

U N I T E D S T A T E S O F A M E R I C A

DEPARTMENT OF TRANSPORTATION

UNITED STATES COAST GUARD

UNITED STATES OF AMERICA :
UNITED STATES COAST GUARD :
 : DECISION OF THE
vs. :
 : VICE COMMANDANT
LICENSE NO. 278523 :
 : ON APPEAL
 :
Issued to: Romans S. GANTT, : NO. 2558
Appellant :

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

By order dated November 2, 1992, an Administrative Law Judge of the United States Coast Guard at Washington, D.C. suspended Appellant's Coast Guard duly issued license for a period of twelve months. Appellant's license was further suspended for an additional six months remitted on twelve months probation. The order was rendered after finding *misconduct* and *violation of regulation* charges proved. The seven specifications supporting the *misconduct* charge allege that, Appellant, while serving as Master on board the M/V MISS ALICE, MD 2445J, under the authority of the captioned license on or about August 7, 1992, did wrongfully, (1) operate the vessel with more than six passengers, a violation of 46 U.S.C. 3311, (2) fail to comply with the drug testing requirements of 46 C.F.R. 16.230, (3) operate the vessel beyond the scope of his license, a

violation of 46 U.S.C. 8902, (4) operate the vessel without an acceptable backfire flame control, a violation of 46 C.F.R. 182.15-7(b), (5) operate the vessel without an approved personal flotation device for each person aboard, a violation of 46 C.F.R. 180.25-5(a), (6) operate the vessel without railings of proper height, a violation of 46 C.F.R. 177.35-1(d), and (7) operate the vessel without a stability letter issued by the Coast Guard, a violation of 46 C.F.R. 170.120. The single specification supporting the violation of regulation charge alleges that, Appellant, while serving as Master on board the M/V MISS ALICE, MD 2445J, under the authority of the captioned license on or about August 7, 1992, did wrongfully operate the vessel without a pollution placard posted, a violation of 33 C.F.R. 155.450.

A hearing on the matter was held at Patuxent River, Maryland on October 27, 1992. At the hearing, Appellant appeared without counsel and admitted the charges and their supporting specifications. After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charges and specifications had been proven. The entire decision was served on Appellant on November 5, 1992. Appellant filed a notice of appeal on December 2, 1992, pursuant to 46 C.F.R. 5.703. Appellant died on October 23, 1993.

FINDINGS OF FACT

On August 7, 1992, Appellant was serving as Master on board the M/V MISS ALICE and was acting under the authority of his license. In view of the disposition to be made of this case, no further findings are necessary.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. In view of the disposition to be made of this case, based on the Appellant's death, the specific errors alleged on appeal need not be further elaborated.

APPEARANCE: Karen H. Abrams, Attorney for Appellant,
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OPINION

The issue presented is whether the Appellant's death serves to abate the proceeding which is pending by virtue of the appeal.

If an abatement is warranted, then the charges which gave rise to this appeal will be dismissed.

The statutes and regulations applicable to these administrative proceedings are silent as to this circumstance. See, 46 U.S.C. Chapter 77, and 46 C.F.R. Part 5. On one previous occasion, the Commandant was confronted with a similar circumstance. [Appeal Decision No. 2134 \(JOHNSON\)](#). As here, the Appellant died while a statutory right to an administrative appeal was pending. The Commandant stated therein that the results in such cases are not dictated by those in criminal or civil proceedings, but the examples and reasoning in those cases merit attention.

Suspension and Revocation proceedings are remedial in nature and intended to maintain standards for competence and conduct essential to the promotion of safety at sea. 46 C.F.R. 5.5. **See also**, [Appeal Decision Nos. 2379 \(DRUM\)](#), and [2346 \(WILLIAMS\)](#). In **Johnson**, the Administrative Law Judge's order was vacated on the reasoning that to dismiss only the appeal would have marked Appellant's record "with an adverse finding as to which all his rights under the law had not been allowed." I find that the reasoning remains appropriate for the purpose of this proceeding. Since the license at issue is personal to Appellant, now deceased, it would little serve the interest of marine safety to review the merits of the appeal.

CONCLUSION

The order should be vacated and charges dismissed.

ORDER

The Order of the Administrative Law Judge, dated at Washington, D.C., on November 2, 1992, is VACATED. The findings are SET ASIDE, and the charges are DISMISSED.

Robert T. Nelson

Vice Admiral, U.S. Coast Guard

Vice Commandant

Signed at Washington, D. C. this 17th day of May, 1994.

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