

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
	:	
vs.	:	ON REQUEST FOR
	:	
	:	TEMPORARY LICENSE
MERCHANT MARINER LICENSE	:	
	:	
<u>Issued to: BYRON ANTHONY TROSCLAIR</u>	:	

On April 23, 2014, an Administrative Law Judge (hereinafter “ALJ”) of the Coast Guard issued a Decision and Order revoking the Merchant Mariner Credentials of Mr. Byron Anthony Trosclair (hereinafter “Respondent”) upon finding proved two charges of negligence (failure to provide a safe method of transferring passengers from vessel to work platform; failure to provide rescue assistance) and one charge of misconduct (failure to render assistance following a marine casualty). The charges arose from Respondent’s operation, as Master, of the M/V STARFLEET PATRIOT on February 16, 2011, when, during passenger transfers between the STARFLEET PATRIOT and an oil platform, a passenger fell into the water; the passenger subsequently died of a heart attack.

On May 16, 2014, Respondent filed a Notice of Appeal in the matter. He perfected his appeal by filing an Appellate Brief on June 19, 2014. The Coast Guard filed a Reply Brief on July 25, 2014, and the matter was forwarded for appellate action on July 29, 2014.

In a letter dated July 29, 2014, Respondent requested issuance of a Temporary License during the pendency of his appeal. Respondent’s request was forwarded to me

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on August 14, 2014. Pursuant to 46 C.F.R. § 5.707(b), I now take action on Respondent's request.

SUMMARY OF FACTS

Respondent was the Master of a vessel that daily transported oil platform workers to a platform in the Gulf of Mexico on February 13-16, 2011. The passengers disembarked from the stern of the vessel, five feet above the sea surface, to a deck of the platform, ten feet above the sea surface, with the assistance of a rope swing. Typically, there was a gap of five to seven feet laterally between the stern of the vessel and the deck of the platform. On February 13-15, the passengers had requested that the vessel be positioned closer to the platform; Respondent had refused all such requests. On the evening of February 15, a "jump platform" four feet tall was placed on the stern of the vessel to make the transfer easier, but on February 16, choppy sea conditions with one- to two-foot waves still made the transfer difficult.

Respondent knew his passengers had been having difficulty making the rope swing transfer. Nevertheless, on February 16, 2011, he acquiesced in again positioning the vessel five to seven feet from the platform. After four or five passengers had transferred to the platform, one passenger attempted but failed to make the transfer and fell into the sea. Thereafter, the vessel moved away from the platform while workers on the platform attempted to rescue the overboard passenger. The overboard passenger was in the sea for twenty-five to thirty minutes before he was lifted to the deck of the platform. Meanwhile, the vessel never deployed its man-overboard platform and none of its personnel provided any rescue assistance while the passenger was in the sea. Despite lifesaving efforts including CPR, the passenger apparently succumbed to a heart attack.

DETERMINATION

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

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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).

Since the revocation at issue did not result from a drug offense, Respondent's temporary license request may properly be entertained. Under the applicable regulations, my determination in response to that 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). However, "If one of the offenses enumerated in §5.61(a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant. A temporary credential or endorsement may be denied for that reason alone." *Id.*

In this case, Respondent is charged with both negligence and misconduct. Negligence is not listed in 46 C.F.R. § 5.61(a). However, "Misconduct resulting in loss of life or serious injury" is listed as 46 C.F.R. § 5.61(a)(2), giving rise to a presumption of incompatibility with safety in accordance with 46 C.F.R. § 5.707(c).

Respondent was charged with misconduct for failure to render assistance, and loss of life ensued. However, the loss of life resulted from a heart attack and the record is insufficient to demonstrate that the failure to render assistance resulted in the heart attack and death. But for Respondent's negligent acts and misconduct together, the loss of life almost certainly would not have occurred, but since I cannot conclude on the evidence that the misconduct found proved alone resulted in loss of life or serious injury, this case does not fall within 46 C.F.R. § 5.61(a) and there is no presumption of incompatibility with safety at sea.

I am left with the question of whether the maritime service of Respondent is compatible with safety at sea. This question must be answered based on the record of the proceeding against Respondent's Credentials; no other evidence has been presented with the request for a Temporary License.

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Respondent was the Master of the vessel during the period of February 13-16, 2011. (Decision & Order (D&O) at 5, Finding of Fact 6) Although the mate was at the helm during the relevant period on February 16, Respondent was in the wheelhouse. (D&O at 8, Findings of Fact 28-29) Respondent had received several requests from passengers on the three preceding days to move the vessel closer to the platform so as to ease the transfer, but he refused. (D&O at 7, Finding of Fact 24) Respondent also knew that some passengers were having difficulty with the transfer on the preceding days. (D&O at 8, Finding of Fact 25) On February 16, sea conditions were choppy, with one- to two-foot waves. (D&O at 8, Finding of Fact 27) As on the preceding days, the vessel was positioned five to seven feet away from the platform deck to which the passengers were transferring. (D&O at 8-9, Finding of Fact 31) It is clear from these circumstances that Respondent had insufficient concern, at best, for the safety of his passengers. This lack of concern is clearly incompatible with safety.

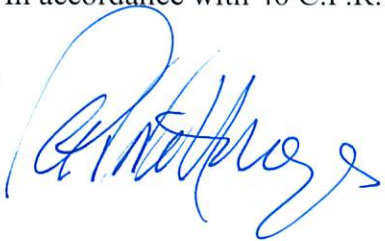
Moreover, after one of the passengers fell into the sea, the vessel moved eighty to one hundred feet away from the platform and remained there while workers on the platform rescued the overboard passenger. (D&O at 9, Finding of Fact 36) Respondent and his crew failed to deploy the vessel's man-overboard platform and failed to provide any rescue assistance. (D&O at 9, Findings of Fact 37-39) This passive conduct was an egregious departure from the standard expected of a master. *See Reyes v. Vantage S.S. Co., Inc.*, 609 F.2d 140, 142 (5th Cir. 1980); *Gardner v. National Bank Carriers, Inc.*, 310 F.2d 284, 286 (4th Cir. 1962) ("The universal custom of the sea demands [that the ship shall use every reasonable means to save the life of a human being] wherever human life is in danger."); *Smith v. Reinauer Oil Transport, Inc.*, 256 F.2d 646, 651 (1st Cir. 1958) (there is an affirmative duty to use care to rescue a seaman who has fallen overboard from whatever cause); *Cortes v. Baltimore Insular Lines*, 287 U.S. 367, 377 (1932) ("There is little doubt that rescue is a duty [of the employer] when a sailor falls into the sea."). These cases discuss the ship's duty to seamen employed on the vessels involved. At least as great a duty, if not a greater duty, is owed to passengers aboard a

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vessel. Furthermore, 46 U.S.C. § 2303(a)(1) requires the master of a vessel involved in a marine casualty to render necessary assistance to save from danger anyone affected by the casualty. Respondent's departure from and apparent disregard for the longstanding customs of the sea, as well as from the requirement of 46 U.S.C. § 2303(a)(1), is unquestionably incompatible with safety at sea.

ORDER

In accordance with 46 C.F.R. § 5.707(b), the request for a temporary license is denied.

A handwritten signature in blue ink, appearing to be "R. H. H. H.", is written over the word "denied." in the previous block.

Signed at Washington, D.C. this 15th day of SEPTEMBER, 2014.