

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 99792
Issue to: LELAND H. GOODWIN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2018

LELAND H. GOODWIN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1, (now 5.30-1).

By order dated 17 July 1974, and Administrative Law Judge of the United States Coast Guard at Long Beach, California, suspended Appellant's seaman's license for 3 months outright plus 6 months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that Appellant, while serving as Operator on board the United States M/V PIONEER under authority of the license above captioned, did from 28 April 1974 through 26 June 1974 wrongfully operate said vessel on forty-one occasions without a valid Certificate of Inspection.

At the hearing, Appellant elected to act as his own counsel and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence a copy of the vessel's Certificate of Inspection, an Amendment to the Certificate of Inspection and a Temporary Certificate of Inspection.

In defense, Appellant offered in evidence a statement by way

of explanation to his plea of guilty.

At the end of the hearing, the Judge rendered an oral decision in which he concluded that the charge and specification had been proved by plea. He then entered an order suspending the license issued to Appellant for a period of 3 months outright plus 6 months on 12 months' probation.

The entire decision was served on 17 July 1974. Appeal was timely filed.

FINDINGS OF FACT

During the period 28 April 1974 to 26 June 1974 the Appellant served as operator on board the M/V PIONEER and acted under authority of his license while the vessel was operated on forty-one occasions without a valid certificate of inspection. The facts are not in dispute.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. The bases of appeal are somewhat vague and exceptions have not been properly raised. Because of an error in the Judge's order the appeal must be considered. Therefore, what is believed to be Appellant's basis of appeal will also be discussed.

APPEARANCE: APPELLANT, pro se.

OPINION

I

Appellant's first contention seems to be that the Judge made

numerous errors in his findings of fact and, in effect, he requests a *de novo* consideration of his case rather than a proper appellate review. It is simply not the function of an administrative reviewing authority to act as a trier of fact and substitute its judgment for that of the Administrative Law Judge. Appellate review is properly confined to the correction of errors of law. The Judge's findings of fact will only be altered if determined to have been arbitrary and capricious as a matter of law. In the instant case, it cannot be said that, as a matter of law, the findings of fact upon which the finding of misconduct rests are arbitrary and capricious.

II

Appellant also contends that the penalty imposed by the Judge's order is excessive. The degree of severity of an order is a matter peculiarly within the discretion of the Administrative Law Judge. This being so, an order will be modified on appeal only upon a clear showing of arbitrary and capricious action on his part. In this case the Appellant has not only been an operator of inspected passenger carrying vessels for a number of years but has also been the owner of passenger vessels. The acts committed were those in violation of the laws relating to maritime safety established for the protection of the public at large. Appellant has a duty to comply with such laws and a breach of this duty is considered to be of a most serious nature. I do not find as a matter of law that the Administrative Law Judge's order dated 17 July 1974 is excessive.

III

Although Appellant does not specifically address the fault, the order of the Administrative Law Judge in this case is predicated on an error.

At an earlier hearing on another matter involving Appellant's license (a case heard by the same Administrative Law Judge), an order had been entered on 9 January 1974. This order suspended Appellant's license for a period of four months and also provided:

"Your said license is further suspended for an additional three (3) months which additional suspension shall not be effective provided no charge under R.S. 4450, as amended

(46 USC 239), is provided against you for acts committed within twelve (12) months from the date of termination of the said foregoing outright suspension."

This order was appealed by Appellant and the Administrative Law Judge authorized issuance of a temporary license pending disposition of the appeal or the expiration of six months, whichever should first occur. This temporary license was issued on 31 January 1974.

When the instant case came to hearing the appeal in the earlier case was still pending. nothing the dates of the offenses in the instant case, proved by plea of guilty, the Administrative Law Judge observed:

"I have no choice but to give you the three months' outright suspension, which is the probation [sic] from the old one." R/19.

He also stated that were it not for the earlier case his order in the instant case would have been for only a period of suspension on probation with nothing outright, but that since probation had been violated the minimum order (including three months outright) was being given. R-20. Some of the reasoning in this connection is not quite clear (of which more is said later), but the error is present.

It is true that the order in the earlier case did not follow the form presently prescribed for a combined suspension/suspension-on-probation order (46 CFR 5.20-170(e)-fourth item), in that the period of probation was not framed (as the beginning of the outright suspension period, but rather at the end of it. Thus, had the earlier order been effective as of 9 January 1974 the offenses in the instant case would have fallen partly within the period of outright suspension and partly within the designated period of probation, by hypothesis commencing on 9 May 1974. While the offenses would have violated probation some would, and the imposition of the three months previously held in abeyance would have been necessary.

But the fact is that an appeal had been filed in the earlier case, a fact of which the Administrative Law Judge was aware. An

appeal stays execution of the order appealed from (especially in view of the fact that a temporary license had been issued, specifically authorizing service during that would otherwise have a period of prohibited service). Appellant's acts which led to the hearing in the instant case were therefore not committed during a period of probation; he was not yet on probation, even assuming by hypothesis an ultimate affirmance of the Administrative Law Judge's order. The order of a three month outright suspension in the instant case was thus improper because based on a misconception of the true situation.

IV

The Administrative Law Judge did, nevertheless, recognize a facet of the problem before him and did make some effort to deal with it. He declared in open hearing, taking cognizance of the fact that his earlier order had been appealed, that should "The Commandant reverse my decision of January 1974" the order in the instant case would be amended so as to eliminate the three month outright suspension and leave only six months' suspension on twelve months' probation. This was realistic attempt to face facts, for, despite the lack of finality in the earlier case. it would have been an exercise in vacuity to pretend that it did not exist as a matter to be considered. Not all loose ends were dealt with, such as the anomaly, in the event of affirmance of the earlier order, of two different, coexisting to some extent, periods of suspension on probation but this, of course, is a logical omission following the mistaken belief that the earlier order was spent because of the purported execution of its full effect of suspension. This is not the place for issuance of complete guidelines for the handling of such, fortunately rare, instances. It is enough for now to note with approval that cognizance was taken, as a fact, of the earlier, although not yet final, action.

V

Since the order in the instant case is necessarily to be approved as to its valid part and since the outright suspension ordered in the earlier case has been served, pursuant to Decision on [Appeal No. 2008](#), with a remaining suspension on probation still extant from that action, it is equitable to supersede the valid

remainder of No. 2008 by incorporating it into the final order in the instant case, which is framed to give a fair accounting under all the circumstances.

ORDER

The final order in Decision on [Appeal No. 2008](#) is REAFFIRMED but the portion remaining unexecuted as of the date of the Decision and Order herein is VACATED this date, the substance of the remainder being considered in the forming of the final order herein. The findings of the Administrative Law Judge made at Long Beach, California on 17 July 1974 are AFFIRMED, and his order of that date is MODIFIED by eliminating therefrom the reference to outright suspension and by adjusting the remainder to provide for: a Suspension of six months which will not be effective provided no charges are found proved for acts committed by Appellant within twelve months of the date marking the termination of the outright suspension affirmed in Decision on Appeal (o. 2002. As MODIFIED, the order is AFFIRMED.

E. L. PERRY
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D. C., 10th day of March 1975.

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