

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

UNITED STATES COAST GUARD
Complainant

vs.

BYRON ANTHONY TROSCLAIR
Respondent

Docket Number 2012-0458
Enforcement Activity No. 4455320

DECISION & ORDER

Date Issued: April 23, 2014

Issued By: Honorable Bruce Tucker Smith
Administrative Law Judge

Appearances:

For Complainant

Bruce L. Davies, Esq.
CWO James R. Mints
U.S. Coast Guard Marine Safety Unit Port Arthur

For the Respondent

Christopher H. Riviere, Esq,
William N. Abel, Esq.
The Riviere Law Firm

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I.

I. PRELIMINARY STATEMENT

The United States Coast Guard Marine Safety Unit Morgan City (Coast Guard) initiated the instant administrative action seeking revocation of Byron Anthony Trosclair's (Respondent) Coast Guard-issued Merchant Mariner's Credential (MMC).

On October 1, 2013, the Coast Guard filed an Amended Complaint alleging that on February 16, 2011, Respondent committed two Specifications of Negligence per 46 U.S.C. §7703(1)(A) and 46 C.F.R. §5.29 as well as one Specification of Misconduct in violation of 46 U.S.C. §7703(1)(B) and 46 C.F.R. §5.27.

On October 11, 2013, Respondent filed his final Answer wherein he denied both the jurisdictional and factual allegations contained in the Complaint. In his Answer, Respondent denied that he was acting under the authority of his MMC by serving as Master aboard the Starfleet Patriot on February 16, 2011. He admitted, however, that he served as "one of the captains aboard the Starfleet Patriot" on February 16, 2011, but specifically averred that "at all times pertinent, he was off-duty and therefore not acting under the authority of said license." (sic).

After various pre-trial Motions were made and argued by the parties and resolved by the court, this matter came on for hearing in Hale Boggs Federal Courthouse, New Orleans, Louisiana, on December 18 – 19, 2013.

All hearings in this case were conducted in accordance with the Administrative Procedure Act (APA), as amended and codified at 5 U.S.C. §§551-59 and the Coast Guard procedural regulations set forth at 33 C.F.R. Part 20. Bruce L. Davies, Esq. and CWO James R. Mints

appeared on behalf of the Coast Guard. Christopher H. Riviere, Esq., and William N. Abel, Esq., appeared on behalf of Respondent, who was also present at the hearing.

Five witnesses testified as part of the Coast Guard's case-in-chief; one witness testified for the Coast Guard in rebuttal. The Coast Guard offered twelve documents into evidence, all of which were admitted.¹

Respondent offered four documents into evidence, all of which were admitted. Respondent and two other witnesses testified during Respondent's case-in-chief.

The court recessed on December 19, 2013. Thereafter, the court received additional testimony on February 24, 2014, at which time the parties rested their respective cases. The court permitted parties to file written closing arguments. Upon receipt of the parties' respective arguments, the court closed the administrative record and commenced its deliberation.

II. FINDINGS OF FACT

These findings of fact are based on a thorough and careful analysis of the documentary evidence, the testimony of witnesses, and the entire record taken as a whole:

1. On February 16, 2011, at and all relevant times herein, Respondent Byron Anthony Trosclair was on his marine employer's payroll; serving aboard his marine employer's vessel, the STARFLEET PATRIOT, as Master of that vessel and under the authority of his mariner's credential. (Respondent's Answer; Tr. Vol. I at 106 – 107; Tr. Vol. II at 81; CG Ex. 9, 11)
2. The STARFLEET PATRIOT is a 261 gross ton, 130.5 foot long, aluminum-hulled vessel, propelled by a combined 3,040 horsepower diesel-reduction engines. (CG Ex. 9, 10).

¹Citations referencing the transcript are as follows: Transcript followed by the volume number and page number (Tr. at __). In this case, proceedings transcribed on December 18, 2013 are referred to as "Vol. I," proceedings transcribed on December 19, 2013, are referred to as "Vol. II," proceedings transcribed on February 24, 2014 are referred to as "Vol. III." Citations referring to Agency Exhibits are as follows: "CG" followed by the exhibit number (CG Ex. 1, etc.); Respondent's Exhibits are as follows: "Resp." followed by the exhibit letter (Resp. Ex. A, etc.); ALJ Exhibits are as follows: "ALJ" followed by the exhibit Roman numeral (ALJ Ex. I, etc.).

3. The STARFLEET PATRIOT's Certificate of Inspection requires the ship's crew to include: one Master, one Licensed Mate, and 2 Deckhands. (CG Ex. 9).

4. On February 16, 2011, the four-man crew of the STARFLEET PATRIOT included the ship's Master, Respondent, Byron Anthony Trosclair; a Licensed Mate, Cameron Hudson; an unnamed engineer; and a deckhand, Joey Duplantis. (Tr. Vol. I at 264.)

5. On February 16, 2011, Respondent Byron Anthony Trosclair was the Master of the STARFLEET PATRIOT. Captain Cameron Hudson was the Licensed Mate, as evidenced by his admissions that he did not fill out the ship's log book, that he was obliged to follow the Respondent's orders, and that he was, in fact, the Licensed Mate. (Tr. Vol. II at 81, 92; CG Ex. 11, 12).

6. On or about between February 13 – 16, 2011, Respondent Byron Anthony Trosclair was the Master of the STARFLEET PATRIOT, an offshore supply vessel engaged in the transport of oil platform workers from Cameron, Louisiana, to a platform-based living facility, and thence to a work platform, in the Gulf of Mexico. (Tr. Vol. I at 22 – 28).

7. The work platform is owned/operated by Apache Corporation and is described as "West Cam 575-A." (platform or work platform) (Tr. Vol. I at 25 – 28; CG Ex. 2).

8. On or about between February 13 – 16, 2011, Mr. Joseph P. Bruno, Sr., was one of several oil platform workers who were passengers aboard the STARFLEET PATRIOT. Those passengers required transport to their duty location on the platform for a three-week long project. (Tr. Vol. I at 22 – 28, 36).

9. On or about between February 13 – 16, 2011, the passengers aboard the STARFLEET PATRIOT were variously employed as welders, sandblasters, electricians, painters and the like on the oil platform owned/operated by Apache Corporation. (Tr. Vol. I at 103, 183).

10. On or about between February 13 – 16, 2011, at approximately 7:30 to 8:00 a.m., the STARFLEET PATRIOT would pick up the workers/passengers from their off-shore living facility and ferry them to the work platform. Upon their daily arrival at the platform, passengers disembarked the STARFLEET PATRIOT by means of a rope swing. (Tr. Vol. I at 26 – 30, 270).

11. On or about between February 13 – 16, 2011, the passengers aboard the STARFLEET PATRIOT would disembark that vessel and alight upon the platform assisted by a rope swing. A rope swing is a long, knotted rope affixed to the platform and is used to assist a passenger as he transfers from a vessel onto a stationary platform. (Tr. Vol. I at 71, 86; CG Ex. 2, 3).

12. A rope swing is not designed to be a “Tarzan swing,” but rather, as an aide to prevent falling, slipping or tripping as a passenger disembarks from a vessel onto a platform. (Tr. Vol. I at 71, 86; Tr. Vol. II at 162; CG Ex. 2, 3).

13. On or about between February 13 – 16, 2011, at approximately 7:30 to 8:00 a.m., the STARFLEET PATRIOT’s deck hand, Mr. Joey Duplantis, assisted with the passenger disembarkation process by catching the swing rope with a 15-foot long “spike pole” or “boat hook” and then handing the rope to each passenger as each would prepare to leave the vessel. (Tr. Vol. I at 242 – 243).

14. On or about between February 13 – 16, 2011, at approximately 7:30 to 8:00 a.m., the passengers disembarked the aft deck of the STARFLEET PATRIOT, assisted by the swing rope, then landed upon an area of the platform described as a “plus ten” deck. The “plus ten” deck is a catwalk or a walkway. (Tr. Vol. I at 33, 80; CG Ex. 2, 3).

15. The aft deck of the STARFLEET PATRIOT was five feet lower than the “plus ten” deck and also approximately five feet above the water. (Tr. Vol. I at 34, CG. Ex. 3).

16. On the morning of Sunday, February 13, 2011, Captain Cameron Hudson was in physical control of the STARFLEET PATRIOT during the passenger disembarkation process. (Tr. Vol. II at 61).

17. On the morning of Sunday, February 13, 2011, and during the passenger disembarkation process, the STARFLEET PATRIOT was positioned in a manner that placed its aft deck approximately five or six feet laterally distant from the “plus ten” deck of the platform. (Tr. Vol. I at 45, 113, 183).

18. On the morning of Sunday, February 13, 2011, and during the passenger disembarkation process, the passenger/workers asked Respondent to position the STARFLEET PATRIOT closer to the platform in order to make the rope swing transfers easier, but

Respondent denied those requests. (Tr. Vol. I at 45). Several passenger/workers also complained to the deck hand, Mr. Duplantis, about the manner in which the rope swing transfers were conducted. (Tr. Vol. I at 243).

19. On the morning of Monday, February 14, 2011, and during the passenger disembarkation process, the STARFLEET PATRIOT was again positioned approximately five feet laterally distant from the “plus ten” deck of the platform. (Tr. Vol. I at 45, 183).

20. On the morning of Monday, February 14, 2011, and during the passenger disembarkation process the workers asked Respondent to position the STARFLEET PATRIOT closer to the platform to make the rope swing transfers easier. Respondent denied those requests. (Tr. Vol. I at 45).

21. On the morning of Tuesday, February 15, 2011, and during the passenger disembarkation process, Captain Hudson was again in physical control of the STARFLEET PATRIOT as the vessel was once more positioned in a manner that placed its aft deck approximately five to seven feet laterally distant from the “plus ten” deck of the platform. (Tr. Vol. I at 36, 45, 114, 183).

22. On the morning of Tuesday, February 15, 2011, and during the passenger disembarkation process, the passenger/workers asked Respondent to position the STARFLEET PATRIOT closer to the platform to make the rope swing transfers easier and Respondent again denied those requests. (Tr. Vol. I at 45).

23. On the morning of Tuesday, February 15, 2011, and during the passenger disembarkation process on Tuesday, February 15, 2011, Mr. Joseph P. Bruno, Sr., complained to Respondent Byron Anthony Trosclair and Mr. Joey Duplantis, that he had poor upper body strength, and told them that he could not hold onto the rope that long to effect a safe transfer. (Tr. Vol. I at 45 – 46).

24. That at various times from Sunday, February 13 until Tuesday, February 15, 2011, the passenger/workers aboard the STARFLEET PATRIOT communicated to Respondent Byron Anthony Trosclair that they wanted the vessel moved closer to the platform to ease the rope swing transfer. (Tr. Vol. I at 185). At those times, Respondent told the workers that he didn’t want to damage the tires/bumpers and chains on the aft of his vessel. (Tr. Vol. I at 42, 66, 246).

25. Respondent Byron Anthony Trosclair knew his passengers were having difficulty transferring from the STARFLEET PATRIOT to the platform in the days prior to February 16, 2011. (Tr. Vol. I at 96, 122; Tr. Vol. II at 196).

26. Sometime during the evening of February 15, 2011, and in apparent response to their employees' concerns, supervisory personnel at Dynamic/Apache ordered the construction and placement of a "swing platform" or a "jump platform" to be installed on the aft section of the STARFLEET PATRIOT, in an effort to ease the transfer to the "plus ten" deck. (Tr. Vol. I at 42 – 43, 83, 117 – 119; CG Ex. 3, 5). The "swing platform" or "jump platform" was a welded steel structure that was supported by four legs, accessed by climbing up approximately four feet to a (court's estimation 3' x 6') metal platform. (CG Ex. 3). Despite the placement of the "swing platform" or "jump platform" on the aft deck of the STARFLEET PATRIOT, changing sea conditions still made the rope swing transfer difficult. (Tr. Vol. I at 44).

27. On the morning of Wednesday, February 16, 2011, the sea conditions were choppy, with one to two foot waves and that the weather was clear. (Tr. Vol. I at 48, 124, 192).

28. On the morning of Wednesday, February 16, 2011, Captain Hudson was in physical control of the STARFLEET PATRIOT. (Tr. Vol. II at 61, 65).

29. On the morning of Wednesday, February 16, 2011, and at the time Mr. Bruno made his unsuccessful attempt to use the rope swing, Respondent Byron Anthony Trosclair was standing in the aft-facing wheelhouse with Captain Hudson at the controls. (Tr. Vol. I at 249, 273, 275; Tr. Vol. II at 66).

30. On the morning of Wednesday, February 16, 2011, Mr. Bruno was to be the fifth or sixth passenger to disembark the STARFLEET PATRIOT by means of the rope swing. (Tr. Vol. I at 186). After others had made the difficult transfer, Mr. Bruno climbed atop the jump platform, took the rope from Mr. Joey Duplantis and prepared to disembark. (Tr. Vol. I at 166 – 167, 186, 223). Mr. Bruno had difficulty holding onto the rope swing and was visibly afraid to make the transfer. (Tr. Vol. I at 49 – 51, 126 – 128).

31. On the morning of Wednesday, February 16, 2011, as Mr. Bruno prepared to make his rope swing transfer, the stern of the STARFLEET PATRIOT was positioned between five and seven

feet laterally distant from the “plus ten” deck of the platform. (Tr. Vol. I at 48, 160, 193).

32. On the morning of Wednesday, February 16, 2011, as Mr. Bruno prepared to make his rope swing transfer from the STARFLEET PATRIOT, Mr. Bruno signaled to the captain in the wheelhouse to “bring the boat back, bring the boat back.” (Tr. Vol. I at 187). At the same time, worker Arturo Garcia and other passengers also attempted to communicate with the wheelhouse to “back closer to the work platform.” (Tr. Vol. I at 124 – 125, 193.)

34. Captain Hudson admitted that on the morning of February 16, 2011, “I could have moved it close enough . . .” to allow Mr. Bruno to safely disembark the STARFLEET PATRIOT (Tr. Vol. II at 86).

35. On the morning of Wednesday, February 16, 2011, Mr. Bruno attempted to make the rope swing transfer from the jump platform near the stern of the STARFLEET PATRIOT onto the “plus ten” deck; he failed and fell into the sea. (Tr. Vol. I at 50 – 51, 249 – 251).

36. On the morning of Wednesday, February 16, 2011, and after Mr. Bruno fell into the sea, the STARFLEET PATRIOT either maneuvered and/or drifted approximately from 80 to 100 feet away from the platform and held its position there as the other workers on the platform pulled Mr. Bruno from the sea. (Tr. Vol. I at 51 – 57, 60 – 63, 129, 188, 253).

37. On the morning of Wednesday, February 16, 2011, and after Mr. Bruno fell into the sea, no crew member from the STARFLEET PATRIOT provided rescue assistance to Mr. Bruno when he was in the water (Tr. Vol. I at 58, 130 – 131, 189).

38. Prior to the morning of Wednesday, February 16, 2011, Respondent Byron Anthony Trosclair had trained and conducted drills to deploy “our man overboard platform” in the event of an emergency such as the one that occurred on February 16, 2011. (Tr. Vol. II at 210).

39. Despite his training, Respondent, as Master, failed to deploy the vessel’s man overboard platform when Mr. Bruno went into the water on February 16, 2011.

40. On the morning of Wednesday, February 16, 2011, Mr. Bruno was in the sea for approximately 25 to 30 minutes before he was lifted onto the “plus ten” deck of the platform. (Tr. Vol. I at 189).

41. On the morning of Wednesday, February 16, 2011, and after Mr. Bruno was lifted to the “plus ten” deck of the platform, the STARFLEET PATRIOT “backed up all the way up to the platform” to allow another worker to transfer from the vessel to the platform to perform CPR on Mr. Bruno. (Tr. Vol. I at 60).

42. Despite the life-saving efforts of the workers and medical personnel who eventually arrived at the scene, Mr. Bruno apparently succumbed to a heart attack. (Tr. Vol. I at 64).

43. Sometime around mid-day or early afternoon on Wednesday, February 16, 2011, and after Mr. Bruno had been declared dead and his body placed on a gurney for transfer, Respondent Byron Anthony Trosclair was at the controls of the STARFLEET PATRIOT. Respondent backed the vessel “all the way up against” with “no gap between” the platform and the vessel to effect the transfer of the gurney to the aft deck of the vessel. (Tr. Vol. I at 65, 133, 160 – 161, 195; Vol. II at 106).

III. SUMMARY OF DECISION

The Coast Guard **PROVED** by a preponderance of reliable, probative, and credible evidence that Respondent committed the acts alleged in Specifications 1, 2 and 3 of the Amended Complaint.

For the reasons set forth infra, the Merchant Mariner’s Credential issued by the U.S. Coast Guard to Respondent is hereby **REVOKED**.

IV. DISCUSSION

The purpose of Coast Guard Suspension and Revocation proceedings is to promote safety at sea. See 46 U.S.C. §7701. Pursuant to 46 C.F.R. §5.19, an ALJ holds the authority to suspend or revoke a license or certificate in a hearing for violations arising under 46 U.S.C. §7703 and/or §7704.

Determining the weight of the evidence and making credibility determinations as to the evidence is within the sole purview of the ALJ. See Appeal Decision 2640 (PASSARO) (2003). Additionally, the ALJ is vested with broad discretion in resolving inconsistencies in the evidence, and findings do not need to be consistent with all of the evidence in the record as long as there is sufficient evidence to reasonably justify the findings reached. Id.; Appeal Decision 2639 (HAUCK) (2003).

A. Jurisdiction

“The jurisdiction of administrative bodies is dependent upon the validity and the terms of the statutes reposing power in them.” Appeal Decision 2620 (COX) (2001) (quoting Appeal Decision 2025 (ARMSTRONG) (1975)). “Where an Administrative forum acts without jurisdiction its orders are void.” Appeal Decision 2025 (ARMSTRONG) (1975). Therefore, establishing jurisdiction is critical to the validity of a proceeding. Appeal Decisions 2677 (WALKER) (2008); 2656 (JORDAN) (2006).

As discussed infra, the Coast Guard charged Respondent with three Specifications describing certain events that occurred on February 16, 2011 in the Gulf of Mexico.

In order to establish jurisdiction in this case, the Coast Guard must prove that the acts of Negligence and/or Misconduct occurred while the Respondent was “acting under the authority of his MMC.” 46 U.S.C. §7703. Appeal Decision 2425 (BUTTNER) (1986) plainly states that jurisdiction is a question of fact that must be proven by the Coast Guard. “A person employed in the service of a vessel is considered to be acting under the authority . . . [when a credential is] (1) Required by law or regulation; or (2) Required by an employer as a condition for employment.” 46 C.F.R. §5.57(a). Accordingly, if neither of the criteria set forth at 46 C.F.R. §5.57(a) is met, then the Coast Guard has no jurisdiction for a Suspension and Revocation proceeding. Appeal

Decision 2620 (COX) (2001) further adds that jurisdiction must be affirmatively shown and will not be presumed. See also Appeal Decision 2025 (ARMSTRONG) (1975).

At all relevant times herein, Respondent was on his marine employer's payroll; serving aboard his marine employer's vessel, the STARFLEET PATRIOT, as Master. (Tr. Vol. I at 107, 264; Vol. II at 81, 92; CG Ex. 11). Inasmuch as Respondent served as a Master on an inspected vessel that required a credentialed Master, the character of Respondent's employment was clearly within the scope of his MMC.² In that regard, the court finds jurisdiction appropriate in a case such as the one at bar. See Appeal Decision 2615 (DALE) (2000). Here, the court has jurisdiction over Respondent and the subject matter at hand.

B. Burden of Proof

In this case, like all Suspension and Revocation cases, the Coast Guard bears the burden of proof to establish the requisite facts mandated by the organic statute, 46 U.S.C. §7703, and the implementing regulations, 46 C.F.R. Part 5 and Part 10, Subpart B; 33 C.F.R. Part 20. The Administrative Procedure Act (APA), 5 U.S.C. §§551-559, applies to Coast Guard Suspension and Revocation hearings before United States ALJs. The APA authorizes imposition of sanctions if, upon consideration of the entire record as a whole, the charges are supported by reliable, probative and substantial evidence. 5 U.S.C. §556(d). The Coast Guard bears the burden of proof to establish the charges are supported by a preponderance of the evidence. 33 C.F.R. §§20.701, 20.702(a). Similarly, a respondent bears the burden of proof in asserting any affirmative defense by a preponderance of the evidence. 33 C.F.R. §§20.701, 20.702; Appeal Decisions 2640 (PASSARO) (2003); 2637 (TURBEVILLE) (2003). "The term substantial evidence is synonymous with preponderance of the evidence as defined by the U.S. Supreme

² The court received and reviewed Respondent's MMC at the outset of the hearing and returned same to him at the conclusion thereof.

Court.” Appeal Decision 2477 (TOMBARI) (1988) (citing Steadman v. SEC, 450 U.S. 91, 107 (1981)).

The burden of proving a fact 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 & Products of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal., 508 U.S. 602, 622 (1993) (quoting In re Winship, 397 U.S. 358, 371-72 (1970) (Harlan, J., concurring) (brackets in original)).

As per 46 U.S.C. §7703(1)(B), a mariner’s credential may be suspended or revoked if that mariner has committed an act of Negligence or an act of Misconduct.

Therefore, at hearing, the Coast Guard was obligated to prove by credible, reliable, probative and substantial evidence that Respondent more-likely-than-not committed the acts alleged in the Complaint.

This case arose following a regrettable set of circumstances in the Gulf of Mexico on February 16, 2011, that resulted in the death of Mr. Joseph P. Bruno, Sr., a passenger aboard the Motor Vessel STARFLEET PATRIOT.

It is important for this court to identify what is at issue before this particular forum . . . and what is not. This is not (as some might mistakenly believe) a tort action for wrongful death. A civil court of appropriate jurisdiction is the appropriate forum for resolving any such action. Moreover, this court does not concern itself with issues of legal or factual causation or damages as are befitting a tort action. For the purposes of determining whether Respondent committed either Negligence or Misconduct, Mr. Bruno’s death is legally irrelevant to the Coast Guard’s burden of proof herein. Rather, this court’s inquiry is strictly limited to a determination of

whether Respondent breached a duty of care and/or whether he violated some formal, duly established rule – not what the consequences of those failings may have been.

Mr. Bruno’s death, however, may be considered as a potential factor in aggravation if it is otherwise appropriate for the court to impose a sanction in this case.

C. Evidence

The STARFLEET PATRIOT is a 261 gross ton,³ 130.5 foot long, aluminum-hulled vessel, propelled by a combined 3,040 horsepower diesel-reduction engines. (CG Ex. 9, 10).

The STARFLEET PATRIOT’s Certificate of Inspection requires the ship’s crew to include: one Master, one Licensed Mate, and 2 Deckhands. (CG Ex. 9). During the relevant times herein, the four-man crew of the STARFLEET PATRIOT included the ship’s Master, Respondent; a Licensed Mate, Cameron Hudson; an engineer and a deckhand, Joey Duplantis. (Tr. Vol. I at 233, 264.)

At all relevant times herein, Respondent was the Master of the STARFLEET PATRIOT.⁴ Captain Hudson was the Licensed Mate, as evidenced by his admissions that he did not fill out the ship’s log book, that he was obliged to follow the Respondent’s orders, and that he was, in fact, the Licensed Mate. (Tr. Vol. II at 81, 92; CG Ex. 11, 12).

The facts reveal that on or about February 13 – 16, 2011, Respondent was the Master of the STARFLEET PATRIOT, an offshore supply vessel (OSV) engaged in the transport of oil platform workers from Cameron, Louisiana, to a platform-based living facility, and thence to a

³ ITC International Convention on Tonnage Measurement of Ships, 1969.

⁴The court regards Respondent as less than fully credible in his attempt to obfuscate his role as Master of the STARFLEET PATRIOT; as if the Master’s duties were something that can be shared with another. (Tr. Vol. II at 179). When asked if he was the senior Master aboard the vessel, Respondent disingenuously responded “We both held captain’s license. Nobody was deemed Master, mate. We both was licensed Master.” (sic) (Tr. Vol. II at 226). Further, the court accepts as authoritative the testimony of Respondent’s expert, Mr. David Scruton’s that: “[T]here can be two captains and one Master, and typically there is one person in overall charge . . . a Master has ultimate responsibility . . . Typically, there is one ultimate Master ” (Tr. Vol. II at 139, 141, 147 – 148).

work platform, in the Gulf of Mexico. (Tr. Vol. I at 23 – 24, Vol. II at 183). The work platform is owned/operated by Apache Corporation and is described as “West Cam 575-A.” (platform or work platform) (Tr. Vol. I at 25, 28; CG Ex. 2).

Mr. Bruno was one of several oil platform workers who were passengers aboard the STARFLEET PATRIOT. Those passengers required transport to their duty location on the platform for a three-week long project. (Tr. Vol. I at 24 – 25, 111). The passengers were variously employed as welders, sandblasters, electricians, painters and the like. (workers or passengers) (Tr. Vol. I at 103, 183).⁵

Each morning, at approximately 7:30 to 8:00 a.m., the STARFLEET PATRIOT picked up the workers from their off-shore living facility and transported them to the work platform. Upon their daily arrival at the platform, passengers were to disembark the STARFLEET PATRIOT by means of a rope swing. (Tr. Vol. I at 28 – 30, 270). A rope swing is simply that: a long, knotted rope affixed to the platform and is used to assist a passenger as he transfers from a vessel onto a stationary platform. It is not designed to be a “Tarzan swing,” but rather, as an aide to prevent falling, slipping or tripping. (Tr. Vol. I at 71, 86; CG Ex. 2, 3). As Respondent’s expert witness, David Scruton, explained:

It is designed to assist in doing a transfer. Normally, most people literally step across and as they step, they’re swinging on the boat – on the rope So it is meant to assist them in their step across. . . . Some people use it as a Tarzan rope. You’ll see people grab ahold of that knot and they’ll swing like Tarzan. They’re not supposed to do that. It is meant as an assist to step across.

(Tr. Vol. II at 162).

⁵ Some of the passengers were employed by a business called “Dynamic,” under contract to “Apache Corporation,” and some passengers were employees of a business called “Applied Coating Services.” (Tr. Vol. I at 175). Mr. Bruno may have been employed by a business entity referred to as “H.I.S.” (Tr. Vol. I at 151).

On each relevant day herein, the STARFLEET PATRIOT's deck hand, Mr. Joey Duplantis, assisted with the passenger disembarkation process by catching the swing rope with a 15-foot long "spike pole" or "boat hook" and then handing the rope to each passenger as each would prepare to leave the vessel. (Tr. Vol. I at 242).

The passengers disembarked the aft deck of the STARFLEET PATRIOT, assisted by the swing rope, then landed upon an area of the platform described as a "plus ten" deck.⁶ The "plus ten" deck might be accurately described as a catwalk or a walkway. (Tr. Vol. I at 33, 80; CG Ex. 2, 3). Importantly, the aft deck of the STARFLEET PATRIOT was five feet lower than the "plus ten" deck and also approximately five feet above the water. (Tr. Vol. I at 34, CG. Ex. 3). The height differential between the "plus ten" deck and the aft deck of the OSV is of some import in this case, infra.

Even though the most crucial events in this case occurred on Wednesday, February 16, 2011, it is appropriate to describe events preceding the 16th.

Sunday, February 13, 2011

Sunday, February 13, 2011, was the first day the STARFLEET PATRIOT's passengers were to report for duty on the work platform. Accordingly, the vessel arrived at the platform in the morning and the passengers began to disembark by means of the rope swing.

On the morning of Sunday, February 13, 2011, Captain Cameron Hudson was in physical control of the STARFLEET PATRIOT. (Tr. Vol. II at 61).

On that day, both Respondent and Mr. Duplantis observed the workers make their respective rope swing transfers from the vessel onto the platform. (Tr. Vol. I at 46, 243).

⁶ So named because of its position approximately ten feet above the water.

The several workers who testified generally agreed that on Sunday, February 13, 2011, the STARFLEET PATRIOT was positioned in a manner that placed its aft deck approximately five or six feet laterally distant from the “plus ten” deck of the platform. (Tr. Vol. I at 45, 113, 183). The deckhand, Mr. Duplantis, has a different recollection of the distance between the aft deck of the vessel and the “plus ten” deck of the platform. He testified that the vessel was only “Anywhere from a couple of inches to maybe a foot or two, just doing in and out like this. They touched up a couple of times, little touch up and then go out about a foot maybe, like this.” (Tr. Vol. I at 244). The court accepts the worker’s collective testimonies about the distance as more reliable.

The workers testified credibly⁷ that on the same day, they asked Respondent to position the STARFLEET PATRIOT closer to the platform in order to make the rope swing transfers easier, but Respondent denied those requests. (Tr. Vol. I at 45). The court regards Respondent’s presence during the morning rope-swing transfers as highly probative. This fact is at odds with Respondent’s assertion that he was “off duty” during the various morning rope-swing transfers. The fact also establishes Respondent’s actual knowledge of the difficulties encountered by his passengers – particularly Mr. Bruno – in the days leading up to, and including, February 16, 2011.

In fact, several passengers also complained to the deck hand, Mr. Duplantis, about the manner in which the rope swing transfers were conducted. (Tr. Vol. I at 243).

⁷ The presiding ALJ is vested with broad discretion in resolving inconsistencies in the evidence, and findings do not need to be consistent with all of the evidence in the record as long as there is sufficient evidence to reasonably justify the findings reached. Appeal Decision 2639 (HAUCK)(2003); Appeal Decision 2519 (JEPSON)(1991). Determining the weight of the evidence and making credibility determinations as to the evidence is within the sole purview of the presiding ALJ. Appeal Decision 2640 (PASSARO)(2003).

By stark contrast, Respondent testified that during or after the first day of passenger transfers, he was unaware that any passengers had any difficulties transferring between the vessel and the platform. (Tr. Vol. II at 193, 215). Yet, this claim is contradicted by his own testimony that he had, in fact, observed the workers making rope swing transfers that day; some with difficulty. In fact, Respondent testified that he approached a “company man” (presumably with Dynamic/Apache) on Sunday, February 13, 2011, and said:

Look, we got weather that’s going to be approaching. This was on, I think, Sunday. I said we got weather that’s approaching about midweek, and I notice they had a couple of the guys that held [the rope] with just one hand and tired to just like bunny hop to the vessel, and that’s not safe. You got to keep two hands, firm grip in case you cannot support your weight, where you can still swing to the vessel.

(Tr. Vol. II at 195).

Thus, the court believes that despite his conflicting testimony, Respondent had, in fact, seen the workers making rope swing transfers on Sunday. Moreover, Respondent’s observations indicates he knew some workers had difficulty making the rope swing transfer. Hence, he was on notice of the potential danger the rope swing posed to his passengers.

The facts further reveal that beginning on Sunday, February 13, 2011, the workers also complained to their employers about the five-foot height differential between the stern of the STARFLEET PATRIOT and the platform. (Tr. Vol. I at 32). This height differential made disembarkation more difficult; passengers had to “swing and pick up your feet to try to make your body go upward to land on the deck because it’s higher.” (Tr. Vol. I at 32, 179, 243).

Monday, February 14, 2011

The several workers who testified generally agreed that during the Monday, February 14, 2011, morning passenger transfers, the STARFLEET PATRIOT was again positioned

approximately five feet laterally distant from the “plus ten” deck of the platform. (Tr. Vol. I at 45, 183). Captain Hudson, who was in control of the vessel, recalled that even from his distant position in the wheel house, it appeared that the stern of the vessel was “three or four feet” from the “plus ten” deck and that he would rely on the “hand signals from the deckhand or whoever was on the stern of the boat” as he positioned the vessel. (Tr. Vol. II at 61, 65).

As they had done the day before, both Respondent and deckhand Mr. Duplantis observed the workers make rope swing transfers from the vessel onto the platform on Monday, February 14, 2011. (Tr. Vol. I at 46, 243).

And, as they had done the day before, the workers asked Respondent to position the STARFLEET PATRIOT closer to the platform to make the rope swing transfers easier. Once more, Respondent crudely denied those requests. (Tr. Vol. I at 45).

Respondent admitted, however, that on Monday, February 14, 2011, he knew Mr. Bruno and another passenger encountered difficulty transferring from the vessel to the platform and back. In response to counsel’s question, Respondent testified:

Q. Did you see them having the trouble?

A. Yes, I just said that he [Bruno] had stepped on the aft bulwarks of the vessel and had started to stumble and the deckhand grabbed him.

(Tr. Vol. II at 216).

Thus, for the second day in a row, Respondent personally observed Mr. Bruno and other workers struggling with the rope swing transfer from the STARFLEET PATRIOT to the platform.

Tuesday, February 15, 2011

The several workers who testified generally agreed that on Tuesday, February 15, 2011, the STARFLEET PATRIOT was once more positioned in a manner that placed its aft deck approximately five to seven feet laterally distant from the “plus ten” deck of the platform. (Tr. Vol. I at 36, 45, 114, 183).

Captain Hudson was again in physical control of the STARFLEET PATRIOT on the morning of Tuesday, February 15, 2011. (Tr. Vol. II at 61). And, as they had done the day before, Respondent and deckhand Mr. Duplantis observed the workers make rope swing transfers from the vessel onto the platform. (Tr. Vol. I at 46, 243).

Once more, the workers asked Respondent to position the STARFLEET PATRIOT closer to the platform to make the rope swing transfers easier and Respondent again denied those requests. (Tr. Vol. I at 45).

On or about Tuesday, February 15, 2011, that Mr. Bruno himself complained to Respondent and Mr. Duplantis, saying that “he had poor upper body strength, and kept telling them that he can’t hold onto the rope that long” to effect a safe transfer. (Tr. Vol. I at 45 – 46).

That Mr. Bruno had physical difficulty transferring from the STARFLEET PATRIOT to the “plus ten” platform on February 15, 2011 (Tr. Vol. I at 36, 40 – 42) was evidenced by Captain Hudson’s admission that during the “first few days. I mean, you had a couple of heavysset guys that, I mean, obviously it’s harder for them to hold themselves up to swing back and forth.” (Tr. Vol. II at 63).

During and after the passenger transfers on February 15, 2011, the workers complained again to their respective employers that the rope swing transfer was unsafe and that the

STARFLEET PATRIOT was positioned too far from the “plus ten” deck to ensure safe transfer. (Tr. Vol. I at 41 – 43, 179).

Then, in apparent response to the worker’s complaints, on the evening of February 15, 2011, Dynamic/Apache supervisory personnel communicated their concerns to the Respondent that the STARFLEET PATRIOT was positioned too far from the “plus ten” deck on the platform to ensure safe transfer. (Tr. Vol. I at 42, 117).

In sum, the court concludes that at various times from Sunday, February 13 until Tuesday, February 15, 2011, the workers communicated to Respondent that they wanted the vessel moved closer to the platform to ease the rope swing transfer. (Tr. Vol. I at 185). At those times, Respondent told the workers that he didn’t want to damage the tires/bumpers and chains on the aft of his vessel. (Tr. Vol. I at 42, 66). Mr. Duplantis’ testimony supports the claim that Respondent did not want to position the vessel close to the platform for fear he would damage the bumper tires and chains. (Tr. Vol. I at 246).

Respondent knew his passengers were having difficulty transferring from the STARFLEET PATRIOT to the platform in the days prior to February 16, 2011. (Tr. Vol. I at 96, 122). Respondent testified that,

The day before the incident, it [weather] started picking up a little bit, and that afternoon a couple of guys had problems swinging on board the vessel because we was pitching up and down. That afternoon, Mr. Bruno he swung, and when he swung, as the vessel came up and his one foot caught the back rail, where you see the cap rail, his back foot caught it and he began to stumble. And Joey – not Joey, the engineer that was on watch working with me, he assisted to keep him on his feet.

(Tr. Vol. II at 196).

Respondent also admitted that on Tuesday, February 15, 2011, he knew “the weather is starting to pick up. Tomorrow morning the seas is going to be a little worse. We still got a couple of guys that’s not putting two hands to swing when they come across.” (sic) (Tr. Vol. II at 196).

Sometime during the evening of February 15, 2011, and in apparent response to their employees’ concerns, supervisory personnel at Dynamic/Apache ordered the construction and placement of a “swing platform” or a “jump platform” to be installed on the aft section of the STARFLEET PATRIOT, in an effort to ease the transfer to the “plus ten” deck. (Tr. Vol. I at 42 – 43, 83, 117 – 119; CG Ex. 3, 5). The “swing platform” or “jump platform” was a welded steel structure that was supported by four legs, accessed by climbing up approximately four feet to a (court’s estimation 3’ x 6’) metal platform. (CG Ex. 3). Despite the placement of the “swing platform” or “jump platform” on the aft deck of the STARFLEET PATRIOT, changing sea conditions still made the rope swing transfer difficult. (Tr. Vol. I at 44).

Wednesday, February 16, 2011

The workers testified that on the morning of Wednesday, February 16, 2011, the sea conditions were choppy, with one to two foot waves and that the weather was clear. (Tr. Vol. I at 48, 124, 192). Captain Hudson characterized the weather similarly, describing the weather as “breezy and it was a pretty good chop. It was a little rough.” (Tr. Vol. II at 73, 88).

Respondent’s recollection of the weather that day is more dire: “Yes, it got choppy. And for a crewboat this size, two to fours [wave size, in feet] with a 15 – to 18 – knot wind and swinging and with the platform being high like it was, it was not a scenario that happened daily.” (Tr. Vol. II at 216). Thus, Respondent was on notice of the weather conditions that morning and was obligated to consider the weather as an additional risk factor in the rope swing process.

On the morning of Wednesday, February 16, 2011, Captain Hudson was in physical control of the STARFLEET PATRIOT. (Tr. Vol. II at 61, 65). Importantly, Captain Hudson testified that before and at the time Mr. Bruno attempted to make his rope swing transfer, he, Captain Hudson received no orders or direction from Respondent regarding the control or maneuver of the STARFLEET PATRIOT, although Respondent was in the wheel house with Captain Hudson at the time of Mr. Bruno's fall. (Tr. Vol. II at 66). The court believes that Respondent's silence, in the face of his prior knowledge of the difficulties encountered by passengers using the rope-swing, constitutes negligence.

It is important to note that at the time Mr. Bruno made his unsuccessful attempt to use the rope swing, Respondent was standing in the aft-facing wheelhouse with Captain Hudson at the controls. (Tr. Vol. I at 249, 273, 275).

Mr. Bruno was to be the fifth or sixth passenger to disembark the STARFLEET PATRIOT by means of the rope swing. (Tr. Vol. I at 186). After others had made the difficult transfer, Mr. Bruno climbed atop the jump platform, took the rope from Mr. Duplantis and prepared to disembark. (Tr. Vol. I at 166 – 167, 186, 223). Mr. Bruno had difficulty holding onto the rope swing and was visibly afraid to make the transfer. (Tr. Vol. I at 49 – 51, 126 – 128).

As Mr. Bruno prepared to make his rope swing transfer, the stern of the STARFLEET PATRIOT was positioned between five and seven feet laterally distant from the “plus ten” deck of the platform. (Tr. Vol. I at 48, 160, 193). Mr. Duplantis, the deckhand, supports this observation, because, per his testimony, on the morning after the “jump platform” had been installed, the STARFLEET PATRIOT was positioned “no closer than six foot” (sic) to the “plus ten” deck. (Tr. Vol. I at 245).

Before he attempted to disembark, Mr. Bruno signaled to the captain in the wheelhouse to “bring the boat back, bring the boat back.” (Tr. Vol. I at 187). Worker Arturo Garcia testified that he, too, attempted to communicate with the wheelhouse to “back closer to the work platform.” (Tr. Vol. I at 124 – 125.)

At the same time, other passengers also signaled to the captain to move the vessel closer to the “plus ten” deck. (Tr. Vol. I at 193). Although Mr. Duplantis does not recall the passengers complaining about the “six foot gap between the STARFLEET PATRIOT and the work platform” he did opine that the six-foot distance was too far for safe transit. (Tr. Vol. I at 247, 251). In fact, Mr. Duplantis, who was positioned on the aft deck of the vessel, and, hence, closer to the platform, signaled to the wheelhouse: “I waived my hand like this (indicating) right before Mr. Bruno swung . . .” (Tr. Vol. I at 249, 287).

Mr. Garcia testified “were all chanting the same thing, shouting the same thing, you know, ‘back the boat up.’ That’s all we were saying. Even the guys that had swung prior to Mr. Bruno.” (Tr. Vol. I at 222). The evidence suggests, however, that given the distance and the engine noises, no one in the wheelhouse, (approximately 100 feet away from the aft deck) could hear any such shouting. (Tr. Vol. II at 83). However, Respondent stood close by as Captain Hudson operated the vessel and both men were able to see the passengers gesturing and having difficulty making the rope swing transfers. (Tr. Vol. II at 83 – 84).

Captain Hudson admitted that on the morning of February 16, 2011 that indeed, “I could have moved it close enough . . .” (Tr. Vol. II at 86).

Interestingly, Captain Hudson, who testified as a defense witness for the Respondent, said he responded to the signals from the deckhand Mr. Duplantis and the passengers who were beckoning him to move closer to the platform:

I saw Mr. Bruno standing on the jump deck and he was – he looked hesitant. He didn't want to swing, which was understandable. You know, the boat's moving back and forth. If you're not comfortable, you're not going to want to go, for sure. And they were waiving me to back up, so I put the engines in reverse to slowly back up . . .

(Tr. Vol. II at 68 – 69).

Of equal interest, Captain Hudson further testified:

Q. Was there anything going through your mind that would have prevented you from bringing [the vessel] hard against the – bringing the stern of the vessel hard against the platform?

A. Just tearing up the stern of the boat, putting a hole in it.

Q. Was there anything – prior to Bruno trying to cross that day, was there anything told to you by Byron Trosclair that ordered you or prevented you from putting the stern of the vessel closer to the plus 10 deck?

A. No.

(Tr. Vol. II at 70).

Again, Respondent's – as Master – silence renders him negligent, see infra.

Nevertheless, Mr. Bruno attempted to make the rope swing transfer onto the “plus ten” deck; he failed and fell into the sea. (Tr. Vol. I at 50 – 51, 249 – 251).

After Mr. Bruno fell into the sea, the wash from the vessel's propellers pushed him inside the pylons that supported the platform from the seabed. (Tr. Vol. I at 51 – 52, 93, 187, 277).

Thereafter, other workers on the platform threw life rings and ropes to Mr. Bruno and, after about 25 to 30 minutes, eventually extracted him from the water. (Tr. Vol. I at 50 – 57, 59, 132).

After Mr. Bruno fell into the sea, the STARFLEET PATRIOT was either maneuvered and/or allowed to drift approximately from 80 to 100 feet away from the platform and held its

position there as the other workers pulled Mr. Bruno from the sea. (Tr. Vol. I at 51 – 57, 60 – 63, 129, 188, 253).

No crew member from the STARFLEET PATRIOT provided actual rescue assistance to Mr. Bruno when he was in the water (Tr. Vol. I at 58, 130 – 131, 189). Although, the court does note that the deckhand, Mr. Duplantis, attempted to obtain and throw a life ring and, later, tried to deploy a rescue ladder that was previously affixed to the vessel. (Tr. Vol. I at 190, 253 – 256, 261 – 262). Given the distance of the vessel from the platform and Mr. Bruno, those efforts were untimely and futile.

Respondent admitted that his vessel has trained and conducted drills to deploy “our man overboard platform” in the event of an emergency such as the one that occurred on February 16, 2011. (Tr. Vol. II at 210). Despite his training, Respondent, as Master, failed to deploy the vessel’s man overboard platform when Mr. Bruno went into the water on February 16, 2011.

Respondent testified that his vessel did not come to Mr. Bruno’s aid because workers on the platform instructed the vessel to stand off and not render assistance. (Tr. Vol. II at 211).

Captain Hudson also testified that the STARFLEET PATRIOT did not go to Mr. Bruno’s aid because workers on the platform:

. . . [W]ere telling us to stay away from the platform, that they were under control with it, that they did not need our assistance. Because we called them and offered, said, hey, you want us to pull up in there and try to get him back on board the vessel? And the guys on the platform said, no, we’re going to pull him up onto the platform.”

(Tr. Vol. II at 74).

The court notes with particularity that after Mr. Bruno was lifted to the “plus ten” deck of the platform, the STARFLEET PATRIOT “backed up all the way up to the platform” to allow another worker to transfer from the vessel to the platform to perform CPR on Mr. Bruno. (Tr.

Vol. I at 60). Other medical first-responders were airlifted to the platform by helicopter. (Tr. Vol. I at 158).

Despite the life-saving efforts of the workers and medical personnel who eventually arrived at the scene, Mr. Bruno apparently succumbed to a heart attack. (Tr. Vol. I at 64).

Sometime thereafter, and with approximately three hours left on Captain Hudson's watch, Respondent assumed physical control of the STARFLEET PATRIOT. (Tr. Vol. II at 104 – 106, 112).

After Mr. Bruno had been declared dead and his body placed on a gurney for transfer, Respondent was at the controls of the STARFLEET PATRIOT. Respondent backed the vessel "all the way up against" with "no gap between" the platform and the vessel to effect the transfer of the gurney to the aft deck of the vessel. (Tr. Vol. I at 65, 133, 160 – 161, 195; Vol. II at 106). Deckhand Duplantis supports this observation, noting that as the various workers carried Mr. Bruno's body from the "plus ten" deck to the vessel, Respondent was at the controls, and the STARFLEET PATRIOT was "butted up against the platform . . .smashed up against it. It butted up against it" (sic) with no damage to either the boat or the platform. (Tr. Vol. I at 258).

Again, the court notes with particularity that Respondent was able to maneuver the vessel snugly aside the platform to ensure a smooth transfer of Mr. Bruno's body from the "plus ten" deck back aboard the STARFLEET PATRIOT. (Tr. Vol. II at 106 – 107). Clearly, the vessel could have – and should have – been thusly positioned during the morning's rope-swing transfers.

After Mr. Bruno's body was transferred from the platform onto the STARFLEET PATRIOT, Respondent and deckhand Mr. Duplantis engaged in a heated, emotional argument

wherein Mr. Duplantis accused Respondent of failing to position the vessel close enough to the platform to ensure Mr. Bruno's safe transfer. (Tr. Vol. I at 67, 258 – 259).

In the days after Mr. Bruno's death, workers were transported to the platform by a different vessel. On those occasions, the vessel "backed all the way up" to the platform to facilitate safe passenger rope swing transfers. (Tr. Vol. I at 68).

The Amended Complaint alleges that Respondent negligently failed to station his vessel close enough to the platform to affect a safe rope swing transfer from the vessel to the platform by the decedent. The Amended Complaint further, generally, alleges that the decedent's fall into the water was occasioned by Respondent's failure to safely position his vessel and further alleges Respondent negligently failed to have a rescue ladder/platform at the ready. Finally, the Amended Complaint alleges that Respondent committed Misconduct by failing to attempt a rescue of the overboard passenger.

In this case, Respondent is charged with two Specifications of Negligence and one Specification of Misconduct.

D. Law

1. Negligence

Negligence is defined in 46 C.F.R. §5.29 as the commission of an action which a reasonable and prudent person of the same station, under the same circumstances, would not commit or the failure to perform an act which a reasonable and prudent person of the same station, under the same circumstances, would not fail to perform. In short, to prove negligence, the Coast Guard is obliged to establish a duty and a breach of that duty.

Specification 1

Specification 1 alleges, alternatively, that on or about February 16, 2011, Respondent, as Master of the STARFLEET PATRIOT, failed to ensure the vessel backed sufficiently close to a platform to ensure the safe rope swing transfer of his passengers; that Respondent intentionally made the rope swing transfers more difficult than was necessary in order to provide “training” for the passengers who were transferring from the STARFLEET PATRIOT to the platform; and/or that Respondent failed to provide a safe method of transferring his passengers from the STARFLEET PATRIOT to the work platform that a reasonable prudent Master would have done under similar circumstances.

In his post-hearing submission, Respondent argues extensively that at all times relevant to the facts alleged in the Complaint, he was off duty and not in either physical or legal control of the vessel. (See, Respondent’s Post Hearing Brief). He argues that since he was off duty and neither in legal or physical control of the vessel, a fortiori, he cannot be found either to committed negligence or misconduct.

The court specifically finds that at all times relevant herein, the Respondent was the Master of the STARFLEET PATRIOT and that he was personally responsible for both the acts of negligence and misconduct alleged in the Complaint. A vessel has only one Master; the person named in the certificate of registry or enrollment. He is “the judge and governor over the whole adventure. He is the Master, and the only Master, even when asleep in his cabin” The Transfer No. 12, 221 F. 409, 412 – 413 (2d Cir. 1915).

In Appeals Decision 2124 (BARROW)(1978) the Commandant clearly established, “The Master is on duty at all times and is responsible for the proper management and safety of a vessel. . . .the Master of a ship may not rely on others to take full blame for damage . . . when the danger would have been avoided if the Master had taken proper steps to prevent errors of others

form jeopardizing...” safety. See also Appeal Decision 360 (CARLSEN)(1949). A Master is also duty-bound to keep himself informed about the status of his vessel and potential risks as a safeguard against hazard. Appeal Decision 2307(GABOURY)(1983).

Although factually distinguishable from the case at bar, Appeal Decision 1891(BLANK)(1972), is noteworthy, here, because it says that a Master may not sit idly by and blindly follow a pilot’s actions. The Master, as here, has a duty to question the pilot and discuss potential risks.

On February 16, 2011, Respondent Byron Anthony Trosclair was the Master of the STARFLEET PATRIOT. Captain Cameron Hudson was the Licensed Mate (as evidenced by his admissions that he did not fill out the ship’s log book), that he was obliged to follow the Respondent’s orders, and that he was, in fact, the Licensed Mate. (Tr. Vol. I at 107; Vol. II at 81, 92; CG Ex. 11, 12).

In the case at bar, Respondent’s duty – as ship’s Master – is established both by the common law of the sea and by the testimony of his own witnesses.

It is well-settled law that a ship’s Master owes a “duty of exercising reasonable care to those lawfully aboard the vessel who are not members of the crew.” Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630 (1959). More particularly, the U.S. Circuit Court of Appeals for the Fifth Circuit has held that the standard of care owed to passengers on a ship, “including their embarkation and disembarkation, has variously been stated as a ‘high degree of care,’ as a ‘duty ... of ordinary care,’ as a ‘reasonably safe means’ of boarding and leaving the vessel, as a duty of ‘reasonable care,’ and as a ‘duty of reasonable care under the circumstances.’” Smith v. Southern Gulf Marine Company No. 2, 791 F.2d 416, 419–20 (5th Cir.

1986).⁸ The National Transportation Safety Board has written, “The Master of a vessel has a heavy responsibility to ensure the proper management and safety of his vessel.” J.W. Kime, Commandant, United States Coast Guard v. Hawker, NTSB Order No. EM-173, 1993 WL 309728).

As the Commandant ruled in Appeal Decision 2113 (HINDS)(1978), “The Master is ultimately responsible for the safety of his vessel regardless of whether a pilot is aboard and is assisting. In fulfilling this responsibility a Master is required to exercise that degree of care which a reasonably prudent Master would exercise under all the circumstances. When he observes or should observe [a danger] . . . he is on notice that he must use all means available to ensure that timely action is taken to avoid [that danger].” The court interprets the Commandant’s guidance to mean a Master ought take control of a vessel when he believes, or should believe, that a danger can be avoided. See also Boudoin v. J. Ray McDermott & Co., 281 F. 2d 81, 8 (5th Cir. 1960).

Thus, for the purposes of this case, the court holds Respondent – as ship’s Master – to a duty of reasonable care under the circumstances, regardless of whether he was in actual, physical control of the vessel. The evidence is overwhelming that Respondent knew that Respondent had difficulty making the rope-swing transfers, long before the morning of February 16, 2011.

Respondent offered the expert testimony of David Scruton, an exceptionally well-experienced and qualified mariner. Mr. Scruton has personal, academic and professional experience as the Master of OSVs and similar vessels, in virtually every major offshore oil and gas area in the world. (Tr. Vol. II at 117). He has personal experience making rope swing

⁸ Likewise, in Tate v. C.G. Willis, 154 F. Supp 402, 1957 A.M.C. 1859 (E.D. Va. 1957), the court explained: “There are numerous cases holding a ship owner liable in providing an improper means of ingress and egress, and it does not seem reasonable to exonerate a ship owner who provides no means of ingress and egress, but relies upon the fact that the vessel is moored in reasonably close proximity to the dock...”

transfers of the variety at issue in this litigation. (Tr. Vol. II at 125). The court accepts Mr. Scruton's expert observation that the act of bringing an OSV alongside an oil platform is a dynamic and changing situation; that there are no "hard and fast rules" about how a ship's Master ought accomplish that task. (Tr. Vol. II at 127).

Mr. Scruton testified that he interviewed both Respondent and Captain Hudson; but it appears Mr. Scruton was somewhat misled about the command structure aboard the STARFLEET PATRIOT during the relevant times herein. Mr. Scruton testified: "[I]t was my understanding that it was Captain Hudson was the Master, then certainly he had the duty to intervene if he saw something unusual or dangerous or out of the ordinary." (Tr. Vol. II at 131).

Otherwise, Mr. Scruton is correct: the Master does have a duty to intervene if he saw something dangerous. In this case, Respondent was the Master and he did have a duty to intervene and correct a situation he knew was dangerous, even though Captain Hudson was physically at the controls of the vessel.⁹ Respondent's prior knowledge of dangers involved is clearly established by his personal observations of the difficult rope swing transfers in the days before Mr. Bruno's death – coupled with his own warnings to others about changing sea conditions.

The court partially accepts Mr. Scruton's characterization of the proper nature and use of a rope swing. He testified, "The idea is to step, and the rope is to assist you." (Tr. Vol. II at 138). However, the court does not accept Mr. Scruton's statement that a person can "step, with the assistance of the rope, six, eight feet. I mean, that's quite easy." (Tr. Vol. II at 138). The court also notes that not all passengers have the same body types and physical abilities. Since it is the Master's duty to ensure the safe transfer of all of his passengers (not just the agile and physically fit) the Master must make sure the vessel is positioned properly to accommodate all. Mr.

⁹ See Appeal Decision 1858 (GOULART)(1972).

Scruton agreed to that premise, “But yes, it can be a potentially dangerous situation. Some people find it easy, others find it more difficult.” (Tr. Vol. 156). Moreover, when asked:

Q. You’re the captain of the vessel and you see several people having trouble with the swing rope transfers. Isn’t it your duty to intervene and ask them why are they having difficulties? These are passengers on the boat.

A. If I saw someone hesitating to the extent that I thought they were going to endanger themselves, then certainly I could stop them and ask them . . . If I see them swing and they do it sufficiently, then I’ve got no problem with that. But if I’ve got major concerns, certainly I would do something about it.

(Tr. Vol. II at 150).

In Lavergne v. Chevron U.S.A., Inc., 782 F. Supp. 1163 (W.D. La. 1991), the court, considering a similar rope-swing case, said a vessel’s captain ought to consider the size, apparent strength, and demonstrated ability of a person using a rope swing when positioning his vessel a safe distance from a landing platform. Id. at 1169.

Mr. Scruton’s testimony affirmed the standard that Respondent breached. Clearly, Respondent was on notice that Mr. Bruno and others were having difficulty making a rope swing transfer.

Respondent’s own account of the events when Mr. Bruno fell into the water is crucial:

Q. At any time prior to that when you noticed Bruno on the jump platform and he began to swing, from the time you walked into the wheelhouse to the time that the incident happened, did you observe anything in the wheelhouse that would have given you cause to relieve Captain Hudson of maneuvering that boat?

A. No. I mean, I wouldn’t have done anything different. I mean, passengers swing, the vessel hovers in and out. So, I mean, Cameron was in the process of backing down. I mean, it takes time for the vessel to get close enough. In my

opinion, if Mr. Bruno would have waited a little longer, the vessel would have been close enough and he might have would have made a safe transfer, but the vessel hovers, it moves in and out.

(Tr. Vol. II at 206).

The court regards Respondent's testimony as particularly damning to his case. By his vain attempt to allege Mr. Bruno's negligence, Respondent plainly admitted that the vessel needed to be closer to the platform in order to ensure a safe transfer. This admission solidifies the Coast Guard's proof: Respondent was the Master of the STARFLEET PATRIOT at all relevant times and that he recognized that his vessel was not close enough to the platform when Mr. Bruno attempted to disembark. If Captain Hudson was negligent in his failure to lay the vessel safely alongside the platform, then by his failure to correct that shortcoming, Respondent is equally negligent.

Given Respondent's admission that the vessel was not close enough to the platform when Mr. Bruno attempted to transfer, Respondent was negligent in his failure to either direct Captain Hudson to come closer or was negligent by his failure to assume command of the vessel and properly position it close to the platform.

Mr. Scruton agreed that even the risk of damaging the aft bumpers/tires is a minimal concern when weighed against the potential for danger to human life:

Q. So if you had a choice between doing a little bit of damage to the boat or making a safer transfer, you would choose to make the safer transfer, wouldn't you?

A. Always.

(Tr. Vol. II at 159).

It is clear that Respondent could have ordered the STARFLEET PATRIOT closer to the "plus ten" deck. Nothing prohibited him from doing so, as evidenced by the fact that he

positioned the vessel butt-up against the platform later in the day as the workers returned Mr. Bruno's body to the ship.

Apparently, Respondent was motivated to protect the rubber tire/bumpers and chains on his vessel, rather than to ensure the safe transit of his passengers. The deckhand, Mr. Duplantis, testified that he specifically heard the Respondent "telling the passengers that they was going to have to start jumping from further away because we [was] busting up tires in – or chains in the back. Because the second day we had popped a chain . . . He said we had busted a chain, and he said they were going to have to start jumping from further away." (sic) (Tr. Vol. I at 245 – 246).

It is noteworthy that Respondent never inspected the ropes his passenger used in their transfer off of, and on to, his vessel; responding essentially, "it's not my job." (Tr. Vol. II at 222 – 223). Yet Respondent opined that the knots tied in the ropes made passenger transfer more difficult, testifying the knots ". . . was too low. Instead of [the passengers] having to reach up to be able to support their weight before they swung, they was having to reach here to where their weight wasn't supported until it actually supported it." (sic) (Tr. Vol. I at 222). But when asked:

Q. Well you knew that the knots were situated like that, but you still went ahead with the transfers?

A. Nobody complained to me.

(Tr. Vol. II at 223).

Respondent was not fully credible in his testimony. When asked by counsel what his purpose was in being on the bridge – in the wheelhouse – on the morning of Mr. Bruno's fall, Respondent specifically denied he was there to observe the safe transfer of passengers. (Tr. Vol. II at 225). The Coast Guard produced a rebuttal witness, Coast Guard LT Michael Tappan, formerly assigned to the Marine Safety Unit in Port Arthur, Texas. LT Tappan participated in the investigation of the matters surrounding Mr. Bruno's death. LT Tappan testified that he

interviewed the Respondent on board the STARFLEET PATRIOT after the accident. Contrary to Respondent's testimony, LT Tappan testified Respondent told him that he had stayed on the bridge to "stay with the other captain to assist in the transfer of personnel from the boat to the platform." Respondent further admitted to LT Tappan that:

He was there to assist the other captain. He said he helped him kind of guide along telling him where to go with personnel as far as like the distance from the boat. He wasn't driving the boat, but he was there kind of giving direction to the other captain.

(Tr. Vol. II at 241).

The court is satisfied the Coast Guard established that Respondent had a duty of reasonable care to ensure the rope swing transfers were conducted in a safe manner. Likewise, the Coast Guard proved Respondent breached that duty of care relative to all of his passengers and, particularly, Mr. Bruno.

Specification 2

Specification 2 alleges that on or about February 16, 2011, Respondent, as Master of the STARFLEET PATRIOT, failed to have a rescue ladder/platform in a ready position during the transfer of passengers from his vessel to the platform; and failed to provide rescue/assistance to his overboard passenger.¹⁰

Captain Hudson admitted that Respondent never directed him to have the safety equipment, including a rescue ladder/platform, ready during the swing rope transfers. (Tr. Vol. II at 90). However, the deckhand, Mr. Duplantis, testified that Respondent ordered him to prepare

¹⁰The court finds that portions of Specification 2 are multiplicitious with Specification 3. Generally, the two Specifications describe the same conduct: Respondent's failure to undertake rescue efforts to save the overboard passenger, Mr. Bruno. Hence, they are multiplicitious for purposes of determining a sanction, infra.

that device for deployment. (Tr. Vol. I at 254 – 255). By his actions, Respondent knew he should have deployed the rescue ladder; however, the ladder was never deployed.

2. Misconduct

Misconduct is defined in 46 C.F.R. §5.27 as human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship’s regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required.

Specification 3 alleges that Respondent committed Misconduct by failing to follow the requirements of 46 U.S.C. §2302, to wit: a “Master or individual in charge of a vessel involved in a marine casualty shall render necessary assistance to each individual affected to save that individual from danger caused by the marine casualty” without serious danger to the Master’s vessel or to individuals aboard that vessel. Id. (emphasis added).

Per 46 U.S.C. §2302, a clear standard is set in the instant matter, providing that:

The Master or individual in charge of a vessel involved in a marine casualty shall . . . render necessary assistance to each individual to save that affected individual from danger caused by the marine casualty, so far as the Master or individual in charge can do so without serious danger to the mater’s or the individual’s vessel or to individuals on board.

Id.

The statute provides no exceptions to the bright-line rule stated therein: A Master has a strict obligation to “render necessary assistance to each individual” unless to do so would imperil the Master’s vessel or his crew on board. Or, as the Louisiana Court of Appeals has written, “This duty is absolute . . .” Smith v. Tidewater Inc., 918 So. 2d 1, 9 (La. App. 4th Cir. 2005).

Fifth Circuit appellate law is replete with reiterations of the time-honored obligation of a mariner to come to the aid of drowning persons. In Reyes v. Vantage S.S. Co., Inc., 609 F.2d 140, 142 (5th Cir. 1980), the court explained the maritime rescue doctrine in detail, saying “The affirmative duty to rescue arises as soon as the seaman enters the water, whether by jumping or falling overboard . . . This is an expansive duty” Id.

In Gardner v. National Bank Carriers, Inc., 310 F.2d 284, 286 (4th Cir. 1962), the court eloquently wrote:

The survival of a seaman adrift at sea depends in large measure upon the diligence of those who are required by law to look for him. If they default in their duty, death is made certain. In recognition of this unyielding truth, the admiralty law annexes to a seaman’s contract of employment, an obligation on the part of the Master to use every reasonable means to save the seaman’s life if he goes overboard.

Id.

More recently, in Caminiti v. Tomlinson Fleet Corp., 1981 MAC 201 (E.D. Ohio), the court said that the “law of the sea has always demanded a higher degree of care, vigilance and diligence.” The court reasoned that the duty to rescue “strangers in peril” exists even if the ship did not cause the peril in the first place. The court harshly criticized the defendants’ failure to render assistance to overboard persons, calling their conduct “shocking to humanitarian considerations and the commonly accepted code of social conduct.” Id.

In The G.W. Glenn, 4 F. Supp. 727, 729 (D. Del. 1933), the court recognized the duty of a ship’s Master to rescue an overboard crewmember or passenger is dictated by “the universal custom of the sea that demands as much whenever human life is in danger.”

If American jurisprudence were not enough to place the maritime community on notice of the obligation to rescue persons overboard, three international conventions also generally impose a duty on a ship's captain to immediately render assistance to those in peril on the seas.¹¹

The evidence revealed that Respondent, as Master, failed to ensure his vessel participated in the rescue effort.

Respondent counters, arguing that the platform workers directed him to stand off, thus preventing him from coming to the aid of Mr. Bruno. (Tr. Vol. II at 211). But Respondent's assertion that he was told to stand off by platform workers rings hollow. No independent witness testified that the STARFLEET PATRIOT was told to stand off from the emergent scene of Mr. Bruno's rescue. Moreover, his argument fails in light of Smith v. Tidewater Inc., 918 S.2d 1 (La. App. 4th Cir. 2005), where the court, concerned with issues similar to those at bar, said that even the commencement of a Coast Guard search and rescue operation did not lessen the duty of a ship's Master to the one who fell overboard. "Prior to the time of the Roman Empire, the duty to search and rescue a seaman gone overboard was recognized as a natural obligation of the Master of a ship." Id. at 7 – 8.

Respondent also suggests that he could not place the bow, or the stern, of his vessel inside the oil platform structure – thus preventing him from participating in a rescue operation. (Tr. Vol. I at 156 – 157, 227). The court regards the mandate of 46 U.S.C. §2302 to be absolute. There was no evidence offered by any person that Respondent would have imperiled his vessel or others by attempting a rescue. Neither is Respondent's suggestion credible that exhaust from

¹¹ See The International Maritime Organizations regulations found in the Safety of Life at Sea Convention; The United Nations Convention of the Law of the Sea; The International Convention of Salvage (1989).

his engines would have complicated the rescue effort. Apparently, the exhaust did not impair the twice-daily passenger transfer to and from the platform.

Nor is Respondent's suggestion that he could not position his vessel safely near the platform credible. He could have brought his vessel broadside to one of the four sides of the platform, lowered his rescue ladder or thrown a ring to the imperiled man. At the very least, Respondent and/or his crew could have personally disembarked to the "plus ten" deck and rendered hands and muscles to the effort to extract Mr. Bruno from the sea.

Respondent was the senior mariner on the scene; the platform workers were tradesmen of other backgrounds – but none were mariners. Respondent was the one person with the ostensible background, training and experience to participate in the rescue of a man overboard. He failed in that regard.

V. SANCTION

The authority to impose sanctions at the conclusion of a case is exclusive to the ALJ. 46 C.F.R. §§5.567; 5.569(a); Appeal Decision 2362 (ARNOLD) (1984). The nature of this non-penal administrative proceeding is to "promote, foster, and maintain the safety of life and property at sea." 46 U.S.C. §7701; 46 C.F.R. §5.5; Appeal Decision 1106 (LABELLE) (1959).

The Coast Guard seeks revocation of Respondent's credential. In determining an appropriate sanction for offenses for which revocation is not mandatory, an ALJ should consider: any remedial actions undertaken by a respondent; respondent's prior records; and evidence of mitigation or aggravation. See 46 C.F.R. §5.569(b)(1)-(3).

In this case, the Coast Guard **PROVED** all three Specifications. However, for the purposes of imposing a sanction, the court finds that portions of Specification 2 are multiplicitious

with Specification 3. Thus, the Respondent should not be sanctioned twice for what was, essentially, the same conduct.¹²

Remedial Action: Respondent did not provide any evidence of independent, remedial action undertaken by him which might mitigate the sanction here imposed. See 33 C.F.R. §5.569(b)(1).

Respondent's Prior Records: The Coast Guard did not provide any adverse information from Respondent's prior records.

Mitigation or Aggravation:

¹² Specification 2 alleges, inter alia, that Respondent, as Master of the STARFLEET PATRIOT, committed Negligence by failing to provide rescue/assistance to his overboard passenger on or about February 16, 2011.

Specification 3 alleges Respondent, as Master of the STARFLEET PATRIOT, committed Misconduct by failing to follow the requirements of 46 U.S.C. §2302, which requires that a "Master or individual in charge of a vessel involved in a marine casualty shall render necessary assistance to each individual affected to save that individual from danger caused by the marine casualty" without serious danger to the Master's vessel or to individuals aboard that vessel.

Although they are pled, alternatively, as both Negligence and Misconduct, the two separate factual allegations in the Amended Complaint are multiplicitious. Although not controlling, a case from recent federal military jurisprudence; United States. v. Pauling, 60 M.J. 91 (C.A.A.F. 2004) persuasively outlines several considerations in determining whether the government unreasonably multiplied charges. The analysis asks:

- (1) Whether each charge is aimed at distinctly separate acts?
- (2) Does the number of charges misrepresent or exaggerate the Respondent's actions?
- (3) Does the number of charges unreasonably increase the Respondent's punitive exposure?
- (4) Is there any evidence of prosecutorial overreaching or abuse in the drafting of the charges?

Pauling, 60 M.J. at 95.

Here, the alleged "misconduct" described in the first allegation is fairly subsumed within the second allegation of "violation of law or regulation." Both allegations describe the same act in the same time frame. Proof of the first factual allegation necessarily proves the second factual allegation, and vice versa. In other words, the Coast Guard alleged the same infraction twice and, thus, potentially enhanced the potential sanction against Respondent.

Recognition of this issue is important, here, because the two separate and distinct factual allegations could, potentially, result in the imposition of a more severe sanction than if only one factual allegation was proved.

Because the two factual allegations describe essentially the same conduct, the court regards them as only one allegation for purposes of imposition of a sanction.

The court considered the death of Mr. Joseph P. Bruno, Sr. as an aggravating factor. At the same time, however, the court recognizes that Mr. Bruno died of a heart attack – not by drowning or head or body trauma. As this court described earlier, issues of causation are irrelevant to this court’s inquiry. Hence, the court gives some consideration to Mr. Bruno’s death, but not overriding or compelling consideration when determining an appropriate sanction.

The duty to aid an overboard passenger has been a constant in maritime law – if not human morality – for as long as men have gone down to the sea in ships. Respondent clearly failed in this regards, just as he failed to safely position his vessel at the time Mr. Bruno attempted to make the rope-swing transfer on the morning of February 16, 2011. Both of these two distinct failures separately warrant **REVOCATION** as the appropriate sanction in this case.

Therefore, based upon the record as a whole, the appropriate sanction is **REVOCATION** of Respondent’s Merchant Mariner’s Credential effective from the date of this Decision and Order.

VI. CONCLUSION

For the foregoing reasons, I find the Coast Guard has **PROVED** each of the three Specifications in the Amended Complaint. The gravity of Respondent’s failings is more than sufficient to warrant **REVOCATION**.

WHEREFORE,

VII. ORDER

IT IS HEREBY ORDERED, that the Merchant Mariner’s Credential issued by the U.S. Coast Guard to BYRON ANTHONY TROSCLAIR is hereby **REVOKED**.

IT IS FURTHER ORDERED, that Respondent BYRON ANTHONY TROSCLAIR

is hereby prohibited from serving aboard any vessel requiring a Merchant Mariner's Credential issued by the U.S. Coast Guard commencing upon the date of this Decision and Order.

PLEASE TAKE NOTE, that issuance of this Decision and Order serves as notice of the parties' right to appeal under 33 C.F.R. Part 20, Subpart J. A copy of Subpart J is provided as Attachment B.

Done and dated this the 23rd day of April, 2014,
at New Orleans, Louisiana.

A handwritten signature in blue ink that reads "Bruce T. Smith". The signature is written in a cursive, slightly stylized font.

HON. BRUCE TUCKER SMITH
ADMINISTRATIVE LAW JUDGE

ATTACHMENT A – EXHIBIT & WITNESS LIST

COAST GUARD EXHIBITS

1. PHOTO: PERSONNEL BASKET
2. PHOTO: PLATFORM WITH “PLUS 10” DECK
3. PHOTO: BUILT-UP PLATFORM/JUMP-DECK ON DOCK
4. PHOTO: SWIM LADDER
5. PHOTO: STERN, STARFLEET PATRIOT
6. PHOTO: STERN, TIRES AND CHAINS, STARFLEET PATRIOT
7. TREATISE
8. EXPERT REPORT
9. CERTIFICATE OF INSEPCION
10. CERTIFICATE OF DOCUMENTATION
11. LOGBNOOK STARFLEET PATRIOT
12. ROUGH LOGBOOK, 1 PAGE, DATED 2/15/11

COAST GUARD WITNESSES

1. ERIC PETRY
2. ARTURO GARCIA
3. RYAN RAMGOOLIE
4. JOEY DUPLAINTIS
5. HENRY WOODS
6. MICHAEL D. TAPPAN, JR.

RESPONDENT’S EXHIBITS

- A. STATEMENT
- B. COAST GUARD REPORT OF INVESTIGATIONS 2 PAGES
- C. PHOTO: LADDER
- D. CV OF EXPERT WITNESS

RESPONDENT WITNESSES

- A. CAMERON HUDSON
- B. DAVID HAROLD SCRUTON
- C. BYRON ANTHONY TROSCLAIR

ATTACHMENT B – NOTICE OF ADMINISTRATIVE APPEAL RIGHTS

33 C.F.R. 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 C.F.R. 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 C.F.R. 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 C.F.R. 7.45.

33 C.F.R. 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 C.F.R. 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 for Decision and Order

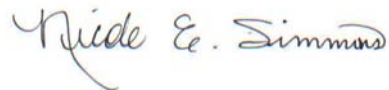
I hereby certify that I have this day served the foregoing document(s) upon the following parties (or designated representatives) in this proceeding at the address indicated Electronically

William Abel
Law Office Christopher H. Riviere
McCulla House
103 West Third St.
Thibodeaux, LA 70302-0670
Primary Counsel for: Byron Anthony Trosclair

I hereby certify that I have filed the foregoing documents with CWO James R. Mints, and Bruce Davies, Esq., Marine Safety Unit Port Arthur, electronically.

I certify that I have filed the foregoing documents with the ALJ Docketing Center electronically.

Done and dated this 23rd day of April, 2014, at
New Orleans, Louisiana



Nicole E. Simmons
Paralegal Specialist