

UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA	:	DECISION OF THE
UNITED STATES COAST GUARD	:	
	:	VICE COMMANDANT
	:	
	:	ON APPEAL
vs.	:	
	:	NO. 2643
	:	
LICENSE NO. 930975	:	
	:	
<u>Issued to: MILTON WALKER</u>	:	

This appeal is taken in accordance with 46 U.S.C. § 7702, 46 U.S.C. § 7703(1),
46 C.F.R. § 5.701, and the procedures in 33 C.F.R. Part 20.

By a Decision and Order (D&O) dated June 18, 2002, an Administrative Law Judge
(ALJ) of the United States Coast Guard at New Orleans, La., suspended Milton Walker's
(Respondent) above captioned license upon finding proved charges of negligence and
misconduct. The negligence and misconduct specifications found proved alleged that:

On or about 5 August 2001, Respondent, while operating an airboat owned by Louisiana Swamp Tours, deliberately and wantonly perpetrated the following acts against the owner of a rival swamp tour boat company and his passenger, who were both in a small pleasure boat: (a) overtook the small pleasure boat at high speed, approaching to within 3 feet of the port side of the small boat and throwing water into the small boat; (b) stopped 10-20 feet in front of the small boat and revved his engine, causing spray and water to spray into the small boat and its occupants; and (c) then turned and headed directly toward the small boat as if he was going to ram it, only turning away at the last second.

The negligence and misconduct found proved by the ALJ occurred in Jefferson Parish, La.

The ALJ suspended Respondent's license outright for six months and directed Respondent to complete a recognized anger management program. The ALJ stated in his D&O that Respondent's license would be revoked if Respondent did not complete such a program. However, if Respondent completed the program, the license would be returned to him at the completion of the six-month outright suspension.

The hearing was held on November 14, 2001, at Marine Safety Office New Orleans, where Respondent appeared with counsel and entered a response denying the charges and specifications. The Coast Guard Investigating Officer introduced into evidence the testimony of two witnesses and four exhibits. Respondent introduced into evidence his own testimony and the testimony of one additional witness.

The ALJ found that Respondent initiated a dangerous maneuver of his vessel with respect to the small pleasure boat (mud boat) and further found the charges and specifications proved. However, the ALJ also found that the operator of the small pleasure boat (mud boat) had severely and continually harassed Respondent prior to the incident.

Respondent filed a notice of appeal on July 15, 2002. Respondent requested and received an extension to file his appellate brief. Respondent filed his appellate brief in a timely manner on October 17, 2002. This appeal is properly before me.

APPEARANCE: Ryan N. Cox, Esq., 3000 Kingman Street, Suite 104, Metairie, La., 70006, for Respondent. The Coast Guard Investigating Officers were LCDR Andrew Norris and LT Selven McLean, stationed at Marine Safety Office New Orleans at 1615 Poydras Street, New Orleans, La., 70112.

FACTS

At all relevant times, Respondent was operating under the authority of his license.

My review of the record shows that the basic facts of the case were captured by the ALJ in his Findings of Fact 1-15. In numerical order, the Findings of Fact found at pages 6-8 of the D&O are:

- #1 Respondent is the holder of Coast Guard license number 930975;
- #2 On August 5, 2001, an 18-foot long mud boat being operated by Cyrus Blanchard with Eldon Boudreux as a passenger was proceeding westbound on the Intercoastal Waterway near mile marker 15, between Barataria Waterway and Bayou Villars. The weather conditions were clear with good visibility;
- #3 At approximately 1400 on August 5, Respondent jumped aboard his 24-foot airboat "WILD THING" and "chased" down Mr. Blanchard and Mr. Boudreux aboard their mud boat. However, this was after repeated continual harassment and threats by Mr. Blanchard, including a threat to kill Mr. Walker and his family;
- #4 Respondent caught up with Mr. Blanchard's mud boat and paralleled its course and speed at extremely close range for several minutes;
- #5 This action by respondent caused large amounts of water to pour into Mr. Blanchard's mud boat forcing Mr. Blanchard to energize the boat's bilge pump to keep it afloat;
- #6 After paralleling the mud boat's course and speed at extremely close range for several minutes, respondent accelerated the "WILD THING" and cut directly in front of Mr. Blanchard's mud boat;
- #7 Respondent remained directly in front of the mud boat with his engine operating at a high speed for several minutes;
- #8 Respondent's action caused sheets of water to spray at high speed into the faces of the mud boat's occupants;
- #9 This action by respondent soaked the mud boat's occupants, affected Mr. Blanchard's ability to see and safely operate his mud boat, and required Mr. Boudreux to lie down in the mud boat because he feared for his personal safety;
- #10 After operating his airboat directly in front of Mr. Blanchard's mud boat for some time, Respondent then turned his airboat on a dime and headed directly toward the mud boat's bow at high speed in a game of "chicken;"
- #11 Mr. Blanchard was able to avoid a high speed head-on collision only by correctly divining that respondent was going to veer off to port at the last second, and by himself turning his mud boat to port. This resulted in a starboard-to-starboard passage at close range;
- #12 Respondent sounded no sound signals and did not give any other indication of his intentions before engaging in this maneuver;
- #13 In the process of engaging in the series of maneuvers described above, respondent also circled Mr. Blanchard's mud boat several times;
- #14 This series of reckless maneuvers by respondent made the mud boat's occupants fear for their lives, and caused them to make an immediate report to the Jefferson Parish Sheriff's Office (JPSO);

#15 After responding on-scene and interviewing all involved parties, the responding JPSO officer issued respondent a misdemeanor summons under Louisiana R.S. #14:37 for 2 counts of aggravated assault against Cyrus Blanchard and Eldon Boudreaux.

A review of the entire record, including the transcript and exhibits, demonstrates that evidence existed to support all of the above Findings of Fact.

BASES OF APPEAL

In his six page appellate brief, Respondent raises a number of issues on appeal. I have consolidated them where possible and have summarized them below.

I.

Respondent contends that the Administrative Law Judge committed error in accepting certain findings of fact as submitted by the Coast Guard. Respondent contends that Findings of Fact 3, 4, 5, 6, 8, 9, 11, 12, and 14 were accepted in error and were a mischaracterization of events.

II.

Respondent argues that the two witnesses testifying for the Coast Guard were biased. Respondent argues that the first witness, who was a passenger in the mud boat, was a cousin of the mud boat's operator, and that the second Coast Guard witness, who was in a third vessel, is a friend and business associate of the operator of the mud boat. Respondent contends that the bias of these two witnesses resulted in testimony that was contradictory, incredible and based on physical impossibility. In addition, Respondent contends that his own testimony was not rebutted.

OPINION

I.

I will first address Respondent's contention that the ALJ committed error in accepting the nine cited Findings of Fact. Respondent contends that these findings are based upon a mischaracterization of events.

It is well settled that it is the function of the ALJ to evaluate the credibility and veracity of the witnesses and to resolve inconsistencies in the evidence. Appeal Decisions 2290 (DUGGINS), 2333 (AYALA), and 2340 (JAFFEE). I have long

held that it is the sole purview of the ALJ to determine the weight of evidence and to make credibility determinations. Appeal Decisions 2156 (EDWARDS), and 2116 (BAGGETT). In fact, I have held that the findings of the ALJ need not be completely consistent with all the evidence in the record as long as sufficient evidence exists to reasonably justify the findings reached. Appeal Decisions 2527 (GEORGE), 2522 (JENKINS), 2519 (JEPSEN), 2506 (SYVERSTEIN), 2424 (CAVANAUGH), 2282 (LITTLEFIELD), and 2614 (WALLENSTEIN).

Respondent, at first, testified that he merely came alongside the mud boat. [D&O at 190] However, during cross-examination, Respondent admitted he lost his temper and chased down the operator of the mud boat. [D&O at 196]

The admission by Respondent that he lost his temper and chased down the operator of the mud boat, along with all the other evidence contained in the case file, supports the ALJ's finding that Respondent was engaged in an out-of-control equivalent of maritime road rage. Based upon a thorough review of the record, I find that the ALJ's Findings of Fact are sufficiently supported by evidence in the record and I will not disturb them.

II.

The second appellate issue raised by Respondent concerns alleged bias by the two witnesses called by the Coast Guard. Respondent contends that these two witnesses were biased and that their conflicts of interest led to testimony that was contradictory and incredible.

I will reverse the decision of the ALJ only if his findings are arbitrary, capricious, clearly erroneous, or based upon inherently incredible evidence. Appeal Decision 2570 (HARRIS), *aff'd* NTSB Order No. EM-182 (1966), 2390 (PURSER), 2363 (MANN), 2344

(KOHADJA), 2333 (AYALA), 2581 (DRIGGERS), 2474 (CARMIENKE), 2607 (ARIES), and 2614 (WALLENSTEIN). As noted, the findings of the ALJ need not be consistent with all the evidentiary material in the record as long as sufficient material exists in the record to justify the finding. Appeal Decisions 2527 (GEORGE), 2522 (JENKINS), 2519 (JEPSEN), 2506 (SYVERSTEN), 2424 (CAVANAUGH), 2282 (LITTLEFIELD) and 2614 (WALLENSTEIN). The standard of proof for suspension and revocation proceedings is that the ALJ findings must be supported by reliable, probative, and substantial evidence. 46 C.F.R. § 5.63, Appeal Decisions 2584 (SHAKESPEARE), 2592 (MASON), 2603 (HACKSTAFF), and 2575 (WILLIAMS).

The ALJ was aware that the first witness called by the Coast Guard was a cousin of the operator of the mud boat. [Transcript (Tr.) at 18] The ALJ was also aware that the second witness called by the Coast Guard was a friend and business associate of the operator of the mud boat. [Tr. at 88-89, 126-128]

Since the issue of potential bias was raised at the hearing, it is safe to conclude that the ALJ gave it due consideration in his evaluation of the evidence.

The ALJ did consider the question of whether the testimony of the two Coast Guard witnesses was conflicting and concluded that it was not. [D&O at 6-7] The ALJ determined that there were trivial differences in the testimony of these two witnesses but found that their testimony was sufficiently consistent so that he could rely on it in making his determination. [D&O at 8] The ALJ also considered the testimony of a witness called by Respondent and found that the witness saw very little of the events in question. [D&O at 8] As the trier of fact, the ALJ in this case had the opportunity to observe the demeanor of the witnesses and determine their credibility and veracity. Since sufficient evidence exists to support his findings, I will not disturb them.

CONCLUSION

The ALJ's decisions were legally sufficient, were not arbitrary or capricious and were not clearly erroneous. Competent, substantial, reliable, and probative evidence existed to support the findings and order of the ALJ. The ALJ's decisions were based on credible evidence. Respondent's bases of appeal are without merit.

ORDER

The Administrative Law Judge's Decision and Order of June 18, 2002, is
AFFIRMED.

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T. J. BARRETT
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 2nd day of February, 2004.