

Past Commandant's Decisions on Appeal have held that when a Respondent dies during the pendency of his appeal, the ALJ's order should be vacated and the Coast Guard's Complaint against his mariner credential should be dismissed. *Appeal Decision 2684 (SCARBOUGH) (2009)*; *Appeal Decision 2134 (JOHNSON) (1978) (citing Melrose Distillers, Inc. v. United States, 359 U.S. 271, 272 (1959))*. This result mirrors the custom in Federal practice to abate the proceeding *ab initio* when the defendant dies. "The only fair and reasonable disposition [of the pending litigation when a Respondent dies] is to wipe the slate clean" by dismissing the matter. *JOHNSON* at 3.

This case is distinguishable from the two precedents cited in that the Government rather than the Respondent has lodged the appeal. The result should, nonetheless, remain the same. *See DiOrio v. Nicholson*, 216 Fed.Appx. 974 (2007) (when the Government appealed a veteran's benefit decision and the veteran died during the pendency of that appeal, the decision was vacated).

Accordingly, the Coast Guard's appeal is DISMISSED.

ORDER

The ALJ's Order dated November 7, 2011, is **VACATED** and the Complaint against Respondent is **DISMISSED**.



Charles D. Michel
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 5th day of January, 201⁶5.

Ceasar 1/5/16