

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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vs.

LICENSE NO. 675013
Issued to Paul V. Uccello

: DECISION OF THE
:
: COMMANDANT
:
: ON APPEAL
:
: NO. 2595

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

By order dated June 13, 1996, the Chief Administrative Law Judge of the United States Coast Guard at Washington, D.C., revoked Appellant s license based upon finding proved a charge of *violation of law or regulation*. The supporting specification alleged that, while serving as the operator of an uninspected towing vessel under authority of the above-captioned license, Appellant was intoxicated in violation of 46 U.S.C. § 2302(e) and 46 U.S.C. § 7703.

The hearing was held on November 1, 1995, at the U.S. Coast Guard Academy in New London, Connecticut. Appellant entered a response denying the charge and specification.

The Coast Guard Investigating Officer offered into evidence two exhibits and the testimony of five witnesses. Appellant offered into evidence 11 exhibits, his own testimony, and the testimony of one witness.

The Chief Administrative Law Judge issued a written Decision and Order on June 13, 1996. It concluded that the charge of *violation of law and regulation* and the supporting specification were proved. Based on the fact that Appellant was serving a probationary period under a previous suspension and revocation hearing, the Chief Administrative Law Judge suspended Appellant s license for three months in accordance with the Decision and Order in Administrative Law Judge Docket No. 01-0069-TEM-94, U.S. Coast Guard v. License NO. 675013. Additionally, based on the finding in this case, the Chief Administrative Law Judge revoked Appellant s license but stayed the revocation for one year after the expiration of the three month suspension.

Appellant filed a notice of appeal and perfected it on June 20, 1996.

APPEARANCES: Raymond Rigat, 80 Broad St., New London, Connecticut 06320, and Dale H. King, P.

O. Box 898, Stonington, Connecticut 06378.

FINDINGS OF FACT

At all relevant times, Appellant was acting under the authority of the captioned license while serving as operator aboard the M/V OLD SAYBROOK TOWING AND SALVAGE (OLD SAYBROOK), CT9154AH. *See* Respondent (R.) Exhibit 5. [Transcript (TR) at 274-277].

On October 21, 1994, Appellant was underway on the OLD SAYBROOK to tow in a disabled vessel. [TR at 129, 289]. The passengers aboard the disabled vessel notified Coast Guard Group Long Island Sound that Appellant appeared intoxicated. [TR at 118]. A Coast Guard 41-foot patrol boat was dispatched and was told to meet Appellant upon his return to Clinton, Connecticut. [TR at 20, 118]. The crew of the patrol boat met two uniformed members of the Clinton Police Department on the pier and waited for Appellant. [TR at 21, 23]. Appellant arrived and tried to turn back to sea. The boarding team got underway and forced Appellant to moor at a nearby pier. [TR at 24-25]. Appellant refused to submit to a field sobriety test and was generally uncooperative during questioning. [TR at 27, 28, 30]. The boarding team conducted a boarding on the OLD SAYBROOK, and Appellant was arrested by the police officers. [TR at 27, 160].

At the hearing, the Chief Administrative Law Judge amended the supporting specification to correct the vessel number. The original specification erroneously stated that the vessel s number was CT640AP. The correct number was CT9154AH. [TR 274-277]. In his Decision and Order, however, the Chief Administrative Law Judge stated that Appellant had been the operator of the vessel numbered CT640AP. [D&O at 2, 3].

BASIS OF APPEAL

Appellant asserts as the basis of appeal that the specification incorrectly stated that Appellant was operating the vessel numbered CT640AP, and that the Chief Administrative Law Judge should not have allowed this material fact to be amended. Additionally, the Chief Administrative Law Judge committed more than just harmless error in finding that Appellant was operating the vessel numbered CT640AP.

OPINION

The Administrative Law Judge may "amend charges and specifications to correct harmless errors by deletion or substitution of words or figures as long as a legal charge and specification remains." 46 C.F.R. § 5.525(b). "Deficiencies in the pleading...can be cured where the record clearly shows that there was no prejudice." Appeal Decision 2396 (MCDOWELL). Additionally, "[t]he Administrative Law Judge is given broad discretion in this regard, particularly in the case of harmless errors." Appeal Decision 2332 (LORENZ).

At the hearing, the Chief Administrative Law Judge amended the specification to reflect the correct vessel number. This amendment was not, as Appellant contends, material to the specification and charge. Appellant was operating a vessel while intoxicated. Appellant's defense to the charge remains the same whether he was operating a vessel numbered CT640AP or CT9154AH. "There may be no subsequent challenge of issues which are actually litigated if there was actual notice and adequate opportunity to cure surprise." Kuhn v. Civil Aeronautics Board, 183 F.2d 839, 841 (D.C. Cir. 1950). There was no surprise to Appellant at the hearing. "The amendment did not make a substantial change to the offense alleged." *Id.* In fact, Appellant recognized the error and notified both the Chief Administrative Law Judge as well as the Coast Guard. [TR at 272-275].

My review of the record finds that the amended specification resulted in no prejudice to the Appellant. "[T]he function of the specification is notice as to the issues so that a person appearing before the Administrative Law Judge can identify the matter with which he is charged." Appeal Decision 2288 (GAYNEAUX). I have reviewed the record and find that the Appellant was well aware of the circumstances giving rise to the charge against him and had adequate opportunity to defend against the charge as amended at the hearing.

Appellant also contends that the use of the uncorrected specification and the wrong vessel number in the Chief Administrative Law Judge's Decision and Order (D&O) constituted more than harmless error. I disagree. It is clear from the record that while the Chief Administrative Law Judge did use the wrong vessel number in the D&O; he based the decision on the facts related to the correct vessel as he states that Appellant was operating "a twenty-four and one-half foot long boat with twin outboard engines." [D&O at 2]. The Chief Administrative Law Judge's harmless error does not affect the D&O. "The Appellant had adequate opportunity to defend against the charge and specification and, in fact, took full advantage of that opportunity." Appeal Decision 2288 (GAYNEAUX); *see also* Appeal Decisions 821 (MCCANTS), 2234 (REIMANN), 2332 (LORENZ), 2410 (FERNANDEZ), 2562 (BEAR).

CONCLUSION

The findings of the Administrative Law Judge are supported by reliable, probative and substantial evidence. The hearing was conducted in accordance with applicable law. The errors alleged by Appellant were harmless and did not violate due process.

ORDER

The Decision and Order of the Chief Administrative Law Judge dated June 13, 1996, is AFFIRMED.

R. D. HERR
Acting

Signed at Washington, D.C., this 23rd day of December, 1997.