

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

UNITED STATES COAST GUARD

Complainant

vs.

ANDRE DEMETRIUS IRBY

Respondent

**Docket Number 2016-0389
Enforcement Activity No. 5731892**

DECISION AND ORDER

Issued: August 25, 2017

By Administrative Law Judge: Honorable Michael J. Devine

Appearances:

**LT RYAN GOMEZ
Sector Hampton Roads
And
CDR CHRISTOPHER JONES, Esq.,
USCG S&R National Center of Expertise**

For the Coast Guard

ANDRE DEMETRIUS IRBY, Pro se

For the Respondent

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I. PRELIMINARY STATEMENT

The United States Coast Guard (Coast Guard) filed a Complaint seeking to revoke Andre Demetrius Irby's (Respondent) Merchant Mariner's Credentials (MMC) for committing an act of misconduct. Respondent filed a timely answer. The undersigned Judge held a hearing and, after carefully considering the testimony and evidence, finds the Coast Guard proved Respondent committed an act of misconduct and orders Respondent's credentials revoked. However, the revocation is **STAYED** and will be **REMITTED** upon completion of a six (6) months' outright suspension and twelve (12) months' probation.

II. PROCEDURAL HISTORY

The Coast Guard brought this administrative action pursuant to the authority contained in 46 U.S.C. § 7703 and its underlying regulations codified at 46 C.F.R. Part 5, and 33 C.F.R. Part 20. The Coast Guard issued a Complaint on December 19, 2016, charging Respondent with misconduct for allegedly committing an assault with a dangerous weapon. See 46 U.S.C. § 7703(1)(B); 46 C.F.R § 5.27. Specifically, the Coast Guard alleges on March 17, 2016, Respondent brandished a knife against a fellow crewmember while serving as a crewmember of the USNS AMELIA EARHART. The Coast Guard seeks revocation of Respondent's credential in accordance with 46 C.F. R. § 5.61(a)(1). Respondent, acting on his own behalf (*pro se*), submitted his Answer on December 19, 2016, neither admitting nor denying the allegations and asserting he lacked sufficient knowledge.

The Administrative Law Judge (ALJ) conducted a hearing in accordance with the Administrative Procedure Act (APA) as amended and codified at 5 U.S.C. §§ 551-59, and Coast Guard procedural regulations set forth in 46 C.F.R. Part 5 and 33 C.F.R. Part 20 on June 15, 2017 in Norfolk, Virginia. The Coast Guard moved for admission of two (2) exhibits, both of which were admitted, and presented testimony of four (4) witnesses.

Respondent moved for admission of three (3) exhibits at the hearing, all three (3) were admitted, and testified on his own behalf. The list of witnesses and exhibits is contained in Attachment A.

During the hearing, the parties initially waived written argument and proposed findings of fact and conclusions of law, but presented closing oral arguments. See 33 C.F.R. § 20.710; 33 C.F.R. § 20.902. After considering the oral argument of the parties, and the evidence of record, the undersigned ruled that a prima facie case of misconduct had been presented by the Coast Guard and that this may constitute a danger to safety at sea and directed the Coast Guard to retain custody of Respondent's credentials pending a final decision and order. See 46 C.F.R. § 5.521(b); Tr. at 146-149. However, the undersigned Judge determined further briefing was necessary regarding the charged violation of assault and permitted the parties to file post hearing briefs with proposed findings of fact or conclusions of law on or before July 7, 2017.

Respondent submitted post-hearing argument on June 20, 2017. The Coast Guard submitted a post hearing brief including proposed findings of fact and proposed conclusions of law on July 7, 2017. Rulings on the proposed findings and conclusions are found in Attachment B. The record is closed and the case is now ripe for a decision. After careful review of the entire record taken as a whole, including witness testimony, applicable statutes, regulations, and case law, I find the Coast Guard **PROVED** Respondent committed an act of misconduct.

III. FINDINGS OF FACT

The Findings of Fact are based on a thorough and careful analysis of the documentary evidence, testimony of witnesses, and the entire record taken as a whole.

1. At all times relevant to this matter, Respondent held Merchant Mariner Credential (MMC) 000168387. CG Ex. 1; Transcript (Tr.) at 31-32.
2. On March 17, 2016, Military Sealift Command employed Respondent as an Able Seaman (AB) on USNS AMELIA EARHART. CG Ex. 2, Tr. at 31-32, 69, 143.
3. Respondent is required as a condition of his employment as an AB to hold an MMC. Tr. at 32.
4. The gangway area of the USNS AMELIA EARHART is located on the main deck and is the location where individuals come on board or depart the vessel. Tr. at 32.
5. On March 17, 201, Respondent acted under the authority of his MMC by serving as a crewmember aboard the vessel USNS AMELIA EARHART. Id.
6. The 04 deck is located four decks above the main deck of the ship. Tr. at 103-06.
7. On March 17, 2016, at or near the elevator on the 04 deck, AB Nazarene Knight accused Respondent of cutting up the clothing of a fellow crewmember. Tr. 94; Resp. Ex. A.
8. Later that same day, Respondent was at the gangway area reporting for watch duty. Tr. at 83, 125.
9. AB Knight approached the watchstand area of the quarterdeck carrying a paint bucket and roller after completing some work painting. Tr. at 73, 95; Resp. Ex. A.
10. At the gangway, AB Knight and Respondent resumed their argument from earlier that day. Tr. at 94-96, 125-26.
11. During the argument, AB Knight put down the paint can, paint roller and brush. Tr. at 73, 94, 105-106.
12. During the argument Respondent drew and opened his folding knife. Tr. at 70-73, 94, 126.

13. AB Knight and Respondent remained approximately 10 to 15 feet apart during the argument. Tr. at 78, 126.
14. AB Koppel was present as the watchstander during the argument between AB Knight and Respondent and was prepared to intervene with a baton if necessary. Tr. at 72.
15. Respondent did not make any threatening moves toward AB Knight during the argument. Tr. at 74, 126.
16. Respondent and AB Knight did not engage in any physical contact. Tr. at 78.
17. AB Koppel directed Respondent to go see the Master and the argument ended when the Third Mate arrived. Id.; Tr. at 126.
18. On March 17, 2016, the USNS AMELIA EARHART was moored in port at Indian Island Ammunition Depot in Washington State. Tr. at 30, 69.

IV. PRINCIPLES OF LAW

The purpose of Coast Guard Suspension and Revocation proceedings is to promote safety at sea. See 46 U.S.C. § 7701. Title 46 C.F.R. § 5.19 gives Administrative Law Judges authority to suspend or revoke a license or certificate in a hearing for violations arising under 46 U.S.C. § 7703. Under 46 U.S.C. § 7703(1)(B) and 46 C.F. R. §§ 5.27; 5.61 and 5.569, a Coast Guard issued license or certificate may be revoked if the holder of that license or certificate has been found to have committed misconduct if certain offenses are proven or when based on the misconduct proven at hearing it is found that permitting the Respondent to retain credentials would be contrary to safety at sea or detrimental to good order and discipline. Id.

A. Burden of Proof

The Administrative Procedure Act (APA), Title 5 U.S.C. §§ 551-559, applies to Coast Guard Suspension and Revocation trial-type hearings before United States Administrative Law Judges. 46 U.S.C. § 7702(a). The APA authorizes sanctions if, upon consideration of the entire record as a whole, the charges are supported by reliable,

probative, and substantial evidence. See 5 U.S.C. § 556(d). Under Coast Guard procedural rules and regulations, the Coast Guard bears the burden of proof to prove the charges are supported by a preponderance of the evidence. See 33 C.F.R. §§ 20.701, 20.702(a).

"The term substantial evidence is synonymous with preponderance of the evidence as defined by the U.S. Supreme Court." Appeal Decision 2477 (TOMBARI) (1988). See also Steadman v. Securities & Exchange Comm'n, 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 & Prod. of California, Inc. v. Constr. Laborers Pension Tr. for S. California, 508 U.S. 602, 622 (1993). Therefore, the Coast Guard Investigating Officer must prove by credible, reliable, probative, and substantial evidence that Respondent more likely than not committed the violation charged.

B. Jurisdiction

Jurisdiction is a question of fact and must be determined before the substantive issues of the case are decided. Appeal Decision 2620 (COX) (2001). Jurisdiction is established for the purposes of suspension and revocation proceedings when the mariner is acting under the authority of a credential while employed in the service of a vessel and holding the credentials or endorsement is required by law or regulation; or required by an employer as a condition of employment. 46 C.F.R. § 5.57.

In this case, Respondent generally denied the allegations of the Complaint in his Answer, but at the hearing he did not contest he held an MMC while working as an AB in the service of the USNS AMELIA EARHART on March 17, 2016. See Answer to Complaint at 1; Tr. 125- 136. The testimony of the Master (Captain Allguire) also supports jurisdiction. Tr. at 31, 32, 46 C.F.R. § 5.57. Therefore, I find the Coast Guard has

jurisdiction to adjudicate this matter. Respondent presented his credentials at the hearing. Tr. at 4. It was noted that his credentials were due to expire on September 5, 2017. Tr. at 4. Regardless of any subsequent expiration, or any newly issued credential, the Coast Guard has jurisdiction to adjudicate this matter and all of Respondent's credential are affected by the order below. See APPEAL DECISION 2712 (MORRIS) (2016).

C. Misconduct

Misconduct is human behavior which violates some formal, duly established rule. 46 C.F.R. § 5.57. 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. Id. Furthermore, it is an act which is forbidden or a failure to do that which is required. Id. Here, the Coast Guard specifically asserts Respondent committed an act of misconduct by assaulting AB Knight. An assault is a demonstration of unlawful intent by one person to inflict immediate injury or offensive contact on the person of another then present. Am. Jur. Proof of Facts 3d 613. It is frequently defined as an intentional attempt by a person, by force or violence, to do an injury to the person of another, or to attempt to commit a battery, or any threatening gesture, showing in itself or by words accompanying it, an immediate attempt to commit a battery, or any threatening gesture, showing in itself or by words accompanying it, an immediate intention coupled with a present ability to commit a battery. 6 Am.Jur. 2d Assault and Battery § 1; Appeal Decision 1218 (NOMIKOS) (1961). As such, an assault constitutes an act of misconduct. Id.

V. ANALYSIS

Much of the evidence in this matter is undisputed: Respondent and AB¹ Knight

¹ Information regarding Merchant Mariners Credentials, including general requirements regarding able seaman and ordinary seaman are contained in 46 C.F.R Part 10.

argued on March 17, 2016, aboard the USNS AMELIA EARHART. However the Parties view of the nature and extent of the words and actions of the two sailors are dramatically different. Part of the evidence presented at the hearing shows that the incident giving rise to the charged violation was part of an ongoing disagreement between Respondent and AB Knight that included an argument when they were at the elevator on the 0-4 Deck of the ship. Tr. at 94; 106. While not directly relevant to the factual analysis of whether an assault occurred, the previous contact between the participants in the dispute is part of the *res gestae*² regarding the incident. The following analysis applies the law of assault and the law of misconduct to the facts arising from the evidence in this case.

A. Coast Guard Allegation of Misconduct Based on Assault

The Coast Guard alleges Respondent committed an assault with a dangerous weapon by brandishing a knife during an argument with AB Nazarene Knight on March 17, 2016. Title 46 C.F.R. § 5.27, CDOAs, common law, and the general maritime law in relation the elements of the offense of assault provides the basis for the charge in this matter. In order to prove assault, the Coast Guard must show by a preponderance of the evidence:

1. Respondent placed another person in apprehension of harm; and
2. the Respondent had the present ability to inflict injury, whether or not the actor (Respondent) actually intended to inflict or was capable of inflicting harm.

Appeal Decision 1218 (NOMIKOS) (1961).

Respondent has not disputed he had an argument with AB Knight on March 17, 2016, at the gangway area or that he brandished³ a knife during the argument.⁴ However, Respondent contends he acted in self defense, that AB Knight was the aggressor, that he wanted to avoid a fight because he is a diabetic, and he only displayed the knife to avoid an attack from AB Knight. Tr. at 129-30.

² See Black's Law Dictionary (Fifth Ed.). The entire circumstances of an incident may be relevant to a determination. The incident at the gangway is properly considered in the light of all of the circumstances that led to that event. Barshop v. United States, 191 F.2d 286, 292 (5th Cir. 1951) (noting *res gestae* refers to the circumstances, facts and declarations which grow out of the main fact, are contemporaneous with it, and serve to illustrate its character.)

³ Respondent is not an attorney and it is not clear that any specific definitions of the term "brandishing" was agreed upon by either party. Therefore, the Court gives little weight to Respondent's use of the word brandish during his testimony.

Respondent also testified that AB Knight was the aggressor and that earlier on the 0-4 Deck at the elevator, AB Knight accused him of cutting someone's clothes, which Respondent denied. Tr. 126. Respondent testified he then went down to relieve the watch. Id. He also testified that three days earlier he had a confrontation with AB Knight because Respondent had "written up" the female Ordinary Seaman (OS) that Knight was dating for being belligerent at the gangway when Respondent was on watch on a previous day. Tr. at 132-33.

AB Knight's testimony confirms his confrontation with Respondent at the elevator and that he asked Respondent why he (Irby) cut up his friend's jeans, to which Respondent replied "F-you." Tr. at 94; Resp. Ex. A; Resp. Ex C. With regard to the incident at the gangway, the testimony shows that AB Knight observed and was aware of Respondent brandishing a knife. Tr. 73, 96. AB Knight alleged Respondent started walking towards him with the knife. Tr. at 96. However, other testimony shows AB Knight apparently remained at a distance from Respondent. Tr. at 78, 96-97. The situation was described by AB Koppel, the security watchstander at the gangway where the incident occurred. Tr. at 70-74. He testified of the occurrence of a heated argument and that Respondent pulled out his knife. Id. The testimony of AB Koppel and AB Knight is sufficient to show AB Knight was concerned or in apprehension when Respondent opened his folding knife. Therefore, the Coast Guard proved the first element of assault.

However, AB Koppel also testified that Respondent and AB Knight were approximately ten to fifteen feet apart. There is no contradiction of that testimony in the record and no evidence of an attempted battery by Respondent. Tr. at 78-85. AB Knight testified that Respondent made a threat to kill him "and that bitch too" (referring to OS Yearling). Tr. at 100. However, Respondent denied making any such threat. Tr. at 126.

⁴ There was no dispute between the parties that a knife is a deadly weapon.

AB Koppel had no recollection of any specific words by Respondent or AB Knight, he could only recall a heated argument between both sailors. Tr. at 85. A specific threat to kill is unlikely to be forgotten. Testimony of the heated argument does not corroborate AB Knight's testimony.

The evidence shows that AB Knight and AB Irby had an ongoing dispute prior to the altercation on the gangway on March 17, 2016. Resp. Ex. A; Resp. Ex. B. Respondent testified he had made a complaint earlier in the week regarding Ordinary Seaman Yearling involving her conduct at the gangway while he was on watch approximately three days before March 17, 2016, and that was the reason for AB Knight's actions toward Respondent.

Both AB Knight and Respondent have a motive to characterize the argument to their own interests. The testimony by AB Knight of a specific statement by Respondent of "I'll kill you and that bitch too" is not corroborated by AB Koppel or anyone else that was present at the time of the incident at the gangway on March 17, 2016. Respondent's testimony contradicts the testimony of AB Knight. However, I find neither party to the argument to be fully credible. I find the testimony of AB Koppel is credible and persuasive.

The evidence shows: (1) Respondent and AB Knight remained approximately 10 to 15 feet apart; (2) there was no evidence of an attempted battery toward AB Knight; and (3) the watchstander, AB Koppel only recalls angry words rather than a specific threat. Therefore, I find the element of an immediate or present ability to inflict injury is not proven. Appeal Decision 1879 (HAMILTON) (1972). Although the law permits finding an assault occurred even if the individual is not within striking distance,⁵ the facts of this case are not sufficient to prove an assault.⁶

⁵ APPEAL DECISION 1218 (NOMIKOS) (1961).

⁶ The Coast Guard requested official notice of APPEAL DECISION 2691 (JORY) (2010); APPEAL DECISION 1965 (BATISTA) (1973); APPEAL DECISION 2215 (OLIVO) (1990) and APPEAL DECISION 1911 (GEESE) (1973), I have considered those cases and other authority but do not find assault proven in this case.

B. Misconduct Based on a Variance in the Pleadings

Although I do not find Respondent committed an assault of AB Knight, Respondent's actions may still constitute an act of misconduct. Formal, duly established rules can be found in statutes, regulations, the common law, the general maritime law, a ships regulation or other similar sources. 46 C. F. R. § 5.27. Here, the Coast Guard did not present any evidence of Military Sealift Command's policies or USNS AMELIA EARHART regulations or equivalent documents addressing sailors conduct aboard MSC vessels. The general maritime law recognizes a seaman owes a duty of care to his fellow seaman, which includes "responsibility for reasonably foreseeable risks created by the seaman's acts or omissions." Patterson v. Omega Protein, Inc., 2014 WL 4354461, at *5 (E.D. La. Sept. 2, 2014). Here, Respondent created a reasonably foreseeable risk, which, while short of assault, could lead to injury of a fellow seaman when he pulled the knife, suggesting he might use it. As recognized by the Commandant in Appeal Decision 1879 (HAMILTON) (1972), misconduct "might be found in a suggestive production of weapon to induce a certain course of action" even where there is no assault.

I find Respondent's drawing and opening a folding knife constitutes a "suggestive production" as contemplated in HAMILTON, supra. By drawing the knife during a verbal argument or dispute where no threat of deadly force or violence has been initiated by the other party is an escalation of the dispute that constitutes misconduct and is a violation of expected conduct.⁷ Therefore, the charge of misconduct in violation of 46 C.F.R. § 5.27 is proven, but with the modification that it is based on an act of violence (pulling a knife) without injury. Appeal Decision 2687 (HANSEN) (2010).

I find that Respondent's action in unfolding a knife during the argument with AB

⁷ Just because the victim only used "mere words" is not a complete bar to self defense. Commandant v. Hussain S. Deiban, 1980 WL29255 (NTSB September 19, 1980).

Knight was an unwarranted escalation of the matter and contrary to the conduct expected between shipmates who must rely on each other in operations aboard ship and at sea.

C. Respondent's Claim of Self Defense is not Supported by the Evidence

Respondent's contention that he was acting in self defense is insufficient in this case. Respondent bears the burden of proof to demonstrate he is entitled to the affirmative defense of self defense. 33 C.F.R. § 20.702; Appeal Decision 2247 (LUKOWSKI) (1981). Even if his testimony alleging AB Knight was the aggressor were considered completely credible, there was clear testimony that Respondent had room to retreat, and there were other individuals at the gangway area that could have assisted him if there was a physical altercation with AB Knight. The record also shows the watchstander AB Koppel had a baton available to use to intervene if necessary. Tr. at 72. Under these circumstances, brandishing a knife is not a reasonable response to a verbal argument. Respondent did not present persuasive evidence to show circumstances that justified Respondent's actions, therefore Respondent's claim of self defense fails. Cf. Appeal Decision 1549 (CHAPMAN) (1966).

VI. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent and the subject matter of this proceeding are within the jurisdiction of the Coast Guard vested under the authority of 46 U.S.C. Chapter 77, as demonstrated by documents and testimony at the hearing. 46 C.F.R. § 5.57; CG Ex. 1; Tr. at 31-32.
2. On March 17, 2016, Respondent and AB Nazarene Knight had a verbal dispute that began on the 04 Deck near the elevator and continued later at the gangway area of the main cargo deck.
3. On March 17, 2016, AB Knight did not threaten Respondent with deadly force during their argument.
4. On March 17, 2016, AB Koppel was a watchstander on the gangway and was available to intercede between AB Knight and Respondent if necessary.
5. The gangway area where the argument between Respondent and AB Knight occurred on March 17, 2016, there were other crew members present and

Respondent had the opportunity to retreat.

6. Respondent's action of drawing and opening a folding knife during a verbal argument with a crewmember did not constitute an act in self defense.
7. Based on the record as a whole, the Coast Guard has proved by a preponderance of reliable and credible evidence that Respondent committed misconduct by drawing and opening a folding knife during an argument with a fellow crewmember in violation of 46 C.F.R. § 5.27.

VII. SANCTION

The authority to impose sanctions at the conclusion of a case is exclusive to the ALJ. Appeal Decision 2362 (ARNOLD) (1984). Title 49 C.F.R. § 5.569 provides the Table of Suggested Range of Appropriate Orders (Table) for various offenses. The purpose of this Table is to provide guidance to the ALJ and promote uniformity in orders rendered. Appeal Decision 2628 (VILAS) (2002), *aff'd* by NTSB Docket ME-174. However, it is not binding on the Judge and either aggravating or mitigating circumstances may support a sanction determination different from the table guidance. The violation I find proved in this case appears to be aligned with the listing under Misconduct of "[v]iolent acts against other persons (without injury)." The suggested range of an order for a sanction for that violation in Table 5.569 is 2-6 months. I find that drawing a knife on a crewmember during an oral argument supports exceeding the Table 5.569 guidance in this case.

Suspension and revocation proceedings are remedial in nature and their purpose is to help maintain standards for competence and conduct essential to the promotion of safety at sea. See 46 U.S.C. § 7701(a); 46 C.F.R. § 5.5. Although there was no evidence of prior misconduct presented at the hearing in this matter I find the escalation of a verbal argument by drawing and opening a folding knife, which is a deadly weapon, to support a higher sanction. Such conduct is not consistent with the need for a cooperative and cohesive crew aboard ships and may lead to injury, dangerous situations, and liability to others. The general maritime law clearly recognizes a ship may be considered unseaworthy if a sailor is

prone to violence and may attack other crew members. E.g. Boudoin v. Lykes Brothers Steamship Co., Inc., 348 U.S. 336 (1955). The unseaworthiness doctrine impugns liability to not only the owner, but the vessel as well, both of which may have to answer for damages caused by a dangerous seaman. Solet v. M/V Capt. H.V. Dufrene, 303 F. Supp. 980, 985 (E.D. La. 1969).

Respondent's prior record of service and the fact that no injury occurred have been fully considered in mitigation. I find the appropriate sanction in this matter is that all Respondent's credentials should be suspended outright for six (6) months with a stayed revocation for a probationary period of twelve (12) months. Since I found the Coast Guard presented *a prima facie* case of misconduct at the hearing on June 15, 2017, and directed that Respondent's credentials be held at that time, the period of six (6) months' outright suspension and the period of twelve (12) months' probation shall run concurrently from June 15, 2017, the date Respondent's credentials were placed in the custody of the Coast Guard at the conclusion of the hearing.

As explained in 46 C.F.R. § 5.521(b), the ALJ may order an MMC retained where the Coast Guard establishes *a prima facie* case of an act or offense. At the close of the hearing, the ALJ ordered the Coast Guard to retain Respondent's MMC pending briefing and a final decision. Because the Coast Guard has retained Respondent's credentials since the hearing, his outright suspension begins on June 15, 2017.

VIII. CONCLUSION

I find that because Coast Guard hearings are remedial in nature as provided by 46 C.F.R. § 5.5 and in keeping with the Table found at 46 C.F.R. § 5.569, the charged violation when considered along with the evidence of aggravation and mitigation, the sanction should be revocation stayed, and if the terms of probation are successfully completed the revocation will be remitted. Terms of probation are that revocation is stayed pending

twelve (12) months' probation, beginning with six (6) months' outright suspension commencing the date of the hearing, June 15, 2017.

Furthermore, Respondent may not commit any other disqualifying violations as described in this order within the twelve (12) month probationary period. For Respondent's benefit a copy of Table 46 C.F.R. § 10.211(g) and Table 46 C.F.R. § 10.213(c) are included as Attachment B of this Order. These tables and the regulations applicable to Coast Guard suspension and revocation proceedings may be accessed through the internet at <http://ecfr.gpoaccess.gov>. Respondent also remains subject to administrative action for any other potential violations.

IX. ORDER

IT IS HEREBY ORDERED, Respondent's credential, and all MMC held by Respondent are **REVOKED**;⁸ but **REVOCATION IS STAYED** and will be **REMITTED** pending successful completion of twelve (12) months' probation including **SIX (6) MONTHS' OUTRIGHT SUSPENSION** followed by an additional **SIX (6) MONTHS OF PROBATION**.

IT IS FURTHER ORDERED, after six (6) months' outright suspension Respondent's credential may be returned. During the twelve (12) month probationary period Respondent must not be found guilty or proven to have violated any law or regulation that is listed in Table 46 C.F.R. § 5.569, or listed in Table 46 C.F.R. § 10.211(g), or Table 46 C.F.R. § 10.213(c) or of a violation that would preclude the issuance of a Merchant Mariner Credential during the probationary period. See Attachment D.

IT IS FURTHER ORDERED, if the Coast Guard determines Respondent has

⁸ APPEAL DECISION 2712 (MORRIS) (2016) (finding continuous jurisdiction of MMC where credential expired). See Section IV. B. *supra*.

violated the terms of probation within the probationary period the Coast Guard may provide notice of intent to execute the stayed revocation of Respondent's credentials. **Within ten (10) days of the Notice of Violation of Probation, Respondent may submit a written request to the ALJ Docketing Center, with a copy to the Coast Guard investigating Officer to request an ALJ hearing solely for determining whether the terms of probation have been violated. Failure to submit a written request within ten (10) days waives the opportunity to request a hearing.** If Respondent does not request a hearing within ten (10) days of adequate service of a Notice of Violation of Probation the Coast Guard may execute the Order to Revoke.

IT IS FURTHER ORDERED, the outright suspension commenced on the date of the hearing, June 15, 2017. Respondent's credentials were deposited with the Investigating Officer at the close of the hearing. The period of probation runs from June 15, 2017.

PLEASE TAKE NOTICE, that service of this Order on the parties and/or parties' representative(s) serves as Notice of Appeal rights set forth in 33 C.F.R. §§ 20.1001 – 20.1004. Attachment C. The time period within which the parties may file a Notice of Appeal shall commence the day of receipt of this Order.

<hr/> Michael J Devine US Coast Guard Administrative Law Judge Date: August 25, 2017
