

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

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UNITED STATES OF AMERICA	:	
UNITED STATES COAST GUARD	:	DECISION OF THE
	:	
	:	COMMANDANT
vs.	:	
	:	
	:	ON APPEAL
MERCHANT MARINER'S LICENSE	:	NO. 2549
NO. 591358	:	
ISSUED TO: Frank K. LEVENE	:	
Appellant	:	
	:	

This request for issuance of a temporary license has been accepted and reviewed in accordance with 46 United States Code (U.S.C.) 7703 and 46 Code of Federal Regulations (C.F.R.) 5.707.

BACKGROUND

By order dated September 25, 1992, an Administrative Law Judge of the United States Coast Guard at New York, New York revoked Appellant's seaman's documents upon finding proved the charges of misconduct and violation of law. The misconduct

charge, supported by two specifications, alleged that Appellant, while serving as Second Assistant Engineer aboard the S/S RESOLUTE, Official Number D612715, on or about June 30, 1991, while the vessel was at sea, wrongfully (1) assaulted and battered the Third Assistant Engineer, William P. Jeuvelis, by strangling him with a strand of wire, and (2) assaulted a crewmember, Franklin Sesenton, by threatening him with a steel pipe. The violation of law charge, also supported by two specifications, alleged that Appellant wrongfully (1) operated the vessel while intoxicated, in violation of 33 C.F.R. 95.045(b), and (2) refused to be tested for evidence of dangerous drugs and alcohol use, in violation of 33 C.F.R. 95.040.

On October 22, 1992, Appellant filed a notice of appeal. On January 8, 1993, Appellant requested Commandant to grant him a temporary license pending the outcome of his appeal.

APPEARANCE: Jonathan C. Scott, Attorney-at-Law,  
51 Normandy Drive, Northport, N.Y. 11768.

#### FINDINGS OF FACT

Appellant is the holder of Merchant Mariner's License No. 591358 which authorizes his service as Second Assistant Engineer of steam vessels, any horsepower. In addition, Appellant is the holder of Merchant Mariner's Document No. [REDACTED]. On June 30, 1991, Appellant was serving aboard the S/S RESOLUTE as a Second Assistant Engineer under the authority of those two documents.

At or about 2:00 p.m. on June 30, 1991, Third Assistant Engineer, William P. Jeuvelis was lying on a beach chair, sunbathing on the flying bridge of the S/S RESOLUTE. Appellant, wearing gloves and holding a strand of copper wire in both hands, approached Jeuvelis stating that he was going to kill him. Appellant then placed the wire around Jeuvelis' neck and began to strangle him. Mr. Jeuvelis, unable to breathe, placed his hand between the wire and his throat, and struggled to break Appellant's hold on the wire. Eventually, Jeuvelis broke Appellant's hold, wrestled Appellant to the deck, and held him there until the Master arrived. While Jeuvelis held Appellant on the deck, Appellant kept repeating that he was going to kill

Jeuvelis.

Upon arrival at the scene, the Master noticed Appellant had slurred speech, and smelled of alcohol. He was taken to the Chief Mate's office where he (Appellant) refused to take a blood alcohol test but admitted that he had been drinking. The Master and Chief Mate then escorted the Appellant to his room where they found two empty gin bottles. The Master ordered Appellant to remain in his room, but Appellant disobeyed the order, obtained a length of pipe, went into the mess hall and assaulted the messman, Franklin Sesenton, by waiving the pipe at him. Appellant was later found sitting on the port side of the crew deck. He was subsequently handcuffed and returned to his room where the Master posted a guard outside Appellant's door.

#### OPINION

Unlike the issues involved in considering the merits of Appellant's appeal, the issue in granting a temporary license or document is whether Appellant's service would be compatible with the requirements for safety at sea. 46 C.F.R. 5.707(c). The burden here is on the Appellant to demonstrate that he should be allowed to possess a license during the pendency of his appeal. I accept the findings of the Administrative Law Judge for the purpose of making this determination. Those findings reveal that Appellant has committed two serious offenses of assault with a dangerous weapon against fellow crewmembers. These offenses, proved at the hearing, raise a regulatory presumption that the continued service of the Appellant is "not compatible with safety at sea". 46 C.F.R. 5.707(c), 46 C.F.R. 5.61(a).

First, I find the Appellant's use of a wire to assault and batter his victim constitutes use of a dangerous weapon. The character of a weapon as a dangerous weapon is not necessarily determined by its design, construction or purpose. 79 C.J.S. Weapons 1 (1984). Where the issue is whether an assault has been committed with a dangerous weapon, many instruments may be dangerous weapons, according to the manner in which they are used. Id.; Bender v. Keating, NTSB Order EM-32 (December 26, 1973), aff'g Decision on Appeal ([1932](#) (Keating)). Thus, in these proceedings, in addition to those items more commonly recognized as dangerous weapons such as pistols<sup>1</sup> and knives<sup>2</sup>, a dinner plate<sup>3</sup>, a cup<sup>4</sup>, and a spatula<sup>5</sup>, have

all been found to be dangerous weapons because each was used in a manner likely to produce serious bodily harm.

Under the circumstances of this case, the instrument used to carry out the assault and battery, a copper wire, also constitutes a dangerous weapon. Appellant, while wearing gloves, wrapped a strand of copper wire around Mr. Jeuvelis' neck and attempted to strangle him. Mr. Jeuvelis was able to squeeze his hand between his neck and the wire and eventually worked himself free, but not before his entire neck showed wire burns and his fingers were cut and bleeding (Opinion at 8). During this time Appellant declared that he was going to kill Mr. Jeuvelis. These facts provide enough basis to find that the copper wire was a dangerous weapon, as it was used in a manner likely to cause serious bodily harm. Further, the other misconduct specification found proved against Appellant, assault upon the messman by threatening him with a steel pipe, also constitutes assault with a dangerous weapon. Decision on Appeal No.'s [1932](#) (Keating) and [1364](#) (Rivera). Therefore, the evidence adduced at the hearing proves that Appellant has committed two offenses enumerated in 46 C.F.R. 5.61, each of which gives rise to the presumption that the continued service of the Appellant is "not compatible with safety at sea". Consequently, a temporary document or license may be denied on the basis of the proven charge alone. 46 C.F.R. 5.707(c).

In rebuttal to the aforesaid 5.707(c) presumption, Appellant cites Decisions on Appeal No.'s [2315](#) (Fifer) and [2329](#) (Fifer), in which a temporary license was issued to a mariner whose license was revoked upon finding proved the charge of "conviction for a narcotic drug law violation." However, those two decisions were issued in 1983. The then existing regulations, contained at 46 C.F.R. 5.30-15, did not provide for a presumption of incompatibility with the requirements for safety at sea for offenses such as the ones committed here. The Coast Guard has since amended the regulations governing temporary licenses to provide for the presumption discussed above and not available in 1983. See 50 Fed. Reg. 32179, August 9, 1985. Since I find the presumption applies here, those two cases are inapposite.

Appellant also raises the following issues for consideration, (1) he has no prior record, and (2) he has, since the incident, made two sea tours, totalling six months, and his supervisors on those tours have considered him an asset to the ship and that his service can only contribute to the safety of any vessel he serves on. While these factors are in Appellant's favor, they do not overcome the presumption of incompatibility. The overwhelming factor against issuance of a temporary license here is the violent nature of the attack on the Mr. Jeuvelis, which in the opinion of the Administrative Law Judge amounted to attempted murder (Opinion at 12). In a recent case, I denied a temporary license to a Third Assistant Engineer who assaulted and battered the Master with his fists. Decision on Appeal No. [2469](#) (Vetter). I find no less reason to do the same here.

#### CONCLUSION

Appellant's violent assault upon a junior officer and crewmember at sea showed a callous disregard for the safety of the crew and the vessel, and demonstrated a potential for violence which significantly threatens the safety of officers and crew who would come in contact with him. Therefore, continued service of the Appellant pending the outcome of his appeal is incompatible with the requirements for safety at sea.

#### ORDER

Appellant's request for the issuance of a temporary license is DENIED.

/S// J. W. KIME

J. W. KIME  
COMMANDANT

Admiral, U.S. Coast Guard

Signed at Washington, D.C., this 14th day of  
April 1993.

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