° to Fisherman's Warf, the home port. (*Resp. Ex. A, K-M; CG Ex. 5*).
17. The CAPT JOEY passed CHUCKY'S PRIDE and continued on, appearing to comply with the instructions. (*Resp. Ex. A, G, and K-M*).

18. There was heavy vessel traffic in the area. (*Resp. Ex. F; Tr. at 41:8-10*). The CAPT JOEY stopped to let a sailboat pass his bow and then continued toward Golden Gate Bridge. (*Resp. Ex. A-C, I, J, K, and M; Tr. at 30:16-21*).
19. At approximately 1520, the CAPT JOEY moved back toward Pier 39 and Hyde Street Marina and appeared to be loitering once again. (*Resp. Ex. G*).
20. PATCOM unsuccessfully attempted to contact the CAPT JOEY over the radio. (*Resp. Ex. G*).
21. The Coast Guard vessel patrol enforcement craft 255020 ("CG patrol vessel") was instructed to go alongside the CAPT JOEY and contact the master. (*Resp. Ex. G*).
22. Petty Officers Neil Lester and Atsuko Sakurai served aboard the CG patrol vessel. (*CG Ex. 5; Resp. Ex. F-H; Tr. at 39:13 – 40:5*).
23. At approximately 1530, the CG patrol vessel came along side the CAPT JOEY as instructed and Petty Officer Lester advised Respondent that the area was for transit only and he could not stay in the area to watch the show. Respondent acknowledged that he was transiting. (*CG Ex. 5; Resp. Ex. A, H, and M; Tr. at 46:17-19, 47:19-23*).
24. Shortly thereafter, the CG patrol vessel approached the CAPT JOEY a second time after observing the vessel circling around in Regulated Area "Bravo". Petty Officer Lester yelled to Respondent from the stern of his vessel but Respondent testified that he could not hear because of the noise from the aircraft flying above. (*CG Ex. 5; Resp. Ex. H; Tr. at 47:21 – 48:1, 56:18 – 57:18*).

25. Petty Officer Sakurai subsequently radioed Respondent on channel 13. (*CG Ex. 5; Resp. Ex. F-H; Tr. at 46:14-25*). Respondent promptly answered. (*Resp. Ex. A, F, and M*). Petty Officer Sakurai again advised Respondent that he could not loiter in the area. (*CG Ex. 5; Resp. Ex. F and H; Tr. at 46:23 – 47:7*).
26. When Respondent failed to vacate the area, Petty Officer Sakurai advised him if he did not comply with the Coast Guard's orders, he could be arrested. Respondent indicated that he could not hear. (*CG Ex. 5; Resp. F and H; Tr. at 47:9-14*).
27. Respondent wears a hearing aid in both ears, which enhances his ability to hear. (*Tr. at 33:10 – 34:4*). Respondent selectively chose what he wanted to hear. (*Entire Transcript*).
28. Petty Officer Sakurai repeated herself several times and then secured approval from PATCOM to board the CAPT JOEY. (*CG Ex. 5; Resp. Ex. F-H*).
29. Initially, Respondent refused to allow the Coast Guard to board the CAPT JOEY and suggested that Coast Guard perform the boarding after the air show once he returned to port. (*CG Ex. 5; Resp. Ex. A, F, and M; Tr. 48:9 -49:2, 50:2-16*).
30. The Coast Guard boarding team subsequently boarded the CAPT JOEY and the vessel was escorted to Hyde Street Pier where more Coast Guard personnel boarded the vessel. (*CG Ex. 5; Resp. Ex. A, F-H, and M; Tr. 49-52*).

DISCUSSION

In this case, the Coast Guard alleges that Respondent violated 33 CFR 100.1105(c)(2) and (c)(3), which constitutes a violation of law or regulation offense under 46 U.S.C. 7703(1)(A) and 46 CFR 5.33.. Section 100.1105 establishes Regulated Areas "Alpha" and "Bravo" for San Francisco Bay's annual Fleetweek, which is regularly held in early October. See 33 CFR 100.1105(a). During Fleetweek, the regulations prohibit vessels from entering and remaining within the Regulated Areas, and vessels are required to comply with all instructions given by authorized personnel. More specifically, section 100.1105(c)(2) and (c)(3) states:

c) Regulations: All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Group San Francisco to patrol the Fleetweek event.

* * *

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain within regulated area "Bravo."

(3) When hailed and/or signaled by an official patrol vessel, a person or vessel shall come to an immediate stop. Persons or vessels shall comply with all directions given.

33 CFR 100.1105(c)(2) and (c)(3).

There is no dispute that Respondent was within Regulated Area "Bravo" around 1530 on October 9, 2005. (*See Tr. 22:1-7*). The record evidence establishes that Respondent did not receive authority from PATCOM to be within Regulated Area "Bravo" other than for transiting. (*Entire Record*). Therefore, the Coast Guard established a prima facie case that Respondent violated 33 CFR 100.1105(c)(2).

Respondent attempts to avoid liability by raising three arguments. Respondent first argues that he was unaware of the Local Notice to Mariner's that announces the enforcement of the Regulated Navigation Areas during Fleetweek. While this might be true, Respondent is not absolved from liability. Respondent received actual notice that the Regulated Navigation Areas were being enforced on October 7 and 9, when the Coast Guard approached the CAPT JOEY and specifically advised him that loitering was prohibited. (*CG Ex. 5; Resp. Ex. F-H; Tr. at 43:9, 43:18, 44:7 – 45:8*). The law clearly provides that a respondent is not immunized from liability where one receives actual knowledge. See *United States v. Aarons, et. al.*, 310 F.2d 341, 345 (2d Cir. 1962). As such, Respondent's first argument must fail.

Respondent's second argument also fails. Respondent claims that he was not aware that the Coast Guard was charging him with loitering in Regulated Area "Bravo". He assumed that the allegations concerned "Area A". He also declares that he did not receive the Coast Guard's evidence including the NOAA chart and certain witness statements until the date of the hearing or shortly before the hearing. This judge is unpersuaded. As the undersigned noted in the Order Denying Continuance dated June 27, 2006, the Coast Guard served Respondent with its witness list and exhibits on May 13, 2006 in accordance with the Scheduling Order issued April 26, 2006 and Coast Guard procedural regulations that require exhibits to be exchanged fifteen (15) days prior to hearing. The four (4) Government Exhibits served on Respondent placed him on notice that the Coast Guard was concerned with his activities in Regulated Area "Bravo". Respondent was also allotted an additional opportunity after the hearing to submit documentary evidence, which were all admitted into evidence.

Respondent's third and final argument is likewise rejected. He declares that he complied with the Coast Guard's orders. The record evidence demonstrates that on October 7, 2006, Respondent was first placed on notice that remaining within Regulated Area "Bravo" to watch the show was prohibited. (*CG Ex. 5; Resp. Ex. F at 2, H; Tr. at 43: 9, 43:18, 44:7 – 45:8*). The Coast Guard advised him that the regulated area was only for complete east and west bound transit. (*Id.*). Yet, Respondent returned to Regulated Area "Bravo" two days later, on October 9, 2006. (*Resp. Ex. A and M*). Respondent failed to vacate the Regulated Area proceeding at a very slow rate of speed and circling around despite the Coast Guard's repeated warnings. (*CG Ex. 5; Resp. Ex. A, B, I, F-M; Tr. at 46:17-19, 47:19-23*). These actions not only constitute a violation of 33 CFR 100.1105(c)(2), they also constitutes a violation of 33 CFR 100.1105(c)(3).

Therefore, the Coast Guard is found to have proved its case by a preponderance of the reliable and credible evidence. In so ruling, the undersigned is mindful that at the time and date of the incident the noise level was loud because aircrafts were flying above. However, based on a review of the record in totality, it is clear to this judge that Respondent's testimony on this point was not credible and that Respondent selectively heard what he wanted to hear. Indeed, Respondent willfully delayed his departure from Regulated Area "Bravo" so that passengers aboard the CAPT JOEY could view the air show. This point is emphasized by the fact that Respondent wanted the Coast Guard boarding team to wait until after the show to board the CAPT JOEY.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent and the subject matter of the hearing are properly within the jurisdiction vested in the United States Coast Guard under 46 U.S.C. 7703.

2. At all relevant times, Respondent was the holder of a Merchant Mariner's Document and Merchant Mariner's License Number [REDACTED] and was acting under the authority of his license while he was serving as master on board the CAPT JOEY on October 9, 2005.
3. The Coast Guard **PROVED** by a preponderance of reliable and credible evidence that Respondent committed a violation of law or regulation under 46 U.S.C. 7703 and 46 CFR 5.33 when he, on October 9, 2005 at approximately 1530 entered Regulated Area "Bravo" and failed to comply with the Coast Guard patrol officer's instructions not to loiter within Regulated Area "Bravo" both in violation of 33 CFR 100.1105(c)(2) and (c)(3), respectively.

SANCTION

For Respondent's violation, the Coast Guard seeks three (3) months suspension. This is the most severe sanction for failure to comply with U.S. law or regulation recommended in the Table of Suggested Range of an Appropriate Order (Table). 46 CFR 5.569. The judge is not bound by the Table, it merely serves as guidance designed to promote uniformity between orders. 46 CFR 5.569(d). The judge may order a more severe or less severe sanction than that recommended by the Table so long as the reason for the upward or downward adjustment is explained with specificity. Commandant v. Moore, NTSB Order EM-201, 2005 WL 2119329 (Sept. 1, 2005); see also *Id.*

In this case, three months suspension appears inadequate. The record evidence shows that Respondent blatantly disregarded the Coast Guard's authority to protect life and property at sea. There are three aggravating factors that suggest a more severe sanction is warranted.

First, Respondent does not make himself aware of Local Notices to Mariners. Through the means of Notices to Mariners issued pursuant to 33 CFR 72.01-1, the Coast Guard disseminates information concerning establishments, changes, discontinuances, and certain deficiencies in operation of aids to navigation maintained by and under the authority of the Commandant.” “Local Notices to Mariners” are issued by each District Commander in accordance with 33 CFR 72.01-5. They include recent changes and deficiencies in aids to navigation maintained by and under the authority of the Commandant within the area of each Coast Guard District, and include any other pertinent information concerning waterways within each Coast Guard District. 33 CFR 72.01-5. As an expert in navigation with over 50 years of experience serving as a master of steam and motor vessels, it was Respondent’s duty to know of the changes in the navigability of waters announced in the Local Notice to Mariners and in safety broadcasts. See generally Appeal Decision 2378 (CALICCHIO) (1985).

Second, Respondent remained in Regulated Area “Bravo” despite the Coast Guard’s repeated warnings on October 9, 2005. The undersigned recognizes that the noise level was quite loud as a result of the aircrafts flying above and communication was difficult. But the undersigned can not disregard the fact that all of the evidence shows that Respondent heard and understood the instructions regarding Regulated Area Bravo relayed to him by CHUCKY’S PRIDE from PATCOM’s, then given to him by Petty Officer Lester when the CG patrol vessel first came alongside the CAPT JOEY, and latter by Petty Officer Sakurai over the radio. (*CG Ex. 5; Resp. Ex. A, G, and K-M; Tr. at 46:17-19, 47:19-23*). Yet, he chose to remain in Regulated Area “Bravo” until the air show was over. (*CG Ex. 5; Resp. Ex. A, F, and M; Tr. at 48:9 -49:2, 50:2-16*). This behavior is simply unacceptable.

Third, at the hearing, Respondent expressed a belief that he has a right to refuse the Coast Guard's boarding if he feels that there is a threat to safety of the vessel or its people. (*Tr. at* 28:3-25). As the undersigned explained to Respondent at the hearing, the Coast Guard should be regarded as the police officers of navigable waters. The Coast Guard has law enforcement authority analogous to that of the police. Like the police, the Coast Guard has authority to make inquiries, examinations, inspections, searches, seizures, and arrests upon navigable waters of the United States. See 14 U.S.C. 89(a). As such, Respondent was required to comply with the Coast Guard's instructions. He had no choice in the matter and he repeatedly failed to comply.

Based on the aforementioned aggravating factors, and to ensure that this behavior is not repeated in the future, a six month suspension is determined appropriate.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED that Merchant Mariner's License Number [REDACTED] and all other valid licenses, documents, and endorsements, issued by the Coast Guard to Thomas Howell Meredith are SUSPENDED outright for a period of SIX (6) MONTHS. The period of outright suspension shall commence upon immediate surrender of all merchant mariner's licenses, documents, and/or certificate of registry to the United States Coast Guard.

IT IS HEREBY FURTHER ORDERED that Respondent shall immediately surrender all merchant mariner's licenses, documents, and/or certificate of registry to the United States Coast Guard.

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).

Done and dated on this 5th day of December, 2006
Alameda, CA

/s/ Parlen L. McKenna
HON. PARLEN L. MCKENNA
ADMINISTRATIVE LAW JUDGE
U.S. COAST GUARD

ATTACHMENT A - WITNESS AND EXHIBIT LISTS

WITNESS LIST

COAST GUARD WITNESSES

Neil Lester

RESPONDENT'S WITNESSES

Thomas H. Meredith

EXHIBIT LIST

COAST GUARD'S EXHIBITS

- 1 Local Notice to Mariners for the Week 39/05, 17 pages
- 2 33 CFR 100.1105, downloaded from <http://ecfr.gpoaccess.gov> on 05/11/2006, 2 pages
- 3 Coast Guard Boarding Report dated 10/09/05 at 1555, 1 page
- 4 Copy of NOAA Chart 18650, 5th Ed. Oct. 2005, depicting Regulated Navigation Area "Bravo" as established in 33 CFR 100.1105(b)(2), 1 page
- 5 Statement of BM3 Neil Lester faxed on 10/18/2005, 2 pages
- 6 Copy of Merchant Mariner's License issued to Thomas Howell Meredith

RESPONDENT'S EXHIBITS

- A Statement of Captain Thomas H. Meredith, undated, 2 pages
- B Statement of Chris Duba dated 3/22/06, 2 pages (including handwritten note cover sheet)
- C Hand drawn diagrams prepared by Thomas H. Meredith, 2 pages
- D Copy of NOAA Chart 18650, 5th Ed. Oct. 2005, depicting Regulated Navigation Area "Bravo" as established in 33 CFR 100.1105(b)(2) with notes prepared by Thomas H. Meredith on the back, 1 page
- E Statement of Thomas H. Meredith, undated, 1 page

- F Statement of BM2 Atsuko Sakurai faxed on 06/06/2006, 3 pages include fax cover sheet
- G Statement of Lt Leanne M. Lusk, undated, 1 page
- H Statement of BM3 Neil Lester, faxed on 10/18/2005, containing handwritten notes and underlining, 2 pages
- I Statement of Rick Lowe dated 6/18/06, 1 page
- J Statement of Chris Duba dated 3/22/06, 1 page
- K Statement of Frank Rescino dated 6/18/06, 1 page
- L Statement of Erik Anfinson dated 6/18/06, 1 page
- M Statement of Captain Thomas H. Meredith, undated, including 1 attachment, 3 pages

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.

Certificate of Service

I hereby certify that I have this day served the foregoing Decision & Order (Docket No. 06-0092) upon the following parties and limited participants (or designated representatives) in this proceeding at their listed facsimile as follows:

**Commanding Officer
CWO J. W. Crouse, IO
MSO San Francisco Bay
Coast Guard Island, Bldg. 14
Alameda, California 94501-5100
Comm: (510) 437-3142
Fax: (510) 437-3144**

**ALJ DOCKETING CENTER
40 South Gay Street, Room 412
Baltimore, MD 21202-4022
Comm: (410) 962-1740
Fax: (410) 962-1746**

I further certify that the foregoing documents(s) were served by first class mail (pre-paid postage) upon Respondent as follows:

Mr. Thomas H. Meredith



**Done and Dated on this 5th day of December, 2006
Alameda, California**

**/s/ Cindy J. Roberson
Cindy J. Roberson
Paralegal Specialist to the
Hon. Parlen L. McKenna**