

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

UNITED STATES COAST GUARD,
Complainant

vs.

POMAIKAI VELASQUEZ,
Respondent.

Docket Number 2024-0016
MISLE Activity No. 7844709

**ORDER MEMORIALIZING SECOND PREHEARING CONFERENCE,
REJECTING SETTLEMENT AGREEMENT AND
GRANTING UNOPPOSED MOTION TO WITHDRAW COMPLAINT**

Issued: July 17, 2024

By Administrative Law Judge: Honorable Timothy G. Stueve

On July 11, 2024, I held a telephonic prehearing conference with the parties. Matt Schirle, Daniel B. Schaefer, Esq. and Jennifer Mehaffey, Esq. appeared on behalf of the Coast Guard. Michael Jay Green, Esq. appeared on behalf of Pomaikai Velasquez (Respondent). The purpose of the prehearing conference was to discuss the settlement agreement submitted by the parties on July 11, 2024.

At the outset, I explained to the parties that I intended to reject the settlement agreement as written. Pursuant to 33 C.F.R. § 20.502, I have a duty to ensure the settlement agreement is lawful. *See* The Interim Final Rule on Rules of Practice, Procedure, and Evidence for

Administrative Proceedings of the Coast Guard, 64 Fed.Reg., pp. 28058-28059 (1999).¹ That said, because the Complaint alleges a violation of 46 U.S.C. § 7704(a) Subparagraph B, the statute does not allow for a sanction of less than revocation for a finding of sexual assault. Here, successful completion of the settlement agreement would result in an imposed sanction of only 12 months suspension, rather than the revocation as required by statute. The parties then stated their respective positions.

First, the Coast Guard objected on several grounds. Specifically, it is the Coast Guard's position that because the settlement did not require Respondent to admit the factual allegations, there is no finding of sexual assault and thus, mandatory revocation would not be triggered. The Coast Guard further states that settlement agreements are beyond of scope of Section 7704(a) because in this case, there has been no admission of guilt of the underlying charges so attaching a mandatory sanction revocation would be misplaced unlike drug settlement agreements where respondents must admit the factual allegations.

Next, the Respondent added that it agrees with the views of the Coast Guard and reiterated the point that there has been no admission of guilt. After hearing the parties' arguments, I disagreed with Coast Guard's interpretation and rejected the Settlement Agreement

¹ Section 20.502 Settlements.

Comment: One writer would like to know whether an ALJ can reject a proposed settlement, even if agreed to by the parties?

Response: Under §20.502(b) any motion for proposed settlement must include the reasons why the ALJ should accept it. The ALJ will review such a settlement for the following information:

- (1) Did the appropriate parties sign the agreement?
- (2) Does the complaint allege sufficient facts?
- (3) Does the government have jurisdiction over the respondent?

(4) Does the law permit the order?

(For example, on convictions in dangerous-drug cases, the statute mandates revocation of mariners' licenses. The parties may not agree to rehabilitation in these cases.)

- (5) Is the settlement fair under the circumstances?
- (6) Is the settlement clear?

in its current form because the law does not permit the order. I notified the parties that they had until Wednesday, July 17, 2024 to submit a revised settlement agreement or file the appropriate motion. If I did not receive any motions by COB July 17, 2024, this matter was moving forward to hearing set to commence July 23, 2024. On July 12, 2024, the Coast Guard filed an unopposed motion to withdraw complaint because the Respondent voluntarily surrendered his credential.

ORDER

IT IS HEREBY ORDERED the Settlement Agreement submitted by the parties on July 11, 2024 is **REJECTED**.

IT IS HEREBY FURTHER ORDERED the unopposed Motion to Withdraw due to voluntary surrender is **GRANTED**. This matter is dismissed with prejudice.

PLEASE NOTE the hearing set to commence July 23, 2024 is **CANCELLED**.



Honorable Timothy G. Stueve
Administrative Law Judge
U.S. Coast Guard

Done and dated July 17, 2024
Alameda, California