

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 165559
Issued to: Thomas L. Sampson

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2336

Thomas L. Sampson

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

By order dated 13 April 1982, an Administrative Law Judge of the United States Coast Guard at Tampa, Florida revoked Appellant's seaman's license upon finding him guilty of incompetence. The specification found proved alleges that Appellant while serving as Operator on board the United States S/V LA GRINGA, O.N. 530918, under authority of the license above captioned, did during the year 1981, operate said vessel from St. Petersburg Municipal Marina Tampa Bay, Florida, while physically incompetent because of inadequate vision.

The hearing was held at Tampa, Florida, on 12 February 1982 and on 13 April 1982. At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and single specification thereunder

The Investigating Officer introduced in evidence seven exhibits, one of which, Exhibit 1, was a stipulation of fact signed by both the Investigating Officer and the Appellant.

In defense, Appellant offered in evidence two exhibits, the second consisting of 14 separate letters referring to his good character and professional skill. Also, Appellant offered the testimony of one witness in addition to his own.

At the end of the hearing, the Administrative Law Judge rendered an oral 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 documents issued by the Coast Guard then held by him.

The entire decision was served on 30 April 1982. Appeal was timely filed on 21 April and perfected on 28 June 1982.

FINDINGS OF FACT

At all times pertinent to the above specification, Appellant was serving as Operator aboard the S/V LA GRINGA under authority of his duly issued Ocean Operator's license. On 12 February 1976 Appellant applied for an original Motorboat Operator's license at the U.S. Coast Guard Marine Safety Office (MSO), Tampa, Florida. He was subsequently found, on that application, by the U.S. Public Health Service to be incompetent to perform the required duties by reason of uncorrected vision failing to meet the visual requirements for an original license.

Subsequently, on 20 April 1979 Appellant applied again at MSO Tampa, Florida for an original Motorboat Operator's license. This second application was amended on its face to that of an application for an Ocean Operator's license instead. Appellant was examined by the U.S. Public Health Service on that date and was found competent to perform the required duties. In due course, Appellant was issued an Ocean Operator's license.

In February 1982, during a routine review of office files at MSO Tampa, the two separate files concerning Appellant were compared. The comparison revealed Appellant's failure of the eye examination in conjunction with his first application, and led to the present charge of incompetence by reason of inadequate vision. Appellant was directed by the Administrative Law Judge to submit to another ophthalmological exam on 12 February 1982. This examination produced a diagnosis of myopia with vision of 20/400 in

each eye, corrected to 20/20 and 20/15 respectively. The eye examination was otherwise normal and the physician stated therein that he could "see no reason why this person should not be a safe sailor/pilot from an ocular standpoint." Because of Appellant's inadequate vision he was found incompetent by the Administrative Law Judge.

Subsequent to the rendering of the Decision and Order of the Administrative Law Judge, Appellant applied for a license under the waiver provision of 46 CFR 10.02-5(e)(7). A waiver of the vision requirements which were the subject of this hearing was granted on condition that the license issued contain the notation that corrective lenses are to be worn at all times while serving under the authority of the license and that spare glasses are to be carried.

BASES OF APPEAL

Appellant urges two ground on appeal from the Order imposed by the Administrative Law Judge, however, in view of my disposition in this case, Appellant's assertions need not be addressed.

OPINION

Due to the authorization, under the waiver provision, to issue Appellant an Ocean Operator's license, the issue of relief from the order of revocation by the Administrative Law Judge of Ocean Operator's license, number 16559, has been rendered moot. It would be inconsistent to allow the revocation order to remain after the condition on which it was based has been waived.

CONCLUSION

There was substantial evidence of a reliable and probative nature to support the findings of the Administrative Law Judge. The hearing was conducted in accordance with applicable regulations. Since Appellant has been granted a waiver of the vision requirements for the license the order should be vacated.

ORDER

The Findings of the Administrative Law Judge are SET ASIDE.

The order is VACATED and the charge DISMISSED.

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

Signed at Washington, D. C., this 9th day of December 1983.

***** END OF DECISION NO. 2336 *****

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