IN THE MATTER OF LICENSE NO. 78589
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: David R. GOLDING

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1913

David R. GOLDING

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.

By order dated 12 May 1972, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, after a hearing held at Miami, suspended Appellant's seaman's documents for four months outright plus four months on eighteen months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as master on board M/V JUNGLE QUEEN II under authority of the license above captioned, on or about 21 March 1971, Appellant "wrongfully failed to insure that the vessel was properly prepared to sail; to wit: That you got the vessel underway with a mooring line made fast to the pier resulting in failure of mooring devices causing personal injuries to three of the passengers on board the vessel."

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

The Investigating Officer introduced in evidence a form report of personal injury and the testimony of four witnesses.

In defense, Appellant offered in evidence his own testimony.

Without objection the Administrative Law Judge took a view of the vessel.

At the end of 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 all documents issued to Appellant for a period of four months outright plus four months on 18 months' probation.

The entire decision was served on 19 May 1972. Appeal was timely filed on 20 May 1972 and perfected on 4 October 1972.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that a form report of personal injury was improperly admitted into evidence.

APPEARANCE: DiGiulian, Spellacy & Bernstein, by Dale R. Sanders, Esq., Ft. Lauderdale, Florida.

OPINION

I

Appellant complains of the introduction into evidence of a report made by him relative to the casualty involved in this hearing. At the time of its admission, over objection, the Administrative Law Judge noted, that "the Investigating Officer introduced documentary evidence consisting of a certified copy of CG Form No. 2692, Report of Personal Injury or Loss of Life, filed by the Respondent on 26 March 1971. . . " The document is, in fact, a copy of a Form CG-924e.

Appellant has three objections to the use of the form:

(1) that it was not properly authenticated as having been made by the person purporting to have made it (Appellant himself);

(2) that it is inadmissable under 46 CFR 137.20-120; and

(3) that it was altered by the addition of material by a person other than the maker.

II

In Decision on Appeal No. 903 I held that a master's report of personal injury, required by regulation, was admissible in a 46 CFR 137 proceeding, citing *Steinberg Dredging Co*. v. *Moran Towing & Transp. Co., Inc.*, CA 2 (1952), 196 F 2nd 1002. While the *Steinberg* decision did not specifically mention 28 U.S.C. 1733 it spoke in the terms of the statute. It not only held that a report filed pursuant to a Federal regulation (46 CFR 137.3, Original Edition, a predecessor to present 46 CFR 136.05) was an official government record and as such admissible in evidence, but that authentication was provided by the production of the record from the authorized custodian.

Since the report in this case was filed pursuant to regulation with the Coast Guard, and since it was produced from the custody of the Coast Guard, Appellant's argument from lack of authentication fails.

III

While the *Steinberg* decision holds a report of the kind in question admissible in court and Decision on Appeal No. 903 holds such a report generally admissible in these suspension and revocation proceedings, 46 CFR 137.20-120 causes a new question here. In the case in No. 903 the Appellant was a person mentioned in the report but he was not the maker of the report. Here, Appellant is the maker of the report.

The section cited states:

> "No person shall be permitted to testify with respect to admissions made by the person charged during or in the course of a Coast Guard investigation except for the purpose of impeachment."

It would be idle to pretend that the production and offering of the form report escapes the section because "no person [was] permitted to testify." It would be equally so to take the position that the filing of the form report did not occur "during or in the course of a Coast Guard investigation" but was merely preliminary to or apart from an investigation proper. It is true that section 10 of the act of June 20, 1874 (33 U.S.C. 361), long antedated the authority to conduct marine casualty investigations as reflected in 46 CFR 136. There is no need here to delve into the history of 33 U.S.C. 361 and of regulations made pursuant to the amended R.S. 4450, and the multitude of distinctions that might be attempted. It is enough to point out that 33 U.S.C. 361 and 46 U.S.C. 239 are both cited as being interpreted or applied at 46 CFR 136. Under the present treatment of these laws there is no longer a valid practical reason to attempt to distinguish between the nature of a CG-2692 and a CG-924e or any other form of casualty report. The report is no more than one of several possible initial steps in a casualty investigation, although at times it may even be the only step.

What is in the report is a statement compellable under the subpoena power of R.S. 4450. Insofar as such a report constitutes an admission (i.e. insofar as it might be useful to offer it in evidence at a hearing in which the maker of the report is the person charged), its admission into evidence is barred by 46 CFR 137.20-120.

There is in this case, of course, no question of use of the form-statement solely for purposes of impeachment. Its receipt into evidence came as the first item of business on the Investigating Officer's case-in-chief.

On this point, this is a case of novel impression and a remand to the Administrative Law Judge is appropriate. Nevertheless, Appellant's third point reveals an error which must also be avoided

in further proceedings.

IV

When the Investigating Officer advised the Administrative Law Judge that the copy of CG-924e presented had been altered by him by the addition of words not on the form when Appellant subscribed it, the Administrative Law Judge stated:

> "I am going to direct that either this language that has been added by the Investigating Officer after Mr. Golding had signed this report, either be stricken from it or if it is not, it will be ignored so far as I am concerned with this document." R-15.

A trier of facts can be presumed to disregard that which he says he will disregard, but still it seems reasonable that an investigating officer should not run the risk of even apparent error by offering such a document in content other than as it was received by him. Several ways were available to have achieved the desired end. However, it appears that the Administrative Law Judge lapsed in this instance. He mentions in the preliminary statement in his decision only that the Form report was admitted into evidence, but later he says:

> "It is true that Mrs. Adkins suffered severe injuries. The record is silent as to the exact extent of these injuries except for a statement, added by a Coast Guard investigating officer to the report of the casualty filed by the Respondent after he had signed it, indicating that Mrs. Adkins suffered the loss of an eye and other facial injuries. Unfortunately, no order of mine can alleviate these injuries to Mrs. Adkins or the other passengers, nor can I make any order compensating them for such injuries. That is the business of another forum." D 12-13

This indicates that the Administrative Law Judge not only failed to comport himself within the limits which he himself recognized but actually went far afield into considerations irrelevant and alien to this proceeding.

In proceedings on remand the Administrative Law Judge will

confine himself to the record properly before him and will state the reasons for his findings on the basis of the admissible evidence. He may, at his discretion, use the proper record made before him for a new decision or hear additional relevant evidence.

ORDER

The order of the Administrative Law Judge dated at Jacksonville, Florida, on 12 May 1972, is VACATED. The findings are SET ASIDE. The case is REMANDED to the Administrative Law Judge for appropriate proceedings.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 30th day of March 1973.

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