UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 36919
Issued to: Anthony Joseph MARGIOTTA ILL

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2291

Anthony Joseph

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 7 October 1981, an Administrative Law Judge of the United States Coast Guard at Port Arthur, Texas revoked Appellant's license upon finding him guilty of misconduct. The specification found proved alleges that while serving as Operator aboard M/V LADY ALICE, under authority of the captioned document, on 19 July 1981, Appellant assaulted and battered by cutting with a broken coffee cup, a member of the crew, James Burnham, while said vessel was underway on the Gulf Intracoastal Waterway.

The hearing was held at Port Arthur, Texas on 10 September 1981.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and the specification.

The Investigating Officer introduced in evidence the testimony of four witnesses and one exhibit.

In defense, Appellant presented no witnesses or exhibits and chose not to give any sworn testimony in his own behalf. Appellant did make some unsworn statements.

On 7 October 1981, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant revoking all licenses and/or documents issued to Appellant by the U.S. Coast Guard.

The entire decision was served on 4 October 1981. Appeal was timely filed on 12 November 1981 and perfected on 8 June 1982.

FINDINGS OF FACT

On 19 July 1981, Appellant was serving as Operator aboard the uninspected towing vessel M/V LADY ALICE under authority of his license while the vessel was underway on the Gulf Intracoastal Waterway. The relief operator was James C. Tyler. While on duty, Tyler was assisted by deckhand James "Jimbo" Winford Burnham. Appellant was assisted by deckhand Arthur Pitts.

On Sunday, 19 July 1981, the day in question, the tug LADY ALICE was pushing two loaded barges, headed towards the ports of Beaumont and Port Arthur, Texas. At 1800 when Appellant and Arthur Pitts relieved Tyler and his assistant, Burnham, the four men drank some beer together. Arthur Pitts had about 2 cans and each of the three others had at least one can of beer. At about 2230 that evening, with Appellant and Arthur Pitts still on duty and the vessel underway, all four men were together in the small wheel house. The wheel house is about eight feet by six feet. Appellant left the steering "sticks" and began "horsing around" or shadow boxing and slapping with his deckhand, Pitts. Burnham had been sitting on a bar behind the steering sticks watching the proceedings. Burnham thought that Appellant seemed to be hitting his deckhand, Pitts, rather "hard." Appellant then invited Burnham to participate or stated that he could "whip him, too," or something to that effect. Appellant and Burnham then started to box. Burnham was getting the best of Appellant, when Arthur Pitts got between them to try to stop them. Burnham grabbed Pitts by the hair of his head and threw Pitts aside and down on the deck. Burnham and Appellant then resumed boxing. Appellant ultimately

grabbed a coffee cup with a large handle and smashed it, so that the broken handle jutted out from both the top and bottom of his fist. Appellant then cut Burnham on the left side of his forehead, on the chin, neck, right shoulder, and on the front of the stomach. Tyler, the relief operator, grabbed Appellant from behind while Pitts grabbed the cup handle from Appellant's hand. Appellant then picked up a ball-point pen and stuck Burnham in the lower left side above the belt line where Burnham now has a small scar. Finally, Burnham ran to his room. Appellant followed Burnham and knocked and kicked on the door, ordering him to pack and get off the towboat. Burnham was put off the boat at a landing near Gibbstown, Louisiana. He was still bleeding at the time. Appellant did not receive any visible injuries.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

(1) Appellant was improperly "forced" to proceed without assistance of counsel;

(2) The battery was committed in self-defense and to protect the other crewmembers;

(3) The Administrative Law Judge erred in evaluating the credibility of the witnesses; and

(4) The sanction invoked is unduly harsh under the circumstances of this case.

APPEARANCE: Trombatore and Moulton, by Calvin A. Fleming of Kenner, Louisiana

OPINION

I

Appellant's first ground for appeal, that he was improperly "forced" to proceed without assistance of course, is without merit. Appellant was fully advised of his rights to be represented by counsel of his choice by the Investigating Officer, via acknowledged Certified Mail on 4 September 1981 and by the Administrative Law Judge at the opening of the hearing. Appellant indicated at the hearing that he understood he was not entitled to the appointment of counsel, as would be the case in the criminal prosecution of an indigent person. No evidence appears on the record which would show that his decision to represent himself was not freely made.

II

Appellant's argument that the battery was committed in "self-defense," or to protect other crewmembers from "aggression," is not persuasive. Appellant cites testimony which he believes establishes that James Burnham was the aggressor in the fight. However, it is well settled that while an act of aggression may authorize the use of sufficient force to cause an aggressor to desist, it does not justify the use of force which goes clearly beyond the bounds of necessity. See Commandant's Appeal Decisions 1852 (Hall) and 1803 (PABON). The evidence establishes that Appellant overstepped the legitimate bounds of self-defense when he made use of a dangerous weapon to inflict serious wounds upon Burnham. Thus, a determination as to which party, if any, acted as the original aggressor is unnecessary in this case.

III

Appellant also contends that the Administrative Law Judge erred in evaluating the credibility of witnesses. It is well established that the findings of the Administrative Law Judge are not subject to reversal on appeal unless it is shown that the evidence upon which he relied is inherently incredible. Commandant's Appeal Decision 2116 (BAGGETT). See also Commandant's Appeal Decisions 2099 (HOLDER) and 2108 (ROYSE). Appellant asserts that some contradictory testimony was elicited from the two disinterested witnesses; specifically, Tyler testified that Burnham held Appellant in a "headlock" and offered

to let Appellant go if he would stop fighting, and Pitts testified that Burnham did not have Appellant in a wrestling hold. Pitts did not testify at all as to whether or not Burnham offered to stop fighting. The Administrative Law Judge incorrectly states in his Opinion that both Tyler and Pitts testified that Burnham held Appellant in a "headlock" and offered to let Appellant go if he would stop fighting. Clearly, there would be no impropriety in the acceptance by the Judge of only part of the evidence of any witness and a rejection of the remainder. Commandant's Appeal Decision 964 (COLON). There were no other contradictions in the testimony of Tyler and Pitts and the Administrative Law Judge found both to be credible witnesses. The Administrative Law Judge's error concerning Pitt's testimony involves a very minor point. I do not believe that it could have affected the outcome of the case and find that it was not prejudicial. The record contains sufficient evidence to support the Administrative Law Judge's findings; therefore, they will not be disturbed.

IV

Appellant's final argument is directed to the severity of the remedial order. Appellant urges that the revocation of his license is "a deprivation of his career and livelihood which would preclude him from supporting his wife and children." I noted in a previous case of assault and battery in which a license was revoked that such hardship is a natural consequence foreseeable to any reasonable seaman who would engage in such conduct. See Commandant's Appeal Decision 2271 (HAMILTON). Assault and battery with a dangerous weapon, inflicting injury, is an offense for which revocation is sought by the Coast Guard, 46 CFR 5.03-5(b)(1)8 and suggested, 46 CFR 5.20-165, Table, Group F. The promotion of safety of life at sea and the welfare of individual seamen is of paramount concern to the Coast Guard. Commandant's Appeal Decision 2093 (BOOHER). A lack of self-restraint such as was exhibited by Appellant, can, and frequently does, lead to serious consequences, especially when the result is assault and battery. Appellant's attack on his fellow crewmember with a broken coffee cup is a very serious offense. Notwithstanding Appellant's prior clean record, the order of revocation is not excessive under the circumstances.

CONCLUSION

This Suspension and Revocation Proceeding was properly conducted and resulted in the entry of an appropriate remedial order. The Administrative Law Judge's findings are supported by the evidence.

ORDER

The order of the Administrative Law Judge dated at Port Arthur, Texas, on 7 October 1981, is AFFIRMED.

J. S. GRACEY
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C. this 1st day of March, 1983.

***** END OF DECISION NO. 2291 *****

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