

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: John Marshall ZELVICK 593392

DECISION OF THE COMMANDANT ON INTERLOCUTORY APPEAL
OF DENIAL OF MOTION TO DISQUALIFY THE
ADMINISTRATIVE LAW JUDGE
UNITED STATES COAST GUARD

2495

John Marshall ZELVICK

This appeal has been taken in accordance with 46 U.S.C. SS7702 and 46 C.F.R. SS5.507.

On January 29, 1990, the attorney for the respondent filed a letter with Coast Guard Administrative Law Judge Rosemary Denson, who is assigned to this case, requesting recusal. By order dated January 30, 1990, Judge Denson field a Decision on Respondent's Request for Recusal, denying the same, and, on February 9, 1990, Respondent appealed the Decision to the Commandant pursuant to 46 C.F.R. 5.507.

Appearance: Mr. Harold L. Witsaman, Esq., Ray Robinson, Hanninen & Carle, 135 S. LaSalle Street, Suite 1916, Chicago, Illinois 60603-4233.

BASES OF APPEAL

Appellant's bases of appeal are:

1. The Administrative Law Judge erred in ruling that the

respondent must strictly comply with procedures set forth in 46 C.F.R. 5.507 when requesting recusal of an Administrative Law Judge.

2. The Administrative Law Judge erred in ruling that the request for recusal was not timely.

3. The Administrative Law Judge should withdraw because, in fact, she is personally biased or subject to other disqualification.

OPINION

Title 46 C.F.R. 5.507 provides that a respondent may, in good faith, request an Administrative Law Judge to withdraw from a case due to personal bias or some other disqualification. The request must be supported by the timely filing of:

- (a) an affidavit or statement
- (b) sworn to before a Coast Guard officer or other qualified official;
- (c) containing detailed facts alleged to constitute grounds for disqualification.

In addition, respondent may make an offer of proof of these detailed facts and may present witness testimony in appropriate cases.

Here, Appellant's attorney sent the Administrative Law Judge a letter stating, in pertinent part:

Based upon your past rulings and decision in the case of William J. Rabatsky, License No. 550514, where you ignored the hearing record and substituted your own judgment based upon no evidence or experience but speculation, ... the licensee charged in this proceeding ... [has] no confidence that [Respondent] ... will receive a fair, unbiased hearing...

There were no exhibits, affidavits of witnesses, or offer of proof accompanying this letter. The letter states in vague, general terms that this attorney disagrees with the ruling of the

Administrative Law Judge in an entirely different case. It provides no detailed facts even suggesting personal bias on the part of the Administrative Law Judge in the instant case, any grounds for disqualification, or any appearance of impropriety. There are undoubtedly many litigants in the past who have disagreed with the outcome of a case that did not favor their position or disagreed with a judge's interpretation of the evidence. Mere disagreement does not constitute grounds for disqualification the next time such litigant comes before the same judge.

The Administrative Law Judge denied the request for recusal on the grounds that it failed to conform to the requirements of 46 C.F.R. 5.507. In his appeal, Appellant does not challenge the Administrative Law Judge's legal conclusion but rather argues that the affidavit requirements are merely "technical," that the Administrative Law Judge ruled unfairly in an unconnected case, that the details of such case are a matter of record with the Coast Guard since that case is presently on appeal to the Commandant, and that an affidavit would therefore "serve no useful purpose."

I agree with the Administrative Law Judge and affirm the Decision. The requirements of 46 C.F.R. 5.507 are not mere technicalities to be waived by the Commandant. See Decision on Appeal [2232 \(MILLER\)](#). They serve an essential function. The respondent must tender evidence of bias in sufficient detail for the Administrative Law Judge to honestly and dispassionately consider whether he or she will be influenced by the evidence in reaching a decision or, if not, whether proceeding in light of such evidence would create an appearance of impropriety. This regulatory scheme affords the Administrative Law Judge an opportunity to respond in the Decision to each and every one of the detailed allegations that may later be the subject of appeal. Appellant here wishes to bypass that process by initially tendering a vague, unsubstantiated letter and then, by way of interlocutory appeal, presenting to the Commandant additional details and arguments (all concerning an unconnected case) not made plain to the Administrative Law Judge below.

I would not presume to review the alleged bias of a Coast Guard Administrative Law Judge absent a clear record of persuasive, detailed, sworn evidence, in accordance with 46 C.F.R. 5.507, to which the Administrative Law Judge has responded with commensurately detailed findings of fact and conclusions of law. Failure to comply

with these regulations is grounds for denial of the appeal and remand for further proceedings.

Having so decided, there is no purpose in my reviewing the factual issue of whether submission of Appellant's letter to the Administrative Law Judge was timely, which is the second basis of appeal. I affirmatively decline to address the third basis of appeal, whether there is any evidence of bias in fact such as to justify recusal.

CONCLUSION

Having reviewed the entire record and considered Appellant's arguments, I find that Appellant has not established sufficient cause to reverse the Decision on Respondent's Request for Recusal. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The Decision on Respondent's Request for Recusal is AFFIRMED. The case is REMANDED to the Administrative Law Judge for further proceedings.

CLYDE T LUSK, JR
Vice Admiral, U.S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 12 day of March 1990.

3. HEARING PROCEDURE

.40 Disqualify Administrative Law Judge

appellant required to support motion with detailed, sworn statement

CITATIONS

Appeal Decisions Cited: 2232 (*MILLER*).

NTSB Cases Cited: None

Federal Cases Cited: None

Statutes Cited: 46 U.S.C. 7702

Regulations Cited: 46 CFR 5.507

***** END OF DECISION NO. 2495 *****

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