

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD

vs.

LICENSE NO. 694718
Issued to Steven J. Lasorsa

: DECISION OF THE
:
:
: VICE COMMANDANT
:
:
: ON APPEAL
:
:
: NO. 2588

This appeal is taken in accordance with 46 U.S.C. § 7702 and 46 C.F.R. § 5.701.

By order dated February 5, 1996, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia, suspended Appellant s license based upon finding proved a charge of *negligence* and a charge of *violation of law or regulation*. The single specification supporting the charge of *negligence* alleged that Appellant failed to adequately navigate the M/V GRANITE STATE (O.N. 646798) while mooring, causing the vessel to allide with a moored barge. The specification supporting the charge of *violation of law or regulation* alleged that Appellant failed to give notice to the Coast Guard of the hull damage which materially and adversely affected the seaworthiness of the M/V GRANITE STATE.

Hearings were held in Portland, Maine, on October 25, 1995, and December 5, 1995. Appellant was represented by counsel and entered a response denying both charges and specifications. The Administrative Law Judge introduced into evidence one exhibit. The Investigating Officer introduced into evidence eight exhibits and the testimony of five witnesses. Appellant introduced into evidence four exhibits, his own testimony and the testimony of one other witness.

The Administrative Law Judge s Decision and Order (D&O) was rendered on January 10, 1996. It concluded that the charges and supporting specifications were found proved. This D&O also afforded the parties an opportunity to file evidence to be used in determining the sanction against Appellant s license. The Administrative Law Judge s Decision and Order dated February 5, 1996, announced the sanction against Appellant s license. The Administrative Law Judge suspended Appellant s license outright for a period of four months and placed Appellant on twelve months probation, to commence at the conclusion of the suspension. Additionally, if, during the probationary period, Appellant violated any law relating to marine safety, Appellant s license would be suspended for four months in addition to any sanction imposed by the presiding Administrative Law Judge at that time. The Administrative Law Judge then rendered a Supplemental Order on February 9, 1996, after reopening consideration of the sanction at Appellant s request. The Administrative Law Judge decided that the sanction imposed was

reasonable in light of the charges being found proved. The Supplemental Order was served on Appellant on February 9, 1996.

Appellant filed a notice of appeal on February 29, 1996, and received a copy of the transcript on March 18, 1996. Appellant perfected the appeal on April 19, 1996.

APPEARANCE: Michael X. Savasuk, Attorney at Law, Bradley and Savasuk, Marine Trade Center, Suite 303, Post Office Box 267 DTS, Portland, Maine 04112-0267.

FINDINGS OF FACT

At all relevant times, Appellant was acting under the authority of the above-captioned license while serving as the master on the M/V GRANITE STATE, a 65-foot, 48 gross-ton, passenger vessel. [Transcript of October 25, 1995 (TR Oct) at 5, 99-100], *see also* Investigating Officer (I.O.) Exhibit 3.

On June 14, 1995, Appellant was at the helm of the M/V GRANITE STATE. *See* I.O. Exhibits 6 & 7, [TR Oct at 37]. The vessel was returning to Rye, New Hampshire, from a whale-watching trip with approximately 100 passengers on board. [TR Oct at 43]. A 40-foot crane barge was tied to the 100-foot pier used by the M/V GRANITE STATE. [TR Oct at 103-104]. After entering Rye Harbor and approaching the pier, Appellant turned the vessel around to face out to sea. [TR Oct at 107], *see also* I. O. Exhibit 1. Appellant, with the barge off his port beam, approached the berth at a 45 degree angle. [TR Oct at 108]. Appellant clutched the engine ahead with "a little bit of" right rudder. [TR Oct at 112]. As Appellant approached the pier, the port quarter of the M/V GRANITE STATE allided with the rake of the barge. [TR Oct at 144], *see also* I.O. Exhibit 1. This allision resulted in an L-shaped puncture through the hull of Appellant s vessel above the waterline. [TR Oct 36, 115, 118]. No passengers were injured and no oil was spilled. [TR at 116, 39], *see also* I.O. Exhibit 6.

The owner of the M/V GRANITE STATE effected repairs that night and did not notify the Coast Guard of the damage or of the repair. [TR Oct at 67, 118, 121; Transcript of December 5, 1995, (TR Dec) at 7]. An anonymous caller notified the Coast Guard of the allision on June 15, 1995. [TR Oct at 57], *see also* I.O. Exhibit 5. On June 16, 1995, CWO Plowman inspected the repairs. [TR Oct at 66]. The repair consisted of a sistered frame and a plywood and fiberglass patch. [TR Oct at 67]. CWO Plowman found the repairs satisfactory. [TR at 79], *see also* I.O. Exhibit 6.

BASES OF APPEAL

1. The seaworthiness of the M/V GRANITE STATE was not materially or adversely affected and thus Appellant was not required to notify the Coast Guard of the allision.
2. Appellant properly rebutted the presumption of negligence resulting when a vessel collides with a fixed object.

OPINION

I

Appellant contends that the damage to the M/V GRANITE STATE did not materially or adversely affect the vessel's seaworthiness.

Any Coast Guard inspected vessel involved in a collision is required to notify the Coast Guard if the vessel suffers damage that materially or adversely affects its seaworthiness. *See* 46 C.F.R. § 4.05(1)(a) (4).

The Administrative Law Judge found that the damage to the hull required Appellant to notify the Coast Guard. However, the Administrative Law Judge found that the damage was on the port bow, six inches above the waterline. [D&O at 4]. No evidence supports this finding. All evidence that addresses the location of the damage indicates that the damage was on the port quarter, approximately two feet above the waterline. [TR Oct at 41, 72, 118; TR Dec at 8]. The Administrative Law Judge can be reversed only if his findings are arbitrary, capricious, clearly erroneous or unsupported by law. *See Appeal Decision 2570 (HARRIS), affd* NTSB Order No. EM-182 (1996); 2531 (DRIGGERS); 2474 (CARMLENKE). This finding that the damage was on the port bow, six inches above the water line is clearly erroneous.

In addition to reversing the Administrative Law Judge's findings, I may make entirely new findings based on the record or I may remand the case to the Administrative Law Judge. *See* 46 C.F.R. § 5.805. The determination of the seaworthiness of the M/V GRANITE STATE involved weighing the testimony of the witnesses. The Administrative Law Judge is in the best position to weigh testimony. *See Appeal Decisions 2421 (RADER), 2319 (PAVELIC)*. From the record, I cannot fairly evaluate the effect that this damage had on the seaworthiness of the vessel. Additionally, I cannot be sure that the Administrative Law Judge's sanction for not reporting damage to the bow six inches above the waterline would be identical to a sanction for not reporting damage to the port quarter two feet above the waterline. Therefore, I am remanding this issue so that the Administrative Law Judge may correct the finding regarding the location of the damage and determine if the Coast Guard proved the charge of *violation of law or regulation* and the supporting specification.

II

When a vessel collides with a fixed object, the vessel is presumed to be negligent. *See Woods v. U.S.*, 681 F.2d 988 (5th Cir. 1982), Commandant v. Murphy, NTSB Order No. EM-139 (1987), Appeal Decisions 2211 (DUNCAN), 2418 (DOUGHERTY), 2455 (WARDELL), 2457 (YOUNG), 2524 (TAYLOR), *affd* NTSB Order No. EM-174 (1993). The respondent can rebut this presumption by showing a "credible, nonfault explanation" for the collision. Commandant v. Murphy, *see also Appeal Decision 2524 (Taylor)*. Appellant contends that he did rebut this presumption and that the Administrative Law Judge erred in finding the *negligence* charge proved. I disagree.

Appellant presented only speculation for the cause of the allision. Appellant stated that a gust of wind "probably caught" the bow of the M/V GRANITE STATE and unexpectedly forced it toward the pier, causing the port quarter to hit the barge. [TR at 110]. The Administrative Law Judge found that this did not constitute a credible, nonfault explanation, stating that the "maneuver...was a straightforward docking...No traffic problems were encountered. Visibility was good, it was daytime, and sea conditions...were normal. A steady breeze prevailed but no unusual weather conditions were experienced...Surely [a gust of wind] should have and could have been foreseen by the respondent. His maneuver should have taken into consideration that ever present possibility." [D&O at 8-9]. Appellant offers no other explanation for the allision, but contends that the GRANITE STATE sustained damage only because the barge had a sharp edge along the deck. Appellant does not contend that this sharp edge contributed to the allision. The presumption of negligence that results from an allision applies regardless of the extent of damage to the vessel. Therefore, Appellant's contention that the barge's configuration caused the puncture in the hull is irrelevant.

The Administrative Law Judge found that a possible gust of wind is not a credible, nonfault explanation for an allision and that Appellant therefore did not rebut the presumption of negligence. My review of the record finds that this finding is supported by reliable, probative and substantial evidence and is not arbitrary, capricious, clearly erroneous or unsupported by law. I will not upset it on appeal.

CONCLUSION

The Administrative Law Judge's finding regarding the location of the damage is clearly erroneous; therefore, the finding regarding the vessel's seaworthiness is not supported by reliable, probative and substantial evidence. The Administrative Law Judge must make further findings to determine if the Coast Guard has proved by reliable, probative and substantial evidence the charge of *violation of law or regulation*. The findings regarding the charge of *negligence* are supported by reliable, probative and substantial evidence.

ORDER

The Decision and Order of the Administrative Law Judge dated January 10, 1996, is VACATED in part and AFFIRMED in part and is REMANDED for further proceedings consistent with this decision.

/S/

J. M. LOY
VADM, U.S. Coast Guard
Acting Vice Commandant

Signed at Washington, D.C., this 13th day of August, 1997.