

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

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Complainant

vs.

GLEN LEE PAHEL

Respondent.

Docket Number CG S&R 06-0576
CG Case No. 2820707

ORDER

Issued: March 16, 2007

Issued by: Judge Walter J. Brudzinski

This Order is issued pursuant to 33 CFR 20.710 in that the parties waived submission of post hearing proposed findings and requested a bench decision after a hearing was held on March 13, 2007 in Toledo, Ohio. On February 23, 2007, I granted Partial Summary Decision pursuant to 33 CFR 20.901 finding that there was no genuine issue of material fact since there was no dispute that Respondent was convicted of the offenses alleged in the Coast Guard's Complaint. However, I found that Respondent was entitled to a hearing on the issue of Sanction because the statutory authority on which the Complaint was based provides for either suspension or revocation.

Background

Complaint. On December 12, 2006, the Coast Guard filed its Complaint alleging that on July 21, 2006, Respondent, Glen Lee Pahel, a holder of a License and

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U.S. COAST GUARD
TOLEDO, OHIO

Merchant Mariner's Document, was convicted on two counts of Criminal Sexual Conduct, 4th Degree, (Victim Between 13 – 16) at the 31st Circuit Court in Port Huron, Michigan. The Complaint further alleges that according to Coast Guard regulations at 46 CFR Tables 10.201(h) and 12.02-4(c) (2), a conviction of Sexual Assault/Child Molestation carries a 5-10 year assessment period for mariners applying for merchant mariner licenses and documents. The Coast Guard proposed Revocation and cites 46 U.S.C. § 7703(2) (*Bases for suspension or revocation*) and 46 CFR 5.61(a) (3) (*Acts or offenses for which revocation of licenses, certificates, or documents is sought*) as authority. On December 29, 2006, this matter was assigned to the undersigned for review and adjudication.

Summary Decision. On January 5, 2007, the Coast Guard filed its Motion for Summary Decision on the grounds that there are no genuine issues of material fact in that:

The Respondent was convicted of Criminal Sexual Conduct – Fourth Degree – Victim Between 13-16 by the State of Michigan on July 21, 2006. Court record of conviction is attached as enclosure CG-01 of the Coast Guard's Motion for Summary Decision.

The Respondent's conviction of Criminal Sexual Conduct – Fourth Degree – Victim Between 13-16 would preclude the issuance of his Merchant Mariners License and Merchant Mariners Document. Statement from CDR Mark W. Skolnicki, Chief, Coast Guard Regional Examination Center Toledo is attached as enclosure CG-02 of the Coast Guard's Motion for Summary Decision.

Therefore, the Coast Guard requests that the Administrative Law Judge issue a Summary Decision and Order against the Respondent that imposes the order (Revocation) requested on the Complaint.

In support of its Motion, the Coast Guard submitted certified copies of the relevant court records. Coast Guard Exhibit 1, comprised of 7 pages, shows the record of

conviction, the imposition of a 180 day jail sentence, (incarceration commencing on 10/31/07 but Respondent was released on 2/20/07), sex offenders' registration, sex offender treatment, submission to search of person/residence/vehicle without a search warrant, no contact with victim, and 5 years of supervised probation, among other things.

The Coast Guard also submitted Exhibit 2, a three page memo from CDR Mark W. Skolnicki, USCG, Chief, U.S. Coast Guard Regional Examination Center Toledo, Ohio. CDR Skolnicki's memo explains in great detail how the regulations in 46 CFR Parts 10 and 12 and the policy found in the Marine Safety, Volume III are applied when evaluating merchant mariner credential applications which reflect criminal convictions.

After evaluating the Coast Guard's evidence, counsel for Respondent's well reasoned Answer to Motion for Summary Decision, as well as the applicable case law, regulations, and statutes, I found, among other things, that the Coast Guard's evidence proved by the preponderance of reliable, probative, and substantial evidence that Respondent was, in fact, convicted of the crimes alleged in the Complaint which would prevent the issuance or renewal of his license and merchant mariner's document absent the imposition of appropriate waiting periods (5 to 10 years) and granted Partial Summary Decision on February 23, 2007.

However, the matter of an appropriate Sanction was still in dispute. While 46 CFR 5.61(a) (3) directs the investigating officer to seek Revocation when "rape or sexual molestation" is found proved, it does not require the Administrative Law Judge to impose Revocation. Title 46 U.S.C. § 7703(2), provides, in pertinent part: A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder . . . (2) is convicted of an offense that would prevent the issuance or

renewal of a license, certificate of registry, or merchant mariner's document”

Therefore, I found that the Coast Guard was entitled to Summary Decision only on the allegations under 46 U.S.C. § 7703(2) and not on the proposed order and that the matter of Sanction would be taken up at the hearing set for March 13, 2007 in Toledo, Ohio.

Hearing

At the hearing, the Coast Guard introduced the two, above-mentioned exhibits into evidence as well as the testimony of two witnesses: Mr. William Symington, Respondent's probation officer, and CDR Mark W. Skolnicki, USCG. Respondent introduced no exhibits and testified in his own behalf.

After previously finding the allegations in the Complaint proved, and after extensive examination, cross-examination, and argument at the hearing, I revoked Respondent's license and document and ordered that they be surrendered to the Coast Guard Investigating Officer at Marine Safety Unit Toledo, Ohio immediately.

Respondent's criminal convictions on two counts of Criminal Sexual Conduct, 4th Degree (Victim Between 13 –16) demonstrate unacceptable character traits or habits of life which disqualify Respondent from holding Coast Guard credentials absent an appropriate assessment period.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED that the allegations in the Complaint are found **PROVED**.

IT IS FURTHER ORDERED that Merchant Mariner's License Number 1036297 and all other valid licenses, documents, and endorsements issued by the Coast Guard to Glen Lee Pahel are **REVOKED**.

IT IS FURTHER ORDERED that Respondent, Glenn Lee Pahel, surrender all validly issued Coast Guard credentials to LT Michael Reed, at Marine Safety Unit Toledo, Ohio immediately.

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

Done and dated March 16, 2007
New York, NY


WALTER J. BRUDZINSKI
ADMINISTRATIVE LAW JUDGE
U.S. COAST GUARD

ATTACHMENT A

NOTICE OF 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 B

WITNESS AND EXHIBIT LISTS

WITNESS LIST

COAST GUARD'S WITNESSES

1. Mr. William Symington
2. CDR Mark W. Skolnicki

RESPONDENT'S WITNESSES

1. Glen L. Pahel, Respondent

EXHIBIT LIST

COAST GUARD'S EXHIBITS

CG Ex. 1 - Certified copies of Judgments of Conviction, 7 pages

CG Ex. 2 – CDR Mark W. Skolnicki memo 16721 of January 5, 2007, 3 pages

RESPONDENT'S EXHIBITS

None

Certificate of Service

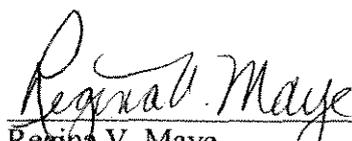
I hereby certify that I have this day served the foregoing Order with Attachments A and B via facsimile upon the following parties and limited participants (or designated representatives) in this proceeding at the addresses indicated as follows:

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USCG – ALJ Docketing Center
40 South Gay Street, Room 412
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Telephone: (410) 962-7434
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Done and dated March 16, 2007
New York, NY



Regina V. Maye
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Administrative Law Judge
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