UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA UNITED STATES COAST GUARD	:	DECISION OF THE
	:	VICE COMMANDANT
vs.	:	ON APPEAL
MERCHANT MARINER DOCUMENT	:	
	:	NO. 2673
Issued to: MAUREEN ANN MIKAN	:	

This appeal is taken in accordance with 46 USC § 7701 *et seq*., 46 CFR Part 5, and the procedures in 33 CFR Part 20.

By a Decision and Order (hereinafter "D&O") dated July 13, 2006, Judge Anthony B. Canorro, an Administrative Law Judge (hereinafter "ALJ") of the United States Coast Guard at Seattle, Washington, dismissed, without prejudice, the Coast Guard's Complaint against Ms. Maureen Ann Mikan (hereinafter "Respondent") upon determining that Respondent had voluntarily surrendered her merchant mariner document on June 14, 2006.

PROCEDURAL HISTORY

On May 1, 2006, the Coast Guard issued a Complaint against, and sought revocation of, Respondent's merchant mariner document alleging *use of or addiction to the use of dangerous drugs*. [Complaint at 2, D&O at 1] After an approved extension of time in which to file her Answer, Respondent filed an Answer to the Complaint on June 19, 2006, wherein she admitted all jurisdictional allegations and agreed to the Coast Guard's proposed order of revocation. [Answer at 1; D&O at 1] Thereafter, on June 14,

2006, Respondent entered into a Voluntary Surrender Agreement and surrendered her merchant mariner document to the Coast Guard in Honolulu, Hawaii. [Voluntary Surrender Agreement; D&O at 1]

The ALJ issued a D&O on July 13, 2006. The D&O dismissed, without prejudice, the Coast Guard's Complaint against Respondent due to the fact that Respondent had entered into a Voluntary Surrender Agreement with the Coast Guard. Respondent filed a letter, addressing the allegations contained within the Coast Guard's (then dismissed) Complaint on August 10, 2006. Although the applicable procedural regulations, at 33 C.F.R. Part 20, require the filing of both a Notice of Appeal and Appellate Brief to perfect an appeal in Coast Guard suspension and revocation cases, in the interest of fairness, I will recognize Respondent's letter as meeting the procedural requirements. Therefore, this appeal is properly before me.

APPEARANCES: Respondent appeared *pro se*. The Coast Guard was represented by LT Bryan D. Johnson of U.S. Coast Guard Sector Honolulu, Hawaii.

FACTS

At all times relevant herein, Respondent was the holder of the Coast Guard issued merchant mariner document at issue in these proceedings.

Due to the fact that Respondent entered a Voluntary Surrender Agreement with the Coast Guard to, among other things, avoid bringing the case to a hearing before a Coast Guard ALJ, the factual allegations that support the Complaint, other than merely being set out in the Complaint, have not been vetted through an administrative proceeding. However, the facts relevant to this proceeding do not involve the facts that support the Coast Guard's initial drug use Complaint; instead, the facts relevant here

center on Respondent's signing of a Voluntary Surrender Agreement with the Coast Guard. To that end, the record shows that on June 14, 2006, Respondent signed and dated a Voluntary Surrender Agreement, deposited her merchant mariner document with the Coast Guard, and waived her right to a hearing in the matter. [Voluntary Surrender Agreement; D&O at 1]

BASIS OF APPEAL

Respondent asserts on appeal, among other things, that she made a mistake and incorrectly filled out her Answer to the Complaint and wants her merchant mariner document returned to her. [Appeal Brief] In so stating, Respondent makes no mention of the Voluntary Surrender Agreement. Given the existence of that Agreement, however, the only argument that Respondent can now make is that the Voluntary Surrender Agreement, or Respondent's entering into it was, in some manner, flawed or inconsistent with the applicable law and regulations. As such, this decision will focus on the seminal issue: whether the ALJ erred in dismissing the case upon accepting the Voluntary Surrender Agreement signed by the parties.

OPINION

In Coast Guard suspension and revocation proceedings, the purpose of a Voluntary Surrender Agreement (hereinafter "Agreement") is to provide a mariner the option to avoid appearing at a hearing where the underlying factual allegations in the Complaint are litigated. *See* 46 C.F.R. § 5.203. In order for an Agreement to be valid, it must meet certain substantive and procedural requirements. *See* 46 C.F.R. § 5.203. Indeed, the applicable regulations make clear that the Agreement must contain the following stipulations:

> (1) The surrender is made voluntarily in preference to appearing at a hearing;
>
> (2) All rights to the license, certificate or document surrendered are permanently relinquished; and,
>
> (3) Any rights with respect to a hearing are waived.

46 C.F.R. § 5.203(b)(1)-(3). In addition, the agreement may not be "accepted by an investigating officer unless the investigating officer is convinced that the holder fully realizes the effect of such surrender." 46 C.F.R. § 5.203(c).

The record shows that the Agreement into which Respondent entered states, in relevant part, as follows:

> I, Maureen Ann Mikan, being advised that I am currently under investigation by the Coast Guard for use and possession of dangerous drugs, do hereby voluntarily surrender to the U.S. Coast Guard Sector Honolulu, Hawaii, my U.S. Coast Guard issued Merchant Mariner Document…and any other Coast Guard issued credentials, in preference to a hearing before a U.S. Administrative Law Judge. I understand that I relinquish all rights to said credentials.
>
> I understand that in order to have my License or Document returned to me or to re-apply for a new Coast Guard issued License and/or Document, I will have to apply for Administrative Clemency in accordance with 46 C.F.R. subpart L including proof of cure as defined by the Coast Guard.
>
> I have read the above agreement and fully understand its meaning.

[Voluntary Surrender Agreement] The agreement is subsequently signed by both Respondent and the Investigating Officer responsible for handling the case on behalf of the Coast Guard. [*Id.*]

It is apparent from the text of the Agreement that the three stipulations required by 46 C.F.R. § 5.203 were addressed. [*Id.*] First, the Agreement states that the surrender is made voluntarily and in preference to an administrative hearing. [*Id.*] Second, the

Agreement recites that all rights to the subject credential are relinquished. [*Id.*] Finally, the first and second paragraphs of the Agreement, when read in conjunction, clearly indicate that all rights to have an administrative hearing to litigate the matter have been waived. [*Id.*]

The only remaining requirement is that before accepting the Agreement, the Investigating Officer must be convinced "that the holder fully realizes the effect of such surrender." 46 C.F.R. § 5.203(c). To this end, the Agreement states that Respondent has "read the above agreement and fully understand[s] its meaning." There is no requirement that the Investigating Officer reduce to writing on the Agreement that she or he believes the holder fully realizes the effect of the Agreement and document surrender. [*Id.*]

The record shows that Respondent has not at any time during the course of these proceedings, alleged that she was pressured or coerced in any manner to sign the Agreement and, moreover, that she does not now, nor has she ever, indicated that she did not understand the nature of the Agreement and the implications of signing it. [Appeal Brief] As shown in the analysis above, the Agreement that Respondent entered into is valid and complies with all of the mandates of 46 C.F.R. § 5.203. Respondent has already surrendered her merchant mariner document to the Coast Guard. As such, if Respondent wishes to secure the return of her credential, she must petition the Coast Guard for Administrative Clemency in accordance with the procedures set forth in 46 C.F.R. Part 5, Subpart L.

CONCLUSION

The findings of the ALJ had a legally sufficient basis. The ALJ's decision was not arbitrary, capricious, or clearly erroneous. Competent, substantial, reliable, and

probative evidence existed to support the findings of the ALJ. Therefore, I find that Respondent's basis of appeal is without merit.

ORDER

The Decision and Order of the Administrative Law Judge, dated at Seattle, Washington on July 13, 2006, is **AFFIRMED.**

V. S. CREA
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 28th of January, 2008.