

**UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD**

UNITED STATES OF AMERICA	:	DECISION OF THE
UNITED STATES COAST GUARD	:	
	:	VICE COMMANDANT
v.	:	
	:	ON APPEAL
	:	
	:	NO.
MERCHANT MARINER LICENSE	:	27 1 6
	:	
	:	
<u>Issued to: RICHARD A. CHESBROUGH</u>	:	

APPEARANCES

For the Government:
LCDR Benjamin M. Robinson
Coast Guard Sector Columbia River

Respondent:
Mr. Richard Albert Chesbrough, *pro se*

Administrative Law Judge: George J. Jordan

This appeal is taken in accordance with 46 U.S.C. Chapter 77, 46 C.F.R. Part 5, and 33 C.F.R. Part 20.

On July 26, 2016, an Administrative Law Judge (hereinafter "ALJ") of the United States Coast Guard issued a Decision and Order revoking the Merchant Mariner Credentials of Mr. Richard A. Chesbrough (hereinafter "Respondent") upon finding proved two specifications of misconduct, and one specification of conviction of an offense that would preclude issuance of a Coast Guard MMC.

On July 22, 2016, Respondent filed a Notice of Appeal in the matter. He perfected his appeal by filing an Appellate Brief on August 30, 2016.

In a letter dated August 30, 2016, Respondent requested issuance of a Temporary Mariner Credential as appellate action commenced in his case. The ALJ considered Respondent's request and, on October 13, 2016, issued a Decision and Order denying issuance of a temporary credential to Respondent. Via letter dated October 29, 2016, Respondent attacks the ALJ's denial of a temporary credential, among other things, and requests that his credential be returned to him while he waits for the outcome of his case. I am treating this as an appeal of the ALJ's denial of his request for a temporary credential.

The ALJ's decision on the temporary credential refers to all three of the allegations found proved: Allegations Two (misconduct: making a false statement in a casualty investigation), Three (misconduct: attempting to induce a witness to testify falsely in a marine casualty investigation), and Six (conviction of an offense that would prevent the issuance or renewal of a MMC).

SUMMARY OF FACTS

At all times relevant to the instant proceedings, Respondent was the Master of the M/V WILLAMETTE QUEEN, a fiberglass-hulled sternwheeler, certified to carry 101 passengers. The vessel is used for lunch and dinner cruises and private events on the Willamette River and Willamette Slough.

On January 29, 2013, a Coast Guard Marine Inspector conducted an inspection of the WILLAMETTE QUEEN. During that inspection, one of the vessel's employees informed the inspector that a grounding had occurred in November 2012. After further investigation of the incident, Coast Guard investigators came to conclude that a reportable marine casualty—the grounding—had, in fact, occurred, and that Respondent had failed to report the incident, as he was required to do. This was the basis of the first allegation against Respondent, which was ultimately found not proved in the absence of sufficient evidence that a grounding had occurred.

As the investigation continued, and following interviews with Respondent, the Coast Guard was made aware that Respondent had made attempts to contact a witness to influence or

alter his testimony. This was the basis of the third allegation against Respondent. Based upon this information, the Coast Guard concluded that Respondent had lied throughout the interview and provided false information during the investigation. This was the basis of the second allegation against Respondent. Because such events would warrant criminal charges being levied, the investigation was turned over to the criminal investigators at the Coast Guard Investigative Service (hereinafter "CGIS") so that a criminal investigation could commence.

During the criminal investigation, CGIS Special Agents initiated a call between Respondent and a witness to the grounding. During that recorded conversation, Respondent and the other witness discussed their conflicting versions of events and Respondent instructed the other witness to conform his testimony so that both of their versions of the relevant events would be congruent. During subsequent interviews with CGIS, Respondent denied having had this conversation.

The Coast Guard also charged Respondent with committing an offense that would preclude issuance of a merchant mariner credential. To support that allegation, the Coast Guard proffered evidence showing that, on May 7, 2015, Respondent pled guilty to two counts of violating O.R.S. § 468.943, Unlawful Water Pollution in the Second Degree, Misdemeanor Class A (Respondent wrongfully discharged wastewater into the Willamette River) in the Marion County Circuit Court, Marion County, Oregon.

DECISION

Under 46 C.F.R. § 5.707(a), a person who appeals from a decision revoking a Coast Guard-issued mariner credential may file a written request for a temporary credential as long as the revocation did not result from an offense enumerated in 46 C.F.R. § 5.59 (misconduct for wrongful possession, use, sale, or association with dangerous drugs; use or addiction to the use of dangerous drugs; or conviction for a violation of the dangerous drug laws). Because the revocation of Respondent's merchant mariner credential did not result from an offense set out in 46 C.F.R. § 5.59—a drug-related offense—his request for issuance of a temporary credential could properly be entertained by the ALJ.

A determination on such a request must “take into consideration whether the service of the individual is compatible with the requirements for safety at sea and consistent with applicable laws.” 46 C.F.R. § 5.707(c). Consideration of the mariner’s compatibility with safety at sea “serves to balance two conflicting policies: first, removal of an unfit mariner from the industry and elimination of further risk of harm to the public and, second, protection of an accused mariner’s due process right to state his case on appeal without having already suffered the penalty, as well as the financial hardship, imposed by the decision at the hearing level.” *Appeal Decision 2499 (AILSWORTH)* (1990). 46 C.F.R. § 5.707(c) establishes a presumption of incompatibility with safety at sea in the case of an offense enumerated in 46 C.F.R. § 5.61(a). Because Respondent was not charged with any offense enumerated in § 5.61(a), a presumption of incompatibility with safety at sea was not established in this case.

When a presumption of incompatibility is not present, “the decision to grant or deny a temporary document or license must be based on a predictive judgment concerning that charge alone,” as opposed to other derogatory information. *Commandant v. Tombari*, NTSB Order No. EM-150 (1988). A denial is not justified “by simply restating, without more, the charges and specifications of the case.” *Appeal Decision 2499 (AILSWORTH)* (1990). The decision must “explain why appellant is ineligible for a temporary license under the applicable regulatory standard” and do more than merely state the offense found proved to justify denial of a temporary license. *Commandant v. Moore*, NTSB Order No. EM-200 (2005) (citing *Commandant v. Lyons*, NTSB Order No. EM-141 (1987)).

In the case at hand, in denying Respondent’s temporary license request, the ALJ began by discussing Respondent’s prior involvement in two other suspension and revocation actions. While the ALJ acknowledged that temporary credentials had been issued in both of those cases, he took notice of a key factual distinction in the present case: while the violations in those earlier cases did not place passengers or other vessels in significant danger, the same could not be said of the circumstances in this case. The ALJ stated:

... Respondent’s lack of truthfulness and cooperation with the Coast Guard in this case is of far greater concern. Providing false information does not create a presumptive reason to deny a temporary document, but my Decision also found

that Respondent has a clear disregard for Coast Guard rules and regulations. Safe operation requires, among other things, timely and accurate notification of casualties. From this record, I am not confident that Respondent can and will continue to operate safely if permitted to hold a temporary credential.

[ALJ Decision Denying Temporary Credential at 5]

The ALJ also found that because Respondent was convicted of an offense that would prevent issuance or renewal of a mariner credential (the pollution offense), he could no longer be deemed qualified to hold such credential and his continued service would be inconsistent with Coast Guard licensing regulations. This does not support a determination that Respondent's service would be inconsistent with safety.

Nevertheless, the ALJ's first rationale sufficiently supports the denial of a temporary credential. The ALJ articulated a clear rationale to support a reasonable predictive judgment that Respondent's continued service would be inconsistent with safety at sea. I agree with the ALJ that Respondent's lack of truthfulness during the casualty investigation and his manifested clear disregard for Coast Guard regulations show that his service is incompatible with safety at sea. I see no error in his denial of a temporary credential to Respondent. Respondent's appeal is denied.

ORDER

The ALJ's Order dated October 13, 2016, is **AFFIRMED**.

Cees J. [Signature] ADM, USCG

Signed at Washington, D.C. this 23rd day of March 2017.