

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

UNITED STATES COAST GUARD
Complainant

vs.

LUIS ADROVER LAGARES
Respondent

Docket Number 2018-0066
Enforcement Activity No. 5746319

ORDER MEMORIALIZING BENCH DECISION

Issued: September 19, 2018

By Administrative Law Judge: Honorable Michael J Devine

Appearances:

**Mr. Eric A. Bauer
And
And Lineka Quijano, Esq.
USCG S&R National Center of Expertise
For the Coast Guard**

**W. Brett Mason, Esq.
For Respondent Luis A. Lagares**

This Order is issued in accordance with 33 C.F.R. § 20.902(c), which authorizes the issuance of an initial oral decision. The United States Coast Guard initiated this administrative action seeking revocation of the Merchant Mariner's credential issued to Luis Adrover Lagares, the Respondent in this case. The Complaint, dated March 2, 2018, alleges Respondent, a holder of Coast Guard issued credentials, violated 46 U.S.C. § 7703(1)(B) (misconduct) on or about February 13, 2017 by seeking employment as a Chief Engineer using an erroneously issued Chief

Engineer endorsement in violation of 18 U.S.C. § 2197 (Misuse of Federal certificate, license or document).

Respondent, acting on his own behalf, filed his Answer on March 18, 2018. Respondent denied the jurisdictional allegations in paragraph 2 of the Complaint also indicating he had been found not guilty in Federal Court on February 28, 2018, and denied paragraphs 3, 5 and 6 of the factual allegations again repeating the indication that he had been found not guilty in Federal Court on February 28, 2018. Respondent also asserted the not guilty finding in Federal court as an affirmative defense.

On September 17, 2018, the undersigned ALJ conducted a hearing in the above named matter in New Orleans, Louisiana. The hearing was conducted in accordance with Administrative Procedure Act, amended and codified at 5 U.S.C. §§ 551-59, Coast Guard Administrative Procedure statute codified at 46 U.S.C. § 7702, and the procedural regulations codified at 33 C.F.R. Part 20. Ms. Lineka Quijano, Esq. appeared on behalf of the Coast Guard. W. Brett Mason, Esq. appeared on behalf of Respondent Lagares. During the hearing the Coast Guard offered five (5) exhibits into evidence, all of which were admitted. The Coast Guard also presented four (4) witnesses. Respondent moved to have four (4) exhibits admitted to the record, all were admitted as Exhibits A through D. Respondent testified on his own behalf and also called Ms. Debbie Blue as a witness.

At the conclusion of the hearing, both parties waived the opportunity to file written argument and proposed findings of fact and conclusions of law. As permitted by 33 C.F.R. 20.710 and 20.902, an oral decision was rendered. Upon review of the exhibits admitted into the record and the witness testimony presented I find the charged violation was proven.

After consideration of all of the evidence in the record and applying the regulations contained in 33 C.F.R. Part 20 and 46 CFR Part 5 Respondent's credentials are suspended. The

findings of fact and conclusions of law were stated on the record during the hearing and are summarized as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Luis Adrover Lagares is the holder of Merchant Mariner Credential (MMC) 000393409 and held that credential during the time relevant to the violation charged under 46 U.S.C. § 7703.
2. Respondent Luis Adrover Lagares and the subject matter of this proceeding is within the jurisdiction of the Coast Guard vested under the authority of 46 U.S.C. Chapter 77. Actions involving renewal of endorsements or credentials are actions within the authority of a mariner's credential under 46 C.F.R. § 5.57.
3. On August 14, 2013 Respondent was issued a Merchant Mariner Credential (MMC) with an expiration date of August 14, 2018.¹
4. On or about September 16, 2016 Respondent applied to the National Maritime Center for a Basic Training Endorsement.
5. On or about October 12, 2016 Respondent was issued a training endorsement sheet containing a Chief Engineer endorsement instead of a Basic Training Endorsement.
6. On October 12, 2016 when the National Maritime Center provided the Chief Engineer Endorsement to Respondent, Respondent was not qualified for that endorsement.
7. On December 9, 2016 the National Maritime Center notified Respondent he was not qualified for the Chief Engineer Endorsement and requested he return the MMC with the Chief Engineer Endorsement.

¹ Jurisdiction continues after expiration of the credential. See Appeal Decision 2712 (MORRIS) (2016).

8. After being informed he was not qualified for the Chief Engineer endorsement, in December 2016, Respondent returned the MMC with the Chief Engineer Endorsement to the Coast Guard.
9. On or about February 13, 2017 Respondent sought employment as Chief Engineer aboard a vessel for Omega Protein.
10. Respondent was acquitted of a charge under 18 U.S.C. § 2197 (misuse of Federal certificate, license or document) in Federal District Court in February 2018.²
11. The Standards of Training, Certification and Watch keeping (STCW) noted in 46 C.F.R. Part 10 for Seafarers (including U.S. Merchant Mariners) are required through international law and implemented in Coast Guard regulations.
12. In February 2017 Respondent used a copy of the Chief Engineer Endorsement to further his application for a position with Omega Protein.
13. I find Respondent knew he was not entitled to that endorsement and his explanation is not credible. The Omega Protein witnesses were credible.
14. Based on the record as a whole, the Coast Guard has proved by a preponderance of reliable and credible evidence that Respondent used a MMC Chief Engineer Endorsement to which he was not entitled.
15. Use of an MMC endorsement for seeking or obtaining employment at a level to which a mariner is not qualified as required by 46 U.S.C. Parts 10 and 11 constitutes misconduct under 46 C.F.R. § 5.27 and 46 U.S.C. § 7703(1)(B).

SANCTION

Coast Guard hearings are remedial in nature as provided by 46 CFR § 5.5. It is within the duties of the undersigned to order any of a variety of sanctions. See 46 CFR § 5.569; see also Appeal Decision 2569 (TAYLOR) (1995); see also Appeal Decision 2680 (MCCARTY) (2006).

However, the undersigned Judge is not bound by 46 CFR § 5.569 or the average order table. (Id.). Consideration of mitigating or aggravating factors and evidence may justify a lower or higher sanction than the range suggested in the average order table. 46 C.F.R. § 5.569(d). In this matter the sanction guidance indicates a range of 1 to 3 months suspension for failure to comply with U.S. law or regulations. See Table 5.569 in 46 CFR § 5.569. The Coast Guard proposed revocation based on the evidence presented. Respondent through counsel proposed dismissal of the charge or a lesser sanction. No clearly identified aggravating factors were identified in this case; therefore I find an upward departure from the suggested sanction is not appropriate under the limited circumstances of this matter. Commandant v. Moore, NTSB Order No. EM-201 (2005). After considering all of the evidence presented I find the appropriate sanction for this violation is **THREE MONTHS OUTRIGHT SUSPENSION**. Respondent remains subject to administrative action for any other potential violations.

ORDER

IT IS HEREBY ORDERED THAT the Merchant Mariner's Credential and all other Coast Guard licenses, certificates and documents issued to Respondent are **SUSPENDED OUTRIGHT FOR A PERIOD OF THREE (3) MONTHS**, commencing immediately on the date of the hearing, September 17, 2018.

PLEASE TAKE NOTICE that Service of this Order on you serves as notice of your right to appeal as set forth in 33 C.F.R. § 20.1001 -1003. (Attachment B). A copy of the transcript will be provided to Respondent if requested.

² Res judicata does not apply to this administrative proceeding. Eg. Appeal Decision 2254 (YOUNG)(1981).

Done and dated September 19, 2018
Baltimore, Maryland

A handwritten signature in black ink, reading "Michael J. Devine". The signature is written in a cursive style with a large, prominent "M" and "D".

Michael J Devine
US Coast Guard Administrative Law Judge

September 19, 2018

Date:

ATTACHMENT A

WITNESS AND EXHIBIT LIST

Coast Guard Witnesses

1. Eric Bauer
2. Courtney Eichelberger
3. Andre Schmitz
4. William Daniels

Coast Guard Exhibits

1. Print out of MMC 000393409
2. Respondent Application for Merchant Mariner Credential (CG-719B) submitted September 16, 2016
3. Chief Engineer endorsement sheet issued to Respondent
4. National Maritime Center letter dated December 9, 2016
5. Respondent's application for employment as a Chief Engineer aboard Omega Protein Inc., vessels and Chief Engineer endorsement sheet

Official Notice

1. Title 18 United States Code 2197

Respondent Witnesses

1. Deborah Blue
2. Luis Lagares

Respondent Exhibits

- A. Correspondence History Report
- B. Judgment of Acquittal from U.S. District Court Southern District of Mississippi
- C. Respondent's application for employment as a Chief Engineer aboard Omega Protein Inc., vessels
- D. Chief Engineer endorsement sheet

ATTACHMENT B

NOTICE OF APPEAL RIGHTS

33 CFR 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

33 CFR 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
 - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
 - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 CFR 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
 - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --
 - (i) Basis for the appeal;
 - (j) Reasons supporting the appeal; and
 - (k) Relief requested in the appeal.

- (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
 - (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
- (c) No party may file more than one appellate brief or reply brief, unless --
- (1) The party has petitioned the Commandant in writing; and
 - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
- (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

33 CFR 20.1004 Decisions on appeal.

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.