

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

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Complainant

vs.

JAMES NEIL RYERSE

Respondent

Docket Number 2009-0429
Enforcement Activity No. 3601363

**ORDER GRANTING COAST GUARD'S MOTION FOR
SUMMARY DECISION – IN PART**

Issued: December 15, 2009

By Administrative Law Judge: Honorable Walter J. Brudzinski

The Coast Guard requests Summary Decision on the grounds that there are no genuine issues of material fact. For the reasons set forth below, Summary Decision is Partially Granted. However, Respondent still has the opportunity at the hearing to present evidence showing that his merchant mariner's document should not be revoked.

The Complaint alleges Respondent was convicted on January 23, 2009 of "an offense that would preclude the issuance or renewal of a license, certificate or registry, or merchant mariner's document" under 46 U.S.C. § 7703(2); to wit: Criminal Sexual Conduct – 3rd Degree – Person between the ages of 13 – 15, in violation of MICH. COMP. LAWS § 750.520d(1)(a) (2009). The Coast Guard proposes Revocation.

In his Answer, Respondent admits to all jurisdiction and factual allegations but requests to be heard on the proposed order. In his response to the Coast Guard's Motion for Summary

Decision, he states that he believes he can prove at hearing that he is “in no way, shape, or form a threat to my shipmates and or vessel. I will prove with letters of character to the ALJ that there is not a safety at sea issue.”

Law

“It is well settled that a court should grant a motion for summary judgment only when evidence, viewed in light most favorable to nonmoving party, presents no genuine issue of material fact.” *Commander Oil Corp. v. Advance Food Service Equipment*, 991 F.2d 49, 51 (2nd Cir 1993) *quoting* *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). “There is no material fact issue when reasonable minds cannot differ as to the import of the evidence before the court. *Id. quoting* *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986). For summary judgment purposes, “[n]o genuine issue exists unless there is sufficient evidence favoring nonmoving party for jury to return verdict for that party, and if evidence is merely colorable, or is not significantly probative, summary judgment may be granted. *Sala v. Gates Const. Corp.*, 868 F. Supp. 474, 476 (E.D.N.Y.1994).

“A factual dispute is material if it ‘affects the outcome of the litigation,’ and genuine if manifested by ‘substantial evidence going beyond the allegations of the complaint.’” *Pignons S.A. de Mecanique de Precision v. Polaroid Corp.*, (1st Cir. 1981), 657 F.2d 482, 486, *quoting* *Hahn v. Sargent*, 523 F.2d 461, 464 (1st Cir. 1975), *cert. denied*, 425 U.S. 904 (1976). “In passing on a summary judgment motion, the court must view the record and draw inferences most favorably to the opposing party.” *Hahn*, 523 F.2d at 464.

Title 46 U.S.C. § 7703 (2) provides that “[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 or registry, or merchant mariner’s document.”

Applying the Law to the Facts

It is undisputed that Respondent is a holder of a merchant mariner's document and it is undisputed that Respondent was convicted of Criminal Sexual Conduct – 3rd Degree – Person between the ages of 13 – 15. The Coast Guard offers a letter from the National Maritime Center dated May 13, 2009 denying Respondent's application for renewal of his merchant mariner's document citing "Attempted Felony Criminal Sexual Conduct" and that under title 46 C.F.R. Table 10.211(g), it has imposed a five year assessment period which started on the date of Respondent's conviction and will end on January 23, 2014. Title 46 C.F.R. Table 10.211(g), is a list of general categories of criminal offenses with corresponding minimum and maximum assessment periods that the Coast Guard uses in evaluating the suitability of applicants for the issuance or renewal of merchant mariner credentials. The offense in question fits in the category of "Sexual Assault (rape, child molestation)" and carries minimum and maximum assessment periods of 5 and 10 years respectively. Considering the May 13, 2009 letter, the Coast Guard has already decided that based on the above conviction, it will not renew Respondent's document for at least 5 years.

Those administrative actions are not binding on the Administrative Law Judge in suspension and revocation proceedings. There is no regulation in title 46 C.F.R. directing the Administrative Law Judge to revoke a merchant mariner's credential if an allegation of conviction of an offense that would prevent the issuance or renewal of a merchant mariner's credential is found proved. Further, Respondent states, "I will prove with letters of character to the ALJ that there is not a safety at sea issue. These letters from officers and masters clearly state their beliefs that I should be able to keep my documents and upgrade when applicable to continue my chosen profession."

Conclusion

Respondent will present evidence on his fitness to hold a document that will affect the sanction. Since this evidence may affect the outcome of these proceedings, they are material and since they could reasonably persuade a trier of fact to impose a sanction less than Revocation, they are genuine. Viewing the record and drawing inferences most favorably to the opposing party, I find that there are genuine issues of material fact remaining.

Therefore, the Coast Guard's motion for summary decision is **PARTIALLY GRANTED** to the extent that the following elements are found proved: 1) At all times relevant to these proceedings, Respondent was a holder of a merchant mariner's document; 2) Respondent was convicted of Criminal Sexual Conduct – 3rd Degree – Person between the ages of 13 – 15, in violation of MICH. COMP. LAWS § 750.520d(1)(a) (2009); and 3) under the regulations at 46 C.F.R. Table 211(g), said conviction is an offense that would prevent the issuance of renewal of his merchant mariner's document.

SO ORDERED.

Walter J. Brudzinski
Administrative Law Judge
United States Coast Guard

Date: December 15, 2009