

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA	:	
UNITED STATES COAST GUARD	:	
	:	DECISION OF THE
vs.	:	
	:	VICE COMMANDANT
LICENSE NO. 674153	:	
AND	:	ON APPEAL
MERCHANT MARINER'S	:	
DOCUMENT NO. [redacted]	:	NO. 2617
	:	
<u>Issued to Donald Lamond</u>	:	

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

By an order dated August 29, 1995 and amended June 13, 1996, a United States Coast Guard Administrative Law Judge in Portland, Maine, suspended Appellant's Merchant Mariner's Document for six months, with six additional months suspended on one year's probation. The order, as amended on June 13, 1996, specifically excluded Appellant's Coast Guard License.

Appellant was charged with *misconduct* and *violation of regulation*. The *misconduct* charge was supported by two specifications: first, Appellant wrongfully assaulted another seaman, and second, Appellant disobeyed a direct order by refusing to take a chemical test for intoxication. The *violation* charge was supported by one specification: that appellant was intoxicated while serving as quartermaster on board a vessel inspected under 46 U.S.C. Chapter 33 and 33 C.F.R. § 95.020(c).

The hearing was held on August 8, 1995, in Portland, Maine. Appellant represented himself and entered a response denying each charge and specification. The Coast Guard Investigating Officer introduced into evidence the testimony of three witnesses and five exhibits. Appellant testified under oath on his own behalf, but did not introduce witnesses or exhibits. The charge of *misconduct*: committing a violent act against another person was found *not proved*. The charge of *misconduct*: failure to comply with the master's lawful order was found *proved*. The charge of *violation of a regulation*: serving as quartermaster while drunk, was found *proved*. Appellant was

sentenced to six months suspension outright and another six months suspension on twelve months probation.

The Administrative Law Judge's original Decision and Order was served on Appellant on August 29, 1995. Appellant filed a notice of appeal with the Portland Administrative Law Judge on March 19, 1996. Appellant was served with the Administrative Law Judge's amended Decision and Order on June 13, 1996. Due to the unusual circumstances of this case, particularly the fact that the Appellant filed his appeal *between* the two Decisions and Orders, I will hear this appeal without deciding the technicalities of timeliness.

APPEARANCE: Appellant appeared *pro se*. The United States Coast Guard Investigating Officer was Chief Warrant Officer Charles S. Rathgeber.

FINDINGS OF FACT

Appellant was serving under the authority of his Merchant Mariner's Document as quartermaster aboard the S/S CONCHO, an inspected vessel tied to the dock at Linden, New Jersey. Appellant spent a day on shore drinking with a friend, and reported for his watch intoxicated. Appellant got into a minor altercation with his drinking buddy, and both men were reported to the Captain. The Captain told both to take a breathalyzer test. Appellant refused unless accompanied by counsel. The Captain dismissed Appellant from the ship for refusing a direct order and disobeying company policy, which required all crewmembers to submit to a chemical test for drugs or alcohol whenever requested. Appellant's friend took the requested test and registered .32 Blood Alcohol Content (BAC).

Appellant was charged with *misconduct*, two specifications: first, he committed a violent act against another person, and second, he failed to comply with a master's order. Appellant was also charged with *violation of regulation*, one specification: that Appellant served as quartermaster on an inspected vessel while intoxicated.

BASIS OF APPEAL

Appellant, acting *pro se*, filed a combined notice of appeal and brief. Respondent asserts that the Administrative Law Judge's Decision and Order was in conflict with his findings at the hearing, and that the Decision and Order contains factual errors.

OPINION

I.

The hearing transcript indicates that the Administrative Law Judge and Coast Guard Investigating Officer agreed to drop all reference to Appellant's Coast Guard License in the charge sheet (TR. at 11-12). The Administrative Law Judge, in delivering his decision from the bench, specifically refers to Appellant's Merchant Mariner's Document and *not* his license (TR. at 102). However, the written Decision and Order suspended both the License and Merchant Mariner's Document.

The Administrative Law Judge corrected the error through a subsequent order dated June 13, 1996 amending his earlier order dated August 8, 1995. The amended Order directs the appropriate penalty and is AFFIRMED.

II.

Appellant cites four sections of the Decision and Order, which are allegedly erroneous. All four citations to the record deal with issues of fact regarding what transpired between Appellant and a Mr. Stanbury, whom Appellant was accused of assaulting. Mr. Stanbury did not testify at trial. In light of the fact that the charge of misconduct based on the alleged assault was found *not proved*, any error in the Administrative Law Judge's findings was harmless.

CONCLUSION

The Administrative Law Judge corrected the error in his original Decision and Order of August 8, 1995 by issuing an amending Order dated June 13, 1996. There is substantial, reliable, and probative evidence supporting the finding of *proved* for the *misconduct* and *violation of regulation* charges.

ORDER

The Decision and Order of the Administrative Law Judge dated August 8, 1995, as amended by the Order dated June 13, 1996, is AFFIRMED.

J. C. CARD
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 2nd day of February, 2000.