

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE NO. 491616  
Issued to: Stanford G. Johnson

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2134

Stanford G. Johnson

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

By order dated 25 October 1977, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, suspended Appellant's license for three months on twelve months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as master on board the United States SS PHILLIPS WASHINGTON under authority of the license above captioned, on or about 27 March 1977, Appellant failed to post a proper watch to attend the stern towing line leading from SS PHILLIPS WASHINGTON to the tug TONY ST. PHILLIP.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order suspending Appellant's license for a period of three months on twelve months' probation.

The entire decision was served on 28 October 1977. Appeal was timely filed. Appellant has since died.

#### *FINDINGS OF FACT*

On 27 March 1977, Appellant was serving as master on board SS PHILLIPS WASHINGTON and acting under authority of his license. (In view of the disposition to be made, no further findings are appropriate.)

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Administrative Law Judge. In view of the disposition to be made the specific errors urged on appeal need no be reflected here.

APPEARANCE: McFarland, Ferguson, Allison & Kelly, Tampa, Florida, by Jack C. Rinard, Esq.

#### *OPINION*

The death of the Appellant serves to abate the proceeding which is still, by virtue of the appeal timely filed, *sub judice*. The Federal practice in such instances, even in criminal procedure, is to abate proceedings, *ab initio*. (*Melrose Distilled v. United States*, (1959), 359 U.S. 271; *Daniel v. United States*, CA5 (1959), 268 F.2d 849.)

Although neither civil nor criminal procedure dictates a result in these proceedings, the examples may be recognized and the considerations underlying them merit attention. To proceed to decision at this stage would be superfluous, and to make the distinction that the appeal has been mooted by decease of the Appellant but that the proceedings already of record have been accomplished and are fact does not go to the root of the matter.

An adverse finding had been entered and the appropriate review for error had been sought. The only fair and reasonable

disposition, then, of a litigation solely involved with Appellant's license and his privilege of using it, is to wipe the slate clean; otherwise Appellant's record would be marked with an adverse finding as to which all his rights under the law had not been allowed.

*ORDER*

The order of the Administrative Law Judge dated at Jacksonville, Florida, on 25 October 1977, is VACATED. The findings are SET ASIDE, and the charges are DISMISSED.

R. H. Scarborough  
Vice Admiral, U. S. Coast Guard  
ACTING COMMANDANT

Signed at Washington, D.C., this 3rd day of November 1978.

INDEX

Abatement of Proceedings  
    Death

Appeal  
    Abatement of at death

Death  
    Abatement of proceedings

Proceedings  
    Abated by death

\*\*\*\*\* END OF DECISION NO. 2134 \*\*\*\*\*

[Top](#)

---