

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

UNITED STATES COAST GUARD
Complainant

vs.

CINDY STAHL
Respondent

Docket Number 2015-0078
Enforcement Activity No. 5072179

DECISION AND ORDER
Issued: October 22, 2015

By Administrative Law Judge: Honorable George J. Jordan

Appearances:

CWO Brian M. Hennessy
Sector Puget Sound
For the Coast Guard

Tyler W. Arnold, Esq.
For the Respondent

ORDER MEMORIALIZING DECISION ON THE RECORD

The United States Coast Guard (Coast Guard or Agency) initiated this proceeding by filing a Complaint against Cindy Stahl (Respondent) on March 18, 2015. The Complaint alleged that Respondent committed misconduct by acting as Master of the uninspected towing vessel (UTV) SHANNON on February 17, 2015, in direct violation of 46 U. S. C. §8904(a) as prescribed by 46 CFR §15.610. The Coast Guard sought a sanction of a 12-month outright suspension of Respondent's Merchant Mariner Credential (MMC).

Through her attorney, Respondent filed an Answer on May 15, 2015. She denied certain jurisdictional and factual elements and sought a formal hearing.

The hearing took place on October 7, 2015 at the Jackson Federal Building in Seattle, Washington. At the start of the hearing, Respondent's attorney informed me that Respondent intended to change her Answer and admit to the allegations, but still wished to be heard on the sanction. Respondent verbally confirmed this on the record. I therefore found the allegations **PROVED BY ADMISSION** and proceeded to hear arguments as to the sanction.

According to Coast Guard regulations, "[t]he selection of an appropriate order is the responsibility of the Administrative Law Judge, subject to appeal and review. The investigating officer and the respondent may suggest an order and present argument in support of this suggestion during the presentation of aggravating or mitigating evidence." 46 C.F.R. § 5.569(a). I am not bound by the Coast Guard's recommendations.

In determining an appropriate sanction, an ALJ may consider the following factors: (1) remedial actions which have been undertaken independently by Respondent; (2) the prior record of Respondent, considering the period of time between prior acts and the act or offense for which presently charged is relevant; and (3) evidence of mitigation or aggravation. See 46 C.F.R. § 5.569(b). The rules include Table 5.569, Suggested Range of an Appropriate Order, which "is for the information and guidance of Administrative Law Judges and is intended to promote uniformity in orders rendered. This table should not affect the fair and impartial adjudication of each case on its individual facts and merits." 46 C.F.R. § 5.569(d).

In Coast Guard suspension and revocation cases, "[t]he sanction imposed in a particular case is exclusively within the authority and the discretion of the ALJ," who is not bound by the scale of average orders. Appeal Decision 2628 (VILAS)(2002). "In the absence of a gross departure from the Table of Recommended Awards, the order of the ALJ will not be disturbed on review." Id. However, in Coast Guard v. Moore, NTSB Order No. EM-201 (2005), the

National Transportation Safety Board (NTSB) disapproved an order revoking a mariner's MMC because the Coast Guard did not prove, and the ALJ did not find, specific factors in aggravation sufficient to depart from the guidance provided in Table 5.569. The NTSB stated that "unless and until the Coast Guard changes its regulation, we will not uphold an upward departure from the policy currently embodied in the Coast Guard's regulation without a clearly articulated explanation of aggravating factors." The NTSB has reiterated its position in Commandant v. Ailsworth, NTSB Order No. EM-211 (2012). The Commandant discussed and has followed the NTSB's position in Appeal Decision 2690 (LANGLEY)(2011) and Appeal Decision 2702 (CARROLL)(2013).

Table 5.569 provides that the usual sanction for misconduct is a one- to three-month suspension. Here, the Coast Guard sought a twelve-month suspension and Respondent argued that a four-month suspension was appropriate.

The Coast Guard entered four exhibits as evidence that Respondent has had numerous suspension proceedings initiated against her in recent years. Evidence of a prior record is admissible under 33 C.F.R. § 20.1315 as long as it is less than ten years old. Here, it is clear Respondent was issued a Warning in Lieu of Civil Penalty on March 1, 2013. (Ex. CG-1). Pursuant to a settlement in a separate case in September 2013, she was assessed a three-month suspension remitted on 12 months' probation. (Ex. CG-2). The Coast Guard brought a third action against her in September 2014 and the parties agreed to a settlement in which her license was suspended for two months. (Ex. CG-3). In light of her prior record, the Coast Guard argued that Respondent has displayed a flagrant disregard for the law and an aggravated sanction is warranted. (Tr. pp. 9-10).

Respondent did not dispute that the Coast Guard had taken these prior actions against her MMC, but argued that a four-month suspension was still above the range specified in the table. She believed that the fact she admitted to the allegations and was willing to take responsibility

for her actions was a mitigating factor, and also stated that a twelve-month suspension would put her out of business. (Tr. pp. 2, 11).

After hearing the parties' arguments, I issued an Order on the Record, suspending Respondent's MMC for six months. As I explained to the parties at the hearing, a six-month suspension is significantly more than the base sanction for misconduct in Table 5.569. Due to her previous record, which is recent and includes serious offenses, I found an upward deviation from the Table to be warranted. However, the offense underlying the allegations in this matter was not as serious in nature as some of those prior offenses. Specifically, in the past Respondent has fallen asleep while having direction and control of the UTV SHANNON, resulting in a grounding, and has also intentionally impeded ferry traffic in the Puget Sound. (Ex. CG-2 and CG-3; Tr. p. 10). Here, she assumed direction and control of the UTV SHANNON while her license was suspended, but at a time when the vessel was not towing a barge and was moving approximately 200 yards from one berth to another. Another licensed Master was nearby but did not have direction and control of the UTV SHANNON. (Tr. p. 12). Although the Coast Guard stated it had evidence of other times Respondent may have acted as Master while her MMC was suspended, it did not charge her with those instances and I have not made any findings as to them.

While Respondent's decision to operate a vessel while her MMC was suspended is a very serious violation, after considering all the evidence regarding the incident and the factors in aggravation and mitigation, I found the Coast Guard's suggested penalty to be too harsh under the circumstances. I therefore assessed a sanction of **SIX MONTHS OUTRIGHT SUSPENSION**, beginning immediately, and retained Respondent's MMC. I have since transferred custody of that MMC to the Coast Guard by an Order dated October 15, 2015 and have provided a receipt to Respondent. Should Respondent decide to appeal this Decision and Order, instructions are provided in Attachment A.

ORDER

IT IS HEREBY ORDERED that the Allegations in the Complaint are found **PROVED** by **ADMISSION**; and

IT IS HEREBY FURTHER ORDERED that Respondent's Mariner's License is **SUSPENDED** for **SIX MONTHS** commencing October 7, 2015.

Service of this Decision and Order upon Respondent provides notice to Respondent of appeal rights as set forth in 33 CFR Subpart J, Section 20.1001.

George J. Jordan
US Coast Guard Administrative Law Judge

Date: October 22, 2015

Attachment A: 33 C.F.R. Part 20, Subpart J – Appeals

§ 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.

§ 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.

§ 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.

§ 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.