UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 23462
Issued to: John D. EINSMANN

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2351

John D. EINSMANN

By order dated 27 June 1983, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida dismissed without prejudice a charge of negligence supported by two specifications and a charge of misconduct supported by one specification which had been served on Appellant.

ISSUE

The appeal has been taken from the order of the Administrative Law Judge. Appellant asks that the charges and specifications be dismissed with prejudice.

APPEARANCE: Corlett, Killian, Hardeman, McIntosh, & Levi, P.A. by David McIntosh

OPINION

The first question which must be answered is whether an event has occurred which is subject to appeal. As set forth in detail below, I conclude that it has not.

Appeals from the order of an Administrative Law Judge are governed by statute and regulation. 46 U.S.C. 7702(b) states:

> The individual whose license, certificate of registry, or merchant mariner's document *has been suspended or revoked* under this chapter may appeal,...[emphasis supplied]

46 CFR 5.30-1(a)states:

> *A person found guilty by* an Administrative Law Judge may...take an appeal to the Commandant. [emphasis supplied].

The only appeal allowed in the absence of a finding of guilty or order of suspension or revocation is appeal from an adverse ruling on a motion for recusal of the Administrative Law Judge pursuant to 46 CFR 5.20-15(c). See also Appeal Decision No. 2158 (McDONALD).

Coast Guard policy is not to allow interlocutory appeals. This was clearly stated in Appeal Decision No. 2004 (*LORD*). The LORD case is very similar to the case at hand. In response to an "appeal" from the Administrative Law Judge's denial of Lord's motion to dismiss I stated:

> ...[T]here is no place in the proceedings for "appeals" from interlocutory rulings of an Administrative Law Judge...any asserted error could be urged on the statutory appeal provided for in the event of an initial decision adverse to Appellant's interests.

In addition, appeals are not allowed from a dismissal. Appeal Decisions No. 1792(PHILLIPS); No. 2039(DIETZE), reversed on other grounds by *Dietze v. Siler*, 414 F. Supp. 1105; *1842(SORIANO)*, reversed on other grounds by *Soriano v. Commandant*, 494 F.2d 681.

Such a policy is not unreasonable. Allowing piecemeal appeals of every ruling of an Administrative Law Judge would unduly disrupt

the proceedings. Orders would have to be reduced to writing and transcripts prepared each time a ruling was appealed. If the hearing proceeded while the appeal was pending, it would normally be concluded before a ruling could be obtained and no advantage would result from allowing the appeal. If the hearing were continued pending resolution of the appeal, there would be substantial delays and transient witnesses could well be lost or subjected to a great hardship. In addition, such delays could well hamper shipping by delaying vessels for extended periods while their crews await rulings.

Administrative Law Judges often rule on several motions in the course of a single hearing. Allowing appeals on each of them could well delay hearings to the point that they would be impractical or impossible to complete. Administrative Law Judges are carefully selected for their legal ability and have great expertise in conducting hearings. I have faith in their ability to properly hear the cases which come before them. There is no need to interrupt the proceedings by allowing interlocutory appeals on the various rulings that they may make. In the absence of a temporary restraining order or injuction issued by a proper court, it is not fitting for an Administrative Law Judge to suspend his own proceeding to allow review of his authority or his rulings on motions. *See LORD supra*. It is sufficient that an Administrative Law Judge's rulings be reviewed at the conclusion of a hearing, and then only if a charge is proved.

When the charges and specifications have been dismissed, as here, the holder of a license or document is under no legal disadvantage from which to appeal. He has full use of his license or document and is not encumbered by defending himself against pending charges. The possibility that he may again be charged in the future is too speculative to provide the basis for an appeal. The proper time for reviewing the terms of a dismissal is when, if ever, charges are again brought. The presiding Administrative Law Judge may review the earlier ruling on a motion to dismiss and I may review the issue on appeal, if and when a charge has been found proved.

It may, of course, be argued that an Administrative Law Judge may err in a ruling and that error may affect the later portions of a hearing. I believe, however, that any burden that such errors

may cause is outweighed by the advantages to respondents, witnesses, and the Coast Guard that result by allowing the hearing to proceed expeditiously to a conclusion. An appeal related to a charge found proved or an order entered against the appellant may then be considered.

CONCLUSION

Dismissal of the charges against Appellant may not be appealed until such time, if ever, that a charge is found proved.

ORDER

This appeal is denied. Appellant may raise issues regarding the propriety of dismissal of the charges against him without prejudices if he is again charged and there is a charged proved.

B. L. STABILE
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 15th day of May 1984.

***** END OF DECISION NO. 2351 *****

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