

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

UNITED STATES COAST GUARD

Complainant

vs.

MICHAEL ALBERT FULTON,

Respondent.

**Docket Number 2023-0477
Enforcement Activity Number 7802518**

ADMISSION ORDER

Issued: January 4, 2024

By Administrative Law Judge: Honorable George J. Jordan

Appearances:

**LT Robert E. Custer
Marine Safety Detachment Nags Head
For the Coast Guard**

**Michael Albert Fulton, *Pro se*
For the Respondent**

DECISION AND ORDER

On December 15, 2023, United States Coast Guard Marine Safety Detachment Nags Head (Coast Guard) issued a Complaint against Michael Albert Fulton (Respondent) alleging negligence as described by 46 U.S.C. § 7703(1)(B) and defined by 46 C.F.R. § 5.29.

Specifically, the Coast Guard alleges on July 26, 2023, Respondent was the operator in command, and having direction and control of the airboat OBX 1(State Number: MC4583ET), while underway with 10 passengers, in Roanoke Sound. Respondent failed to operate the OBX 1 at a safe speed for the prevailing conditions. While conducting a high speed 360-degree spin maneuver, he heeled and nearly capsized the OBX1. Respondent's failure to operate the OBX 1 at a safe speed and causing the OBX1 to heel and nearly capsize is Negligence pursuant to 46 U.S.C. § 7703(1)(B) and defined by 46 C.F.R. § 5.29. In aggravation: When the OBX 1 heeled, all ten passengers were ejected from the vessel, and sustained minor to critical injuries.

Accordingly, the Coast Guard proposes a sanction of six (6) months outright suspension of Respondent's Merchant Mariner Credential (MMC or credential).

In Respondent's Answer, dated December 15, 2023, he admits to all jurisdictional and factual allegations, and agrees with the Coast Guard's proposed order of six (6) months outright suspension, with no additional conditions requested.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED that Respondent's violation of negligence under 46 U.S.C. § 7703(1)(B) and 46 C.F.R. § 5.29 is **PROVED BY ANSWER**. I have carefully reviewed the file and find that the proposed sanction is appropriate under the provisions of 46 C.F.R. § 5.569.

IT IS FURTHER ORDERED that Respondent's Merchant Mariner Credential is **SUSPENDED OUTRIGHT FOR SIX (6) MONTHS**, commencing on the date it is deposited with the Coast Guard.

PLEASE TAKE NOTICE, service of this Decision 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 A).

IT IS SO ORDERED.

Done and dated January 4, 2024, at
Seattle, Washington



HON. GEORGE J. JORDAN
ADMINISTRATIVE LAW JUDGE
UNITED STATES COAST GUARD

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 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.

§ 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.