

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATE OF AMERICA)	
UNITED STATES COAST GUARD)	
)	
vs.)	DECISION OF THE
)	VICE COMMANDANT
)	ON APPEAL
LICENSE No. 770660)	NO. 2620
)	
)	
<u>Issued to Charles G. Cox</u>)	

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

By an Order dated March 11, 1999, an Administrative Law Judge (ALJ) of the United States Coast Guard at Norfolk, Virginia, suspended Appellant’s above captioned license upon finding proved a charge of *misconduct*. The single specification supporting the charge alleged that Appellant, while acting under the authority of the above captioned license, did make threats against the first mate.

The hearing was held on January 20, 1999, at Saint Paul, Minnesota. Appellant appeared without counsel and entered a response denying the charge and specification. The Coast Guard Investigating Officer introduced six exhibits and the testimony of three witnesses. Appellant introduced one exhibit and chose to read a statement.

The ALJ’s initial Decision and Order (D&O) dated February 19, 1999, was served on Appellant on that date. After the ALJ’s final Order of March 11, 1999, an Order of Clarification was issued on April 15, 1999. Appellant filed a *pro se* Notice of Appeal along with a supplemental statement. This matter is properly before me.

APPEARANCE: Appellant represented himself *pro se*. The United States Coast Guard Investigating Officer was Chief Warrant Officer William G. Perkins.

FINDINGS OF FACT

In April 1998, Appellant was serving as the Master of the Army Corp of Engineers (ACOE) dredge THOMPSON, when the dredge went aground. After the grounding, the ACOE removed Appellant from the dredge. On May 24, 1998, the ACOE detailed Appellant from the position of “Master, PLD Class I” to an “Unclassified List of Duties” and tasked him with duties at an ACOE maintenance facility ashore. Upon reassignment, Appellant’s duties did not involve the operation of the THOMPSON, nor any other vessel. Between April 30 and August 12, 1998, Appellant visited the THOMPSON twice but did not get underway. Whenever the ACOE operated the dredge during this period, an officer besides Appellant was in charge of the operation. After the grounding in April 1998, Appellant never served in any capacity on board the THOMPSON again. However, although Appellant worked at a shore side facility during this period, the ACOE still considered him the Master of the THOMPSON and claimed that his license was a condition of employment for that position. On August 12, 1998, Appellant went aboard the THOMPSON to do some computer work and allegedly made a threatening statement to a crewmember. After completing its investigation in September 1998, the ACOE permanently redesignated Appellant’s position to the shore side facility and the ACOE no longer considered Appellant as the Master of the dredge.

BASES FOR APPEAL

Appellant asserts the following bases for appeal from the Decision and Order of the ALJ: (1) on the date of the alleged misconduct, the Appellant was not the Master of

the U.S. Army Corps of Engineers dredge THOMPSON and, therefore, was not acting under the authority of his license; and, (2) he made no threats to the first mate.

OPINION

I

Appellant contends that he was not acting under the authority of his license at the time of the alleged misconduct. I agree. The jurisdiction of administrative bodies is dependent upon the validity and the terms of the statutes reposing power in them. Appeal Decision 2025 (ARMSTRONG). In this case, the applicable federal statute states, “A license . . . may be suspended or revoked if the holder (1) when acting under the authority of that license, certificate or document (B) has committed . . . misconduct . . .” 46 U.S.C. § 7703(1)(b). The Coast Guard regulation interpreting this statute states: “A person employed in the service of a vessel is considered to be acting under authority of a license, certificate or document when the holding of such a license, certificate or document is: (1) Required by law or regulation; or (2) Required by an employer as a condition for employment.” 46 C.F.R. § 5.57. If neither one of these two criteria is met, the Coast Guard has no jurisdiction over the offense for Suspension and Revocation proceedings.

Jurisdiction is a question of fact that must be proven. Appeal Decision 2425 (BUTTNER). Based on the record, there is no assertion or evidence that indicates jurisdiction is based on a law or regulation. Therefore, jurisdiction must be based on Appellant’s condition of employment with the ACOE. I have previously held that:

[A] person is serving ‘under authority of a license or document’ issued by the Coast Guard if the possession of that license or document is a condition of

employment and the character of the employment is that involving the scope of the license or document issued. R.S. 4450 proceedings are directed solely at the documents or licenses, not against person or property. Accordingly, when such action is based upon a charge of “misconduct while acting under authority . . .,” the particular act must be related to the particular document or license and to the person’s employment thereunder.

Appeal Decision 2025 (ARMSTRONG). In this case, to determine whether the misconduct charged relates to Appellant’s license requires a determination “whether the character of his employment at the time of the offense is that involving the scope of the license or document issued.” A mere finding that the employer required a license is insufficient. The character of the particular employment at hand, and its relation to the scope of the license must also be examined to determine if jurisdiction lies.

The ALJ found jurisdiction based solely on ACOE assertions that Appellant was required to hold a license on the date of the offense. D&O at 5. Although the ACOE required Appellant to possess his license as a condition of employment as Master, it is clear from the record that he no longer served as a Master, nor as a mariner in any capacity after the May 24, 1998 reassignment to the “Unclassified List of Duties.” Thus, the character of Appellant’s employment with the ACOE had changed. Appellant’s employment no longer encompassed his previous position as Master and its requirement for a license. Instead, on August 12, 1998, the date of the alleged misconduct, Appellant went aboard the dredge to do computer work. TR at 23, 31, 39-42, 58, 65, 72, 80. There is no evidence on the record that the computer work, nor any of the other actions Appellant took aboard the THOMPSON on August 12, 1998 fall within the scope of a Coast Guard license or document, especially since Appellant was only aboard temporarily, and no longer a part of the crew. Based on the facts in this case, I find that the ACOE’s requirement for a Master’s license as a condition of employment for the

computer work required of Appellant was insufficient for Coast Guard suspension and revocation jurisdiction to lie.

II

Appellant also claims that he did not make a threat against the First Mate of the dredge THOMPSON on August 12, 1998. Based on my determination of the first issue, it is unnecessary to address the merits of this issue.

CONCLUSION

Based on the record in this case, I find that Appellant was not acting under the authority of his license at the time of the charged misconduct, thus the Coast Guard did not establish jurisdiction over the offense in accordance with 46 U.S.C. § 7703 and 46 C.F.R. § 5.57.

ORDER

The Decision of the Administrative Law Judge dated February 19, 1999, is REVERSED, and the Order of March 11, 1999 is VACATED. The case is DISMISSED.

//S//
T. H. Collins
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 22 day of January, 2001.