

SERVED: July 28, 2011

NTSB Order No. EM-209

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 20th day of July, 2011

_____)	
ROBERT J. PAPP, JR.,)	
Commandant,)	
United States Coast Guard,)	
)	
Appellee,)	
)	Docket ME-183
v.)	
)	
ERIC N. SHINE,)	
)	
Appellant.)	
_____)	

OPINION AND ORDER

Appellant, proceeding pro se, seeks review of the Vice
Commandant's¹ decision on appeal (CDOA) 2689,² dated

¹ The Commandant has delegated to the Vice Commandant the
authority to take final action in suspension and revocation
proceedings.

² Appellant also seeks review of CDOAs 2661 and 2644, dated
December 27, 2006 and February 2, 2004, respectively. We will
address these CDOAs below.

September 30, 2010, which affirmed a decision and order issued by Coast Guard Administrative Law Judge (ALJ) Walter J. Brudzinski on November 13, 2008, following an evidentiary hearing held on May 20-23, 2008.³ By that decision, the law judge denied appellant's appeal of the Coast Guard's March 6, 2003 complaint, specifically finding appellant medically incompetent to hold a certificate due to a major depressive disorder and a psychiatric condition under 46 U.S.C. § 7703⁴ and 46 C.F.R. § 5.61.⁵ The law judge ordered revocation of appellant's license and any other merchant mariner credentials issued by the Coast Guard. After careful review of the entire record, we deny appellant's appeal.⁶

³ Copies of the decisions of the Vice Commandant and law judge are attached.

⁴ Section 7703 provides that a license, certificate of registry, or merchant mariner document may be suspended or revoked if the holder, while acting under authority of that license, commits an act of incompetence.

⁵ Section 5.61 provides that an investigating officer may seek revocation of a license, certificate, or document when incompetence is proven.

⁶ Appellant requested oral argument pursuant to 49 C.F.R. § 825.25(a). In reviewing the more than 20,000 pages of pleadings, transcripts, and briefs in this case, we find no good cause exists to grant oral argument in this case. Additionally, we partially granted appellant's motion to extend the page limit of his brief, allowing him to submit 50 pages.

Facts

This case proceeded to hearing after 5 years of highly contested litigation that included several hundred filings, an interlocutory appeal to the Commandant, and an appeal to the Commandant from a granting of summary judgment, which ultimately resulted in a remand to the law judge for a hearing. The law judge's decision and order (D&O), attached hereto, contains a detailed summary of the testimony and evidence presented at the hearing. As we find no basis to challenge the law judge's findings of fact, this opinion and order only includes a summary of the evidence as necessary to resolve the appeal before us.

On June 1, 2000 and July 5, 2001, the Coast Guard issued appellant merchant mariner credentials. Coast Guard Exhibit (CG Exh.) 2. From March 6 to June 11, 2001, appellant served as a third engineer and second engineer aboard the Steamship (SS) MAUI, operated by Matson Navigation. Chief Engineer Cecil Ray supervised appellant aboard the SS MAUI. Mr. Ray received his merchant mariner license after graduating from the Coast Guard Academy in 1970 and had extensive experience managing people. Mr. Ray testified he had daily interactions with appellant while appellant was aboard the SS MAUI, and found him extremely difficult to manage. Mr. Ray eventually had appellant

discharged from the SS MAUI for cause.⁷ Appellant's performance rating aboard the SS MAUI cited him as being "totally unreasonable." CG Exh. 5.

From December 2, 2001 to January 5, 2002, appellant served as a third engineer aboard the Motor Vessel (M/V) PRESIDENT JACKSON, operated by American Ship Management. First Engineer Allen Hochstetler supervised appellant aboard the M/V PRESIDENT JACKSON. Mr. Hochstetler testified appellant would often argue with him about how to perform a task and would not follow orders. Eventually, as he was afraid for appellant's safety and the safety of others aboard the ship, Mr. Hochstetler assigned appellant menial and time-consuming welding tasks to keep appellant occupied. After experiencing numerous problems with appellant's behavior, Mr. Hochstetler submitted an email to the ship's captain explaining that appellant's behavior caused him to "fear for the safety of [his] being and [his] livelihood" and requested he be relieved of duty rather than supervise appellant on the next voyage. CG Exh. 12. Several other crewmembers also filed complaints about appellant's behavior. As a result, the master discharged appellant from the M/V PRESIDENT JACKSON, noting in the ship's log,

⁷ Maston Navigation later rescinded the discharge for reasons unknown to Mr. Ray.

Eric Shine, 3rd Assistant Engineering Officer has been insubordinate and intimidating crew and officers of this vessel. Eric Shine has exhibited confrontational, unprofessional and aggressive behavior. Eric Shine has failed to follow lawful orders and making [sic] threats of litigation against several officers and the company.

The above offenses represent misconduct and therefore, Eric Shine is hereby discharged for cause. Mr. Shine's continued presence aboard the vessel creates an un-seaworthy condition.

CG Exh. 19 at 21.

In addition to calling Messrs. Ray and Hochstetler as witnesses, the Coast Guard called Doctor (Captain) Arthur French, III, as an expert witness. Dr. French, though not a psychologist or psychiatrist, was the Chief of the Medical Evaluations Branch at the National Maritime Center and throughout his 24-year medical career worked extensively with psychological disorders as an emergency room doctor and as a flight surgeon. In preparation for the hearing, Dr. French reviewed all of appellant's medical records. He noted appellant filed workers' compensation disability claims after being discharged from the M/V PRESIDENT JACKSON, claiming he suffered from severe depression or a mood disorder. See CG Exh. 24, 25, and 70. He also noted that in January 2003, appellant was hospitalized. As part of the intake diagnosis, the treating doctor noted, "bipolar manic/depressive disorder not otherwise specified. Most recently depressed with mood congruency in the

form of paranoid delusions" and went on to state that the "patient was encouraged to undergo personality testing to rule out narcissistic/paranoid personality traits." CG Exh. 71 at 1. Dr. French explained that a doctor provides a "rule out" diagnosis when the doctor has insufficient information to make a diagnosis, but suspects such a diagnosis. After listening to the testimony of Messrs. Ray and Hochstetler, Dr. French testified that appellant's behavior aboard the SS MAUI and M/V PRESIDENT JACKSON was consistent with the diagnoses of major depression and personality disorders he observed in appellant's medical records. Specifically, he stated appellant's continual argumentativeness, inflexibility, and inability to follow orders all were characteristics indicative of these personality disorders. Dr. French also noted appellant's behavior at the hearing was consistent with the diagnoses in appellant's medical records.

In concluding his testimony, Dr. French stated he would not find appellant competent to hold merchant mariner credentials. He based this conclusion on a review of appellant's medical records, the testimony of Messrs. Ray and Hochstetler regarding appellant's behavior aboard the ships, and on personally observing appellant's erratic behavior during the hearing.

Procedural history

As a result of the incidents involving appellant aboard the SS MAUI and the M/V PRESIDENT JACKSON, the Coast Guard opened an investigation and, ultimately, issued a complaint to revoke appellant's merchant mariner credentials on March 6, 2003. The complaint alleged appellant acted under the authority of his credentials while serving on the SS MAUI and the M/V PRESIDENT JACKSON. CG Ex. 1 at 1. It further alleged appellant "is medically incompetent [to hold credentials] due to a depressive disorder, or other psychiatric condition." CG Exh. 1 at 2.

Appellant, initially represented by counsel, appealed.⁸ The case was assigned to Administrative Law Judge Parlan McKenna. Judge McKenna issued three orders requiring appellant to submit to a psychological evaluation by an independent doctor, dated July 30, 2003, August 4, 2003, and September 8, 2003. Appellant refused to comply with these orders and instead submitted to an evaluation by a doctor of his choosing.

Through counsel, appellant filed a motion requesting Judge McKenna recuse himself, which the law judge denied on November 20, 2003. Appellant, pro se, subsequently filed a 48-

⁸ Appellant was represented by counsel from two different law firms during the proceedings before Judge McKenna. Both attorneys moved to withdraw during the course of the proceedings.

page motion (including 3 volumes of 64 attachments) in an interlocutory appeal of the denial to the Commandant. The Vice Commandant issued CDOA 2644 on February 2, 2004, finding the recusal issue not ripe for review.⁹

On February 20, 2004, Judge McKenna granted the Coast Guard's contingent motion for summary judgment. In granting summary judgment, the law judge largely relied on appellant's refusal to submit to the psychological evaluation in drawing a negative inference regarding appellant's competency. Appellant, who then proceeded pro se, appealed Judge McKenna's decision to the Commandant.¹⁰

In CDOA 2661, dated December 27, 2006, the Vice Commandant vacated the summary judgment decision and remanded the case for a hearing. In that decision, the Vice Commandant noted the case presented an issue of first impression for the Coast Guard regarding the standard of review for a law judge to apply in granting a motion for summary judgment. The Vice Commandant found the law judge needed to hold a hearing to review the Coast Guard's evidence as well as the contrary evidence presented by

⁹ See 33 C.F.R. § 20.204(b)(2) which states, "[i]f an ALJ denies a motion to disqualify herself or himself, the moving party may, according to the procedures in subpart J of this part, appeal to the Commandant once the hearing has concluded" [emphasis added].

¹⁰ Appellant's counsel formally moved to withdraw on April 12, 2004.

appellant's expert witness, to properly resolve whether appellant suffered from a major depressive disorder or psychiatric condition.

Immediately following the remand, Judge McKenna recused himself. Administrative Law Judge Brudzinski subsequently was assigned the case on January 30, 2007. Because of the large number of filings and the length of those filings in this case, Judge Brudzinski held a prehearing conference on October 23, 2007, to resolve several outstanding motions.¹¹ On February 26, 2008, Judge Brudzinski ordered appellant to submit to a psychological examination. Appellant, once again, refused to undergo an examination.

The case proceeded to hearing on May 20-23, 2008. At the hearing, the Coast Guard called the 3 witnesses, as summarized above, and introduced 71 exhibits. Appellant did not call any witnesses or testify on his own behalf at the hearing. He introduced 2 exhibits into evidence and started to introduce an additional 178 exhibits, but later withdrew them.

The law judge permitted the parties to file post-hearing briefs. Appellant filed a 173-page post-hearing brief with 18 attachments in 3 volumes totaling several thousand pages,

¹¹ Prior to the remand, there were 179 filings in this case. Post remand, there were another 73 filings. Numerous filings were over 100 pages in length; several filings were over 1000 pages in length.

which included a 161-page affidavit from appellant. The Coast Guard did not submit a post-hearing brief.

On November 13, 2008, Judge Brudzinski issued his D&O. In addressing appellant's issues on appeal, the law judge noted,

[D]ue to the convoluted nature of most of [appellant's] arguments, it would have been within the power of the undersigned to dismiss such arguments outright as being not probative and without merit. However, the undersigned has attempted to decipher [appellant's] arguments. After reviewing the transcript in-depth and upon studying [appellant's] 170 post-hearing brief topics, the undersigned determined [appellant's] arguments fall within five (5) general categories.

D&O at 26. The law judge denied appellant's appeal, finding the Coast Guard proved appellant was acting under the authority of his credentials while aboard the SS MAUI and M/V PRESIDENT JACKSON, and was incompetent. He concluded appellant "is suffering from mental impairments of sufficient disabling character to support a finding that he is not competent to perform safely his duties aboard a merchant vessel." D&O at 39. Therefore, Judge Brudzinski ordered revocation of appellant's merchant mariner license and any other credentials issued by the Coast Guard.

Appellant subsequently appealed the law judge's decision to the Commandant, filing a 534-page brief with well-over 1000 pages of attachments weighing nearly 22 pounds. On appeal, appellant purported to raise 149 issues. The Vice Commandant

affirmed the law judge's decision on September 30, 2010. In reaching her decision and analyzing the issues, the Vice Commandant noted:

To ascertain [appellant's] salient arguments has proven a painstaking and arduous task, given the sheer volume of [appellant's] post D&O-filed pleading and his almost complete failure to clearly present the basis for appeal or to cite to portions of the record supporting his issues as required by 33 C.F.R. § 20.1003(a)(1) ... [Appellant] has filed a multitude of ambiguous pleadings, leaving it to the undersigned to attempt to identify the issues suitable for review. A laborious assessment of [appellant's] filing has resulted in identifying the following twelve issues for consideration on appeal. Any other issues, points of discussion, or questions raised by [appellant], not enumerated below, are beyond the scope of appealable issues ... and are deemed immaterial, irrelevant or unduly repetitious and are hereby denied.

CDOA at 7.

Issues on appeal

Appellant now appeals to this Board. Much like appellant's briefs to the law judge and Vice Commandant, we find it extremely difficult to ascertain appellant's issues on appeal. Despite appellant's repeated use of the phrase "CMDT erred CFR 825.15" throughout his brief, we find appellant's brief does not generally comport with the requirements of 49 C.F.R. §§ 825.15 and 825.20. However, after a painstaking and laborious review of appellant's brief subsequent to reviewing the entire record, we have identified eight general issues for consideration on appeal. Appellant contends the Board has

jurisdiction to review all 3 CDOAs—2689, 2661, and 2644—and that the Coast Guard lacked jurisdiction over this case. He alleges both law judges were biased and should have recused themselves from his case. Appellant claims the excessive delays and length of time it has taken to process this case have prejudiced his due process rights. He also claims the Coast Guard violated his due process rights since the Coast Guard did not provide him with counsel. He believes the law judge erred in ordering him to submit to a medical evaluation. He further asserts the law judge improperly admitted the Coast Guard's evidence while erroneously excluding his evidence and witnesses. Finally, appellant alleges the law judge's D&O is not supported by reliable, probative, and substantial evidence. The Coast Guard contests each of these arguments and urges us to affirm the Vice Commandant's appeal decision.

While we anticipate, based upon appellant's briefs to the Vice Commandant and to this Board, appellant will contend our analysis overlooks numerous issues raised in his appeal, we hold that any other issues purportedly raised in appellant's brief and not specifically addressed in this opinion and order are either subsumed by the issues listed above or are deemed denied as immaterial, irrelevant or unduly repetitious.

Jurisdiction of the Board

Appellant seeks de novo review by the Board of CDOAs 2689, 2661, and 2644. In CDOA 2689, the Vice Commandant affirmed Judge Brudzinski's D&O; in CDOA 2661, the Vice Commandant vacated Judge McKenna's decision granting summary judgment for the Coast Guard and remanded the case for a hearing; and in CDOA 2644, the Vice Commandant dismissed, without prejudice, appellant's interlocutory appeal regarding the recusal of Judge McKenna as not ripe.

While we reviewed the entire record, including the filings and rulings relevant to CDOAs 2661 and 2644, as part of our de novo review of this case, we lack jurisdiction to review CDOAs 2661 and 2644 in this appeal. Under our Rules of Practice, "[a] party may appeal from the Commandant's decision sustaining an order of revocation ... by filing a notice of appeal with the Board within 10 days after service of the Commandant's decision."¹² Accordingly, appellant only timely appealed CDOA 2689 to the Board.

Furthermore, we note CDOA 2644 is moot. In his interlocutory appeal, appellant sought Judge McKenna's recusal from the case. Judge McKenna recused himself after the

¹² See 49 C.F.R. § 825.5(a).

Commandant vacated his order and remanded the case. The Coast Guard's procedural rules permit the Commandant to remand a case to a Coast Guard administrative law judge: "[t]he Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings."¹³ In CDOA 2661, the Vice Commandant found error; thus, appellant was the prevailing party. Therefore, our jurisdiction concerning this appeal is limited to reviewing CDOA 2689.

Jurisdiction of the Coast Guard

In his filings, at the hearing, and in his briefs to the law judge, the Commandant, and to us, appellant repeatedly has argued the Coast Guard lacks jurisdiction over his case. His arguments widely vary. Among his arguments, he claims the Shipping Commissioner's Act of 1871 [sic] should apply to the proceedings.¹⁴ Appellant also contends he is a civilian and the Coast Guard subjected him to an unlawful military tribunal. At the same time, he claims he is a lieutenant in the Navy being

¹³ 33 C.F.R. § 20.1004(a).

¹⁴ The Shipping Commissioners Act of 1872 was a United States law that governed mariners serving in the U.S. Merchant Marine. It has been superseded since 1872. The current rules governing merchant mariners are contained in Titles 33 and 46 of the Code of Federal Regulations.

subject to a military proceeding under the Uniform Code of Military Justice, by the Coast Guard, which is not a military branch of service. He asserts the Coast Guard is subjecting him to posse comitatus.¹⁵ He claims the case is barred under double jeopardy. And repeatedly, he argues the proceedings were criminal; thus, he contends the Federal Rules of Evidence and the Federal Rules of Criminal Procedure should have applied. We find all these arguments without merit.

The Coast Guard clearly had jurisdiction over appellant's revocation proceedings. Appellant held merchant mariner credentials issued by the Coast Guard. See CG Exh. 2; see also Answer at 2 (Apr. 9, 2003). Congress gave the Secretary of the Department of Homeland Security "general superintendence over the merchant marine of the United States and of merchant marine personnel ... In the interest of marine safety and seamen's welfare, the Secretary shall enforce this subtitle."¹⁶ The Secretary delegated this authority to the Commandant of the United States Coast Guard.¹⁷ Congress specifically gave the Secretary jurisdiction over merchant mariner licenses, certificates of registry, and documents. In relevant part, the

¹⁵ 18 U.S.C. § 1385 (the Posse Comitatus Act prohibits members of the military from exercising state law enforcement powers on non-federal property within the United States).

¹⁶ 46 U.S.C. § 2103.

¹⁷ See Department of Homeland Security Delegation No. 0170.1.

statute states, "[a] license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder ... (4) has committed an act of incompetence relating to the operation of a vessel."¹⁸

Congress also specified that merchant marine suspension and revocation hearings would be governed by administrative procedures.¹⁹ We find the Coast Guard properly conducted these proceedings under the Administrative Procedure Act and the applicable Coast Guard regulations governing suspension and revocation proceedings.²⁰ The record clearly establishes the proceedings were not conducted as military tribunals, as proceedings under the Uniform Code of Military Justice, or in any other manner alleged by appellant. Furthermore, because the proceedings were administrative, the Federal Rules of Evidence and of Criminal Procedure were inapplicable here.²¹ Likewise, the doctrine of double jeopardy is inapplicable in cases subject to our review.²²

¹⁸ 46 U.S.C. § 7703(4).

¹⁹ 46 U.S.C. § 7702(a).

²⁰ See generally 5 U.S.C. §§ 551-559 and 33 C.F.R. §§ 20.101-809.

²¹ See Bennett v. NTSB, 66 F.3d 1130, 1137 (10th Cir. 1995).

²² See generally, Administrator v. Sardina, NTSB Order No. EA-4605 (1997).

Bias and recusal of the law judges

Appellant contends Judge Brudzinski and Judge McKenna should have recused themselves. Among other contentions, appellant argues Judge Brudzinski was biased because he was a former Coast Guard officer and a former prosecutor. Appellant further believes Judge Brudzinski was biased because he refused to vacate every order issued by Judge McKenna. Finally, he states Judge Brudzinski referred to appellant's "disease" during the hearing, indicating the law judge prejudged the outcome of the case.

We have held the standard of review for determining judicial bias is not simply whether actual bias or prejudgment had been demonstrated, but also whether the circumstances presented an unacceptable appearance concerning the law judge's impartiality.²³ In closely examining the entire record in this case, we find no evidence of actual bias or prejudgment nor do we find the appearance of bias.

Any issue involving Judge McKenna's alleged bias became moot in January 2007 when he sua sponte recused himself from the case under 33 C.F.R. § 20.204(b). Additionally, we note the record up to the point of Judge McKenna's recusal provides no evidence of any bias—actual or otherwise—on Judge McKenna's

²³ Commandant v. Dresser, NTSB Order No. EM-195 at 3 (2003); see also 28 U.S.C. § 455(a).

part. The record establishes he was an impartial arbiter in this case.²⁴

Appellant produced no evidence that Judge Brudzinski's prior work as a Coast Guard officer and prosecuting attorney biased him against appellant. We likewise find no merit in appellant's argument that Judge Brudzinski erred by not vacating every prior order and ruling of Judge McKenna. Most of Judge McKenna's rulings concerned discovery issues and requests for extensions of time. Additionally, regardless of the prior rulings, appellant continued to re-litigate most issues raised before Judge McKenna with Judge Brudzinski. Therefore, Judge Brudzinski's ruling, with regard to Judge McKenna's prior rulings, was reasonable under the circumstances.

Finally, appellant claims Judge Brudzinski prejudged his case by referring to appellant as having a "disease" at one point during the hearing. We find no merit to this claim. While Judge Brudzinski appeared frustrated at times during the

²⁴ Judge McKenna granted numerous extensions of time for appellant. He permitted appellant to release his first counsel and gave appellant time to obtain new representation. He ordered an in-person preconference hearing. He gave appellant three opportunities to comply with his order for a mental health examination. Overall, the chronology of the pleadings shows Judge McKenna ruled on the motions in a timely manner after providing both parties with opportunity to respond. Furthermore, appellant does not articulate how Judge Brudzinski's failure to vacate all of Judge McKenna's orders caused appellant to suffer prejudice.

hearing, as noted on the record, and made comment about appellant's disease at one point,²⁵ the record is devoid of evidence supporting a finding that the law judge harbored any actual or appearance of bias toward appellant or that the law judge prejudged the case. A review of the transcript clearly shows the law judge presided over a particularly difficult hearing. Appellant acted in an extremely disruptive manner throughout the hearing. During the course of the 4-day hearing, appellant objected over 400 times, and he continually interrupted the law judge, the Coast Guard attorney, and the witnesses. Appellant commented to the law judge that he "was not a real judge" so appellant did not have to respect him. He continued interrupting the proceedings despite repeated attempts by the law judge to control the situation. Immediately prior to the law judge making the comment about appellant's "disease,"

²⁵ At this point in the record, the law judge remarked,

I missed that last bit of testimony because of the disruptive behavior of [appellant] ... If the hearing is frustrating and I can't hear anything—I'm letting this go to let the record reflect how disruptive this is. If I can't hear anything then I'm going to have to have [appellant] removed from the courtroom. I've given him warning, after warning, after warning, after warning, and he still does not understand. Perhaps it's the disease. Perhaps it's a combination of a lot of things. I don't know. He just is constantly interrupting ... I have never ever seen such disruptive behavior.

appellant's behavior became so disruptive the law judge requested the presence of security in the courtroom.

Additionally, the law judge, considering appellant was pro se, spent 2 days of the hearing attempting to explain procedures to appellant and, to the extent permissible under the rules, trying to assist appellant in introducing his 178 exhibits. Although not required by the rules, the law judge permitted parties to submit post-hearing briefs, further demonstrating he provided appellant multiple opportunities to present his case. Nothing in the record before us suggests the law judge prejudged the case or based his decision on anything but the evidence adduced at the hearing, and thus, we find no reason for the law judge to have recused himself from the hearing. Given the circumstances, we find the law judge conducted the hearing as professionally as possible.

Case delays

Appellant claims a violation of his due process rights because of the excessive delays in processing this case. At the same time, he asserts the law judge erred in not giving him sufficient time to put together his exhibits for the hearing and we erred in not providing him more time to file his brief with the Board.

In examining appellant's claim that the Coast Guard violated his due process rights by causing excessive delay in

his case, we adopt the Coast Guard's analysis of determining due process violations with regard to delays.²⁶ Therefore, to determine if an appellant's due process right to timely action was violated, we will examine the length of delay, the reasons for the delay, any delay attributable to the appellant (e.g., whether the appellant asserted a right to timely processing), and the prejudice suffered by the appellant as a result of the delay.

Under 46 C.F.R. § 5.55, the Coast Guard must serve a complaint related to an act of incompetence within 5 years of the commission of the act. In this case, the alleged acts of incompetence occurred between March 6, 2001, and January 5, 2002. The Coast Guard served the complaint on March 6, 2003, which was in compliance with the 5-year time limit. During that timeframe from January 2002 to March 2003, the record shows the Coast Guard was working to obtain the various medical records and disability claims filed by appellant to support the complaint. Thus, this period of delay was not unreasonable.

²⁶ See Appeal Decision 2064 (WOOD); Appeal Decision 1972 (SIBLEY). This test essentially mirrors the balancing test for determining speedy trial violations established by the United States Supreme Court in Barker v. Wingo, 407 U.S. 514, 530 (1972). While Barker was a criminal case, other courts have applied similar balancing tests in examining appellate delays, see, e.g., Coe v. Thurman, 922 F.2d 528, 531-32 (9th Cir. 1990); and in examining delays by administrative agencies, see, e.g., Telecomm. Research and Action Ctr. v. FCC, 750 F.2d 70, 80 (D.C. Cir. 1984).

From service of the complaint until the Vice Commandant issued CDOA 2689, over 7 years passed. However, during that period of time, the record contained over 250 filings totaling well over 15,000 pages, several transcribed prehearing conferences, and a 4-day hearing. Appellant filed three separate appeals with the Vice Commandant, one of which resulted in a remand for a hearing.

Under the circumstances of this case, we find no unreasonable delay in the processing of the case. Much of the delay in this case is attributable directly to appellant.²⁷ He filed numerous requests for extensions of time. He refused to comply with 4 orders to submit to mental health examinations. Appellant's filings, especially after he became pro se, were extremely lengthy and difficult to understand. The record clearly shows Judge McKenna and Judge Brudzinski both worked diligently to ensure appellant received a fair and complete hearing. Both conducted prehearing conferences on the record for the benefit of appellant. We find the law judges acted reasonably and timely in processing the case.

The Vice Commandant also had a herculean task in reviewing the record on appeal. In CDOA 2661, the Vice Commandant

²⁷ We note appellant never asserted a right to timely processing; however, given the administrative nature of these proceedings and appellant's pro se status for much of the time, we decline to draw any negative inference from this fact.

remanded the case, ensuring appellant received a full hearing on the issue of his competency. The remand obviously caused further delay in this case, but also benefitted appellant and protected his due process rights. In CDOA 2689, the Vice Commandant thoroughly reviewed the extremely lengthy record and the law judge's D&O before issuing a detailed decision. Despite the passage of time, we find the overall processing of this case reasonable under the unique circumstances involved here.

Even assuming the delay was excessive and unreasonable, we find appellant has shown no prejudice. Appellant cannot point to an unavailable witness or lost documentary evidence suffered as a result of the delay or any other type of prejudice. Overall, we conclude appellant's due process rights were not violated due to the processing time of this case.

Related to this issue, we also find no prejudice to appellant in the denial of extensions of time by the law judge and by the Board. Appellant requested a 2-week delay at the end of the Coast Guard's case to put together his exhibits for the hearing. As the law judge pointed out at the hearing, appellant had been on notice of the hearing date and therefore had sufficient time to organize his exhibits. As discussed below, the law judge repeatedly tried to accommodate appellant and assist him in introducing his exhibits but, in the end,

appellant refused to introduce the exhibits. Under the Board's rules, an appellant's brief is due to the Board within 20 days of filing a notice of appeal.²⁸ The Board granted appellant three 30-day extensions of time (90 days total). We find this to be more than a reasonable amount of time.

Right to counsel

Appellant contends his due process rights were violated because the Coast Guard should have provided him counsel. Appellant was represented by counsel until shortly after Judge McKenna granted summary judgment.²⁹

While 33 C.F.R. § 20.301 provides that a party may be represented by counsel, suspension and revocation hearings are administrative proceedings, not criminal. Therefore, appellant has no right to government-provided counsel.³⁰ Appellant was aware of his right to hire counsel or designate a representative, but chose not to retain additional counsel to

²⁸ 49 C.F.R. § 825.20(a).

²⁹ At various points in the record, appellant claimed his counsel did not represent him and was not authorized to act on his behalf but instead was hired by the shipping company and was being forced upon him.

³⁰ The 6th Amendment to the United States Constitution provides, "[i]n all criminal prosecutions, the accused shall ... have the assistance of counsel for his defense." See Austin v. United States, 509 U.S. 602, 608 (1993); M.L.B. v. S.L.J., 519 U.S. 102, 113 (1996); see also, Administrator v. Mize, NTSB Order No. EA-5580 (2011); Administrator v. Bakhit, NTSB Order No. EA-5489 (2009); Administrator v. Nadal, NTSB Order No. EA-5308 (2007).

assist in later proceedings.

Medical evaluation

Appellant argues the law judge violated his due process rights by ordering him to submit to a mental health evaluation prior to the hearing. On three occasions, Judge McKenna ordered appellant to submit to mental health evaluations, and on one occasion, Judge Brudzinski ordered a mental health evaluation. Appellant never complied with these orders.

In Coast Guard suspension and revocation hearings, 33 C.F.R. § 20.1313 provides, "[i]n any proceeding in which the physical or mental condition of the respondent is relevant, the ALJ may order him or her to undergo a medical examination. Any examination ordered by the ALJ is conducted, at Federal expense, by a physician designated by the ALJ." The central issue in this case involved appellant's competency to hold merchant mariner credentials. Under these circumstances, we find it appropriate for the law judge to order a mental health evaluation. The Vice Commandant overturned Judge McKenna's order granting summary judgment in which Judge McKenna drew a negative inference against appellant due to the lack of mental health examination. Overall, appellant does not explain how the law judge's order that he complete a mental health evaluation under 33 C.F.R. § 20.1313 violated his due process rights.

Evidence and witnesses

Appellant also contends the law judge's rulings on evidence and witnesses prejudiced him. Specifically, appellant argues the law judge improperly allowed the Coast Guard to introduce his medical records in violation of the physician-patient privilege. He asserts the medical records were unlawfully obtained and/or falsified by the Coast Guard. Additionally, he claims the law judge improperly excluded his documentary evidence and refused to issue subpoenas for his witnesses.

The physician-patient privilege does not apply for purposes of Coast Guard suspension and revocation proceedings.³¹ Furthermore, we find no evidence the Coast Guard illegally obtained any document in this case. To the contrary, the record shows the Coast Guard issued lawful subpoenas for medical records and obtained other documents from public records.³² Finally, the record is bereft of any evidence the Coast Guard falsified records; this is simply a baseless accusation by appellant.

We have long held law judges have significant discretion in overseeing testimony and evidence at hearings, and we typically

³¹ See 46 C.F.R. § 5.67.

³² We also note Judge McKenna issued a protective order for the medical records.

review law judges' evidentiary rulings under an abuse of discretion standard, after a party can show that such a ruling prejudiced him or her.³³ In the instant case, appellant has neither established that the law judge abused his discretion, nor demonstrated the law judge's alleged errors resulted in prejudice.

Turning to appellant's own exhibits and witnesses, we find appellant's arguments on these issues meritless as well. The law judge spent nearly two days of the hearing attempting to assist appellant in introducing his exhibits and in understanding procedures. The Coast Guard offered to stipulate to the admission of all of appellant's documentary evidence. Tr. at 679. However, appellant ultimately refused to introduce all but two exhibits. He repeatedly started to introduce exhibits, but then withdrew documents, asserting an attorney-client privilege. In the end, he only introduced two exhibits

³³ See generally Commandant v. Shea, NTSB Order No. EM-204 at 7 (2008). See also Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008) (citing Administrator v. Bennett, NTSB Order No. EA-5258 (2006), in which we held we will not overturn a law judge's evidentiary ruling unless we determine the ruling was an abuse of discretion); Administrator v. Martz, NTSB Order No. EA-5352 (2008); Administrator v. Zink, NTSB Order No. EA-5262 (2006); Administrator v. Van Dyke, NTSB Order No. EA-4883 (2001); Lackey v. FAA, 386 Fed. Appx. 689, 2010 WL 2781583 (9th Cir. 2010)). Cf. Administrator v. Ferguson, 352 Fed. Appx. 192, 2009 WL 3747426 (9th Cir. 2009) (holding that law judge erred in curtailing cross-examination of FAA witness, because witness was central to Administrator's case and ruling was therefore prejudicial).

at the hearing; however, the law judge provided the parties with the opportunity to present post-hearing briefs. In his post-hearing brief, appellant attached over 1,000 pages of documents for the law judge's consideration.³⁴ We find the law judge gave appellant every opportunity to introduce his documentary evidence and appellant failed to avail himself of these opportunities; the law judge did not abuse his discretion and appellant cannot show he suffered prejudice.

Likewise, we find no basis in appellant's claims that the law judge denied him witnesses. The law judge repeatedly informed appellant he could testify in his own defense. Appellant chose not to testify. Tr. at 680, 683, 684, 711, 741, 743, 769. The law judge also offered appellant the opportunity to call witnesses. Tr. at 714, 725, 743, 865. Instead of calling witnesses, appellant argued the law judge improperly refused to issue subpoenas to his witnesses.

Under 33 C.F.R. § 20.608, any party may request the law judge to issue a subpoena for witnesses to testify; however, the rule requires a showing that the evidence be relevant to the hearing. Appellant requested the law judge subpoena 130 witnesses for his case—the list included Senator Dianne

³⁴ It is not possible to determine from the record whether the documents attached to the brief were the same documents appellant was attempting to introduce at hearing.

Feinstein, Senator Barbara Boxer, Congressman Elijah Cummings, Admiral Thad Allen, and the law judge—but failed to proffer how these witnesses were relevant to the case. Therefore, the law judge refused to issue subpoenas.

Appellant made no attempt to call any witness, other than Cecil Ray, during his case. When he tried to call Mr. Ray, appellant could not articulate what new testimony he would elicit from Mr. Ray separate and apart from that obtained during cross-examination, so the law judge denied his request. In summary, the record establishes the law judge did not improperly prevent appellant from introducing documentary evidence or witness testimony at the hearing.

The law judge's D&O

Appellant generally attacks the law judge's D&O. He contends that each of the 53 findings of fact are erroneous; he claims the D&O contains hundreds of errors; and he states his incompetence was not proven by the Coast Guard's evidence.

Pursuant to the regulation implementing the Board's authority to review decisions of the Commandant, the Board will only consider whether:

- (a) A finding of material fact is erroneous;
- (b) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law or precedent;
- (c) A substantial and important question of law,

policy, or discretion is involved; or

(d) A prejudicial procedural error has occurred.³⁵

On appeal to the Board, appellant raises essentially the same, mostly extraneous, non-substantive objections he presented to the Vice Commandant and the law judge. Based upon the evidence adduced at the hearing, the law judge's findings of fact were not erroneous. The record, developed through the testimony of the lay and expert witnesses along with the information from the medical records, unequivocally established appellant suffers from manic depression and bipolar disorder.³⁶ He exhibits characteristics of narcissistic, obsessive compulsive, and paranoid personality disorders. He refuses any treatment for these disorders. The record showed appellant's disruptive, erratic, and sometimes dangerous behavior aboard the SS MAUI and the M/V PRESIDENT JACKSON was the outward manifestation of his diseases and significantly affected the safety aboard both vessels. After a careful review of the Vice Commandant's CDOA as well as the law judge's D&O, we find both decisions comprehensively addressed all matters warranting discussion, as well as some that did not. Because we find none of appellant's

³⁵ 49 C.F.R. § 825.15.

³⁶ We also note appellant's erratic and constantly disruptive behavior throughout the hearing further supported the Coast Guard's case regarding appellant's mental state and inability to perform his duties as a merchant marine.

contentions establishes reversible legal or factual error, we sustain the Vice Commandant's decision. As a result of the severity of these diseases, appellant is not competent to perform duties safely aboard a merchant marine vessel, and revocation is the appropriate sanction.

ACCORDINGLY, IT IS ORDERED THAT:

1. Appellant's appeal is denied; and
2. The Vice Commandant's appeal decision affirming the law judge's decision and order is affirmed.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above opinion and order.

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

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD

vs.

MERCHANT MARINER LICENSE

Issued to: ERIC NORMAN SHINE

DECISION OF THE

VICE COMMANDANT

ON APPEAL

NO. **2689**

This appeal is taken in accordance with 46 U.S.C. § 7701 *et seq.*, 46 C.F.R. Part 5, and the procedures set forth in 33 C.F.R. Part 20.

By a Decision and Order (hereinafter "D&O") dated November 13, 2008, Coast Guard Administrative Law Judge (hereinafter "ALJ") Walter J. Brudzinski revoked the merchant mariner license of Eric Norman Shine (hereinafter "Respondent") upon finding proved the charge of *incompetence*. In finding the alleged violation proven, the ALJ made 53 findings of fact, including several findings related to Respondent's actions aboard two merchant vessels and others regarding Respondent's medical treatment history. Respondent appeals.

APPEARANCE: Prior to filing his first appeal, Respondent was represented by Forgie, Jacobs & Leonard (Peter S. Forgie, Esq.), 4165 E. Thousand Oaks Boulevard, Suite 355, Westlake Village, CA 91362. From the time of his first appeal, Respondent has appeared *pro se*. The Coast Guard was represented by LCDR Chris Tribolet of U.S. Coast Guard Maintenance and Logistics Command Pacific, Alameda, California.

PROCEDURE & FACTS

The Coast Guard filed a Complaint, alleging that Respondent is medically incompetent due to a major depressive disorder, against Respondent's merchant mariner license on March 6, 2003. [D&O at 3] The Complaint stemmed from incidents that occurred while Respondent acted under the authority of his merchant mariner license by serving as the Third Engineer (and/or Second Engineer) aboard the M/V MAUI between March 6, 2001, and June 11, 2001, and while Respondent served as the Third Engineer aboard the M/V PRESIDENT JACKSON between December 2, 2001, and January 5, 2002. [Hearing Transcript (hereinafter "Tr.") at 61-63; 217-255]

At all times relevant herein, Respondent was the holder of the Coast Guard issued merchant mariner credential at issue in these proceedings. [Coast Guard Exhibit (hereinafter "Ex.") 2] The Coast Guard alleges that, while serving aboard the M/V MAUI and the M/V PRESIDENT JACKSON, Respondent engaged in behavior that was viewed by his supervisors and members of the crew as harassing, aggressive, litigious and unsafe. [D&O at 13-17] Testimony from the Chief Engineer onboard the M/V MAUI alleged that at various times Respondent alternatively refused to work or was very difficult to supervise and direct. [*Id.* at 13-14] He testified that Respondent did not have the necessary skills to perform his duties and possessed an overall inability to work with other crewmembers. [*Id.*] The Chief Engineer onboard the M/V PRESIDENT JACKSON testified that Respondent's presence onboard the ship created an unseaworthy condition due to his insubordination, inability to follow orders, dangerous working practices, constant threats of litigation, and aggressive behavior toward other crewmembers. [*Id.* at 15-17]

What followed in this matter, after the Complaint was issued, is long and storied, involving over two hundred motions, replies and orders.¹ Respondent's case was initially assigned to Coast Guard ALJ Parlan McKenna who issued three Orders (on July 30, 2003, August 4, 2003, and September 8, 2003) requiring Respondent to submit to a psychological examination by an independent doctor of the ALJ's choosing. *See Appeal Decision 2661 (SHINE)*. Respondent did not comply with any of those orders to the satisfaction of ALJ McKenna, and instead, on August 1 and August 22, 2003, submitted to a psychological evaluation by a medical doctor of his own choosing. [*Id.*] As a consequence, on September 10, 2003, citing the negative inference created by Respondent's failure to submit to the psychological examination ordered by the ALJ, as well as many other pieces of evidence, the Coast Guard filed a "Contingent Motion for Summary Decision" which Respondent replied to. [*Id.*] Following the issuance of numerous other orders, motions and replies, on February 20, 2004, the ALJ issued a Summary Decision, in favor of the Coast Guard. A hearing was not held before the Summary Decision was issued. [*Id.*]

Respondent properly appealed the Summary Decision and, as a result, *Appeal Decision 2661 (SHINE)*, which vacated ALJ McKenna's Summary Decision and remanded the matter for a hearing, was issued on December 27, 2006. Following the remand, the case was re-assigned to a new ALJ (ALJ Brudzinski) on January 30, 2007.

Citing 33 C.F.R. § 20.1313, ALJ Brudzinski ordered Respondent to undergo a medical (psychiatric) examination on February 26, 2008. Respondent refused, claiming the designated psychiatrist was conflicted. [Tr. at 797-798]

¹ To be precise, there were 179 pleadings (129 party filings) prior to the remand. Following the remand, there were 73 pleadings (41

ALJ Brudzinski convened a hearing in the matter on May 20, 2008, in Long Beach, California. The hearing lasted four days and concluded on May 23, 2008. During the hearing, the Coast Guard introduced sixty-seven exhibits into the record, including various medical records related to Respondent and written statements made by Respondent relating to his mental health in pleadings or letters to insurers and unions, and offered the testimony of three witnesses. *See, e.g.*, Coast Guard Exhibits 23, 25-29, 30, 32, 70-71. The hearing transcript shows that Respondent spent the last two days of the hearing arguing with ALJ Brudzinski on various issues, including medical privilege, the court's statutory authority to hold the hearing and Respondent's assertions as to the general unfairness/illegality of the proceedings. [Tr. at 660-906] During this time, although ALJ Brudzinski provided Respondent great latitude to put forth some type of defense, Respondent called no witnesses, but did enter two exhibits into the record and actively and extensively cross examined the Coast Guard's witnesses.

After the hearing concluded, ALJ Brudzinski invited the Coast Guard and Respondent to file briefs of proposed findings of fact and conclusions of law. Respondent did so by filing a 170 page post hearing brief entitled "CONCLUSIONS [sic] OF LAW AND FACT ORDERED FILED BY JULY 10, 2008 – FILED UNDER DURESS AND BY COMPULSION." The Coast Guard declined to file a post hearing brief.

On November 13, 2008, ALJ Brudzinski issued the D&O now at issue, finding the charge of *incompetence* proved. [D&O at 4] Thereafter, on December 10, 2008, Respondent, without regard to the unambiguous requirements of 33 C.F.R. §§ 20.1001-

party filings) up to and including the November 13 2008, D&O.

1003 (Procedures for Appeal), filed 15 separate pleadings with the ALJ Docketing Center, some were entitled "Notices of Appeal," while other were simply entitled "Motions."

Respondent submitted a second filing on January 9, 2009, styled as a "Second Notice." Respondent's "Second Notice" was comprised of 16 pleadings that were essentially duplicative of the December 10, 2008, filings, but for the additional claim that the first set of filings was not properly entertained by the ALJ Docketing Center. Also on December 9, 2009, the ALJ Docketing Center received a second package from Respondent entitled "[UNPERFECTED] APPEAL ON DECISION AND ORDER AND ALL PRECEEDINGS" which was comprised of over two thousand pages, weighed approximately 22 pounds and included 149 "issues" on appeal. At no time did Respondent file an Appellate Brief conforming to the requirements of 33 C.F.R. § 20.1003.

Notwithstanding Respondent's failure to adhere to the proper procedures for filing a "Notice of Appeal" and "Appellate Brief," and taking into consideration the fact that Respondent has appeared *pro se* since before the remand, I will consider Respondent's combined pleadings filed up to and including January 9, 2009, as sufficing for both the Notice of Appeal and Appellate brief.² Respondent effectively perfected his appeal through his combined filings of December 10, 2008, and January 9, 2009, and I consider this appeal as being properly before me.³

² The Coast Guard ALJ Docketing Center, in a February 9, 2009, letter to Respondent, advised Respondent that his combined filings of December 10, 2008, and January 9, 2009, would serve as effectively conforming to the requirements set out in 33 C.F.R. §§ 20.1001-1004 (Appeals).

³ Respondent filed yet another set of pleadings on January 12, 2009, (weighing 22 pounds) which was properly rejected by the ALJ Docketing Center since they already considered Respondent's prior filings as satisfying the Notice of Appeal and Appellate Brief filing requirements of 33 C.F.R. §§ 20.1001-1004.

BASES OF APPEAL

This appeal is taken from the ALJ's D&O which found the charges of *incompetence* proved. In his *pro se* appellate filings, Respondent raises hundreds of "issues," points and topics for consideration on appeal. However, in Coast Guard Suspension and Revocation proceedings, appealable issues are limited by 33 C.F.R. § 20.1001(b) which states:

(b) No party may appeal except on the following issues:

- (1) Whether each finding of fact is supported by substantial evidence.
- (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
- (3) Whether the ALJ abused his or her discretion.
- (4) The ALJ's denial of a motion for disqualification.

Additionally, the regulations mandate that a party appealing an ALJ's opinion file an Appeal Brief that adheres to the requirements of 33 C.F.R. §20.1003(a), which states:

- (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the—
 - (i) Basis for the appeal;
 - (ii) Reasons supporting the appeal; and
 - (iii) Relief requested in the appeal.
- (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.

Moreover, Commandant Decisions on Appeal dictate that "[w]hen acting on an appeal from an agency decision, the agency has all the powers which it would have in making the initial decision." See Appeal Decision 2610 (BENNETT) citing 5 U.S.C. § 557(b).

This includes the power to exclude "irrelevant, immaterial or unduly repetitious

evidence.” See Appeal Decision 2610 (BENNETT) citing 5 U.S.C. § 556. See also 33 C.F.R. § 20.802.

To ascertain Respondent’s salient arguments has proven a painstaking and arduous task, given the sheer volume of Respondent’s post D&O-filed pleadings and his almost complete failure to clearly present the basis for appeal or to cite to portions of the record supporting his issues as required by 33 C.F.R. §20.1003(a)(1). In short, rather than follow the clear instructions of 33 C.F.R. Part 20 which require only the filing of a “Notice of Appeal” and one “Appellate Brief,” Respondent has filed a multitude of ambiguous pleadings, leaving it to the undersigned to attempt to identify the issues suitable for review. A laborious assessment of Respondent’s filings has resulted in identifying the following twelve issues for consideration on appeal. Any other issues, points of discussion, or questions raised by Respondent, not enumerated below, are beyond the scope of appealable issues under 33 C.F.R. §20.1001(b) and are deemed immaterial, irrelevant or unduly repetitious and are hereby denied.

- I. *Whether the Coast Guard has Jurisdiction to Consider Matters Related to Mariner Credentials;*
- II. *Whether Coast Guard Suspension and Revocation proceedings are constitutional;*
- III. *Whether the ALJ erred by not applying the Federal Rules of Civil Procedure;*
- IV. *Whether the ALJ erred by not recusing himself;*
- V. *Whether the ALJ erred by not disqualifying the Coast Guard “prosecutor” (Investigative Officer) and whether the Investigating Officer committed misconduct;*
- VI. *Whether the ALJ erred by allowing certain witnesses for the Coast Guard to testify;*

- VII. *Whether the ALJ improperly denied Respondent the opportunity to call witnesses;*
- VIII. *Whether the ALJ conducted improper EX PARTE proceedings;*
- IX. *Whether the ALJ erred by ordering Respondent to submit to a medical evaluation;*
- X. *Whether Respondent had/has a right to privacy and privilege with respect to medical/personal records pertaining to his medical condition;*
- XI. *Whether there was excessive delay of the proceedings as a whole; and,*
- XII. *Whether the Coast Guard carried its burden of proof.*

OPINION

Before addressing the above issues, in addition to considering allowable bases for appeal, it is necessary to address the criteria for reversal of an ALJ's opinion. The standard of review for appeals of Suspension and Revocation (hereinafter "S&R") proceedings is that the ALJ's findings must be supported by reliable, probative, and substantial evidence. *See, e.g., Appeal Decisions 2603 (HACKSTAFF), 2592 (MASON), 2584 (SHAKESPEARE), and 2575 (WILLIAMS).* Numerous prior Commandant Decisions on Appeal make clear that, in evaluating the evidence presented at a hearing, the ALJ is in the best position to both weigh the testimony of witnesses and assess the credibility of evidence. *See, e.g., Appeal Decisions 2584 (SHAKESPEARE), 2421 (RADER), 2319 (PAVELIC), 2589 (MEYER), 2592 (MASON), and 2598 (CATTON).* The ALJ's decision is not to be reversed on appeal unless his findings are arbitrary, capricious, clearly erroneous, or based on inherently incredible evidence. *See, e.g., Appeal Decisions 2584 (SHAKESPEARE), 2570 (HARRIS), aff'd NTSB Order No. EM-182, 2390 (PURSER), 2363 (MANN), 2344 (KOHAJTA), 2333 (AYALA), 2581*

(DRIGGERS), 2474 (CARMLENKE), 2589 (MEYER), 2592 (MASON), and 2560
(CLIFTON).

I.

Whether the Coast Guard has Jurisdiction to Consider Matters Related to Mariner Credentials

The first issue presented in this case is whether the Coast Guard has jurisdiction to suspend or revoke a merchant mariner credential. Throughout these proceedings, Respondent has asserted that the Coast Guard, as a branch of the military, has no authority to consider issues related to his merchant mariner license, since he is a civilian in the merchant marine. For example, Respondent states:

Appellant is being forced, or in fact compelled under duress and at the hands of a now self-declared and "Special" Branch of the Military to file his Appeal to the Uniformed Military Head, as Commandant of, and Admiral within, a Special Branch of Military that Appellant is not a member of, nor has ever been a member of or in the service in.

[Respondent's "Second Notice of Appeal to the Commandant; and Notice and Motion to the Coast Guard and Reaffirmation of all 15 Related Appeal Motions and Previously Filed and Left Unnoticed and Undocketed by ALJ Docketing Center Staff Debra Gundy" at 5]

Additionally:

The Coast Guard is declaring itself to be a Special Branch of Military that the Respondent is not in as stated, and the Coast Guard is declaring that it can carry on Civilian Affairs and not just Police Work, but carry on Investigations, issue and enforce its own subpoenas without Article III Judicial Notice. It does not have the right to put on its case and the Appellant has repeatedly made these issues as to venue and jurisdiction clear.

[Respondent's Appeal Brief at 284]

46 U.S.C. § 2103 states that “[t]he Secretary⁴ has general superintendence over the merchant marine of the United States and of merchant marine personnel.” The Secretary of the Department of Homeland Security has delegated this authority to the Commandant, United States Coast Guard. *See* Department of Homeland Security Delegation No. 0170.1. Under 46 U.S.C. § 7701(b), “[l]icenses, certificates of registry, or merchant mariner’s documents may be suspended or revoked for acts described in section 7703 of this section.” 46 U.S.C. § 7703 states, in relevant part, that “[a] license, certificate of registry, or merchant mariner’s document issued by the Secretary may be suspended or revoked if the holder...has committed an act of incompetence relating to the operation of a vessel.” *See* 46 U.S.C. § 7703(4). As such, to the extent it bears repeating, I find that this appeal is appropriately before me, and that the prior proceedings leading up to this appeal were undertaken pursuant to proper United States Coast Guard authority to address alleged acts of misconduct of those holding merchant mariner credentials.

II.

Whether Coast Guard Suspension and Revocation proceedings are constitutional

In his appeal, Respondent questions the constitutionality of these proceedings. To that end, Respondent devotes more than one hundred pages of his appeal filings to various questions of constitutionality, invoking issues of due process, the right to a jury, separation of powers, “*ultra vires*” issues, and concurrently asserts violations of Constitutional Amendments III, V-VII, XIV, XVI, and XXIII.

⁴ Pursuant to 46 U.S.C. § 2101(34), the term “Secretary” means “the Secretary of the department in which the Coast Guard is operating.”

S&R proceedings are administrative, not judicial. *See, e.g., Appeal Decision 2646 (McDONALD)*. Their purpose is to promote safety at sea. *See* 46 U.S.C. § 7701(a). Following final agency action and appeal to the National Transportation Safety Board, judicial review is available in the federal courts. *See* 5 U.S.C. § 702; *see also* 46 C.F.R. § 1.01-30, 46 C.F.R. § 5.713 and 33 C.F.R. § 20.1101(b)(2). S&R proceedings have as the focus of their inquiry issues of compliance with statutes and regulations. The constitutionality of statutes are the province of the Federal Courts. *See Weinberger v. Salfi*, 422 U.S. 749, 765 (1975); Appeal Decisions 2632 (WHITE), 2135 (FOSSANI), 2049 (OWEN) and 1382 (LIBBY). Because this is not the proper forum to address the constitutionality of duly enacted regulations, I will not make a determination on Respondent's constitutional claims.

I do note, however, that Respondent's due process rights have been safeguarded within the Coast Guard's administrative process and that this process that has been held to be constitutionally sufficient. *See, e.g., Williams v. Dept. of Transp.*, 781 F.2d 1573, 1579 (11th Cir. 1986). The record clearly indicates that Respondent has been afforded the right to appear before a neutral trier of fact, to face all evidence presented against him, to present evidence on his own behalf, to cross-examine the Coast Guard's witnesses and to call witnesses on his own behalf, and to appeal the ALJ's decision to a higher authority. Based on thorough review of the transcripts from the extensive hearing, nothing can be found to indicate that the ALJ's treatment of the Respondent was contrary to the requirements of 46 C.F.R. Part 5 and 33 C.F.R. Part 20. Therefore, although it is not my province to determine the validity of the constitutional claims raised by

Respondent, I have little doubt that his claims would be found baseless upon further review.

III.

Whether the ALJ erred by not applying the Federal Rules of Civil Procedure

Respondent asserts that the Federal Rules of Civil Procedure should govern the procedural aspects of the hearing. He states:

More normally, under the APA the Federal Rules of Civil Procedure are to apply in the lower proceedings as to the so-called ALJ's, but herein the Coast Guard has stated that the FRCP's do not apply and are not controlling and the Coast Guard can somehow make up its own rules in the midst of proceedings as can be seen from the transcripts of proceedings from October 23, 2007 and May, 2008. This is a violation of Due Process.

[Respondent's "Second Notice and Appeal on Decision, Order and on All Proceedings: And Related Motions Contained Herein" at 3]

Coast Guard administrative proceedings are governed by the Administrative Procedure Act, not the Federal Rules of Civil Procedure (hereinafter "F.R.C.P."). *See* 46 U.S.C. § 7702(a); *See also* Appeal Decision 2679 (DRESSER). A review of the F.R.C.P. shows that although the Rules govern procedures in numerous courts of the United States, they are not expressly made applicable to either administrative proceedings, in general, or Coast Guard S&R proceedings in particular. *See* Fed. R. Evid. 101; Fed. R. Evid. 1101; Fed. R. Civ. P. 1; Fed. R. Civ. P. 81. As a result, administrative agencies, like the Coast Guard, are not bound by the same rules governing criminal or civil trials. *Compare* *Bennett v. National Transp. Safety Bd.*, 66 F.3d 1130, 1137 (10th Cir. 1995) (agencies not bound by same rules of evidence as a jury trial). Moreover, the applicable procedural rules make clear that the F.R.C.P. should only be applied if a "specific provision" is not

addressed within 33 C.F.R. Part 20. *See* 33 C.F.R. § 20.103(c). Therefore, I conclude that the ALJ did not err in conducting these proceedings in accordance with the procedural rules set out in 33 C.F.R. Part 20, rather than the F.R.C.P.

IV.

Whether the ALJ erred by not recusing himself

Respondent asserts that the ALJ erred by not recusing himself from the proceedings. The record shows that prior to the remand, Respondent moved for the recusal of ALJ McKenna. Following the remand, ALJ McKenna recused himself *sua sponte* and the case was assigned to ALJ Brudzinski who remained with the proceedings through the execution of the D&O. Following reassignment, Respondent moved for recusal of ALJ Brudzinski due to alleged conflicts of interest. To support this allegation, Respondent alleges that the ALJ's past uniformed service in the Coast Guard and as a prosecutor create a conflict of interest that necessitates recusal of ALJ Brudzinski.

[RESPONDENT'S NOTICE OF MOTION REGARDING RECUSAL OF ALJ BRUDZINSKI DUE TO CONFLICT OF INTEREST; Tr. at 770-772] Respondent also claims that the ALJ's involvement in subsequent hearings rendered him conflicted. Finally, Respondent cites the ALJ's consistent ruling against him as evidence of bias and cause for recusal. [RESPONDENT'S NOTICE OF MOTION REGARDING RECUSAL OF ALJ BRUDZINSKI DUE TO CONFLICT OF INTEREST; Tr. at 40, 772-773, 890]

In S&R cases, a party may move the ALJ to disqualify himself and withdraw from the proceeding for "personal bias or other valid cause." 33 C.F.R. § 20.204(b). Such a motion must be made "promptly upon discovery of the facts or other reasons allegedly constituting cause" and be filed along with a supporting affidavit prior to the

issuance of the ALJ's D&O. [*Id.*] The party seeking disqualification carries the burden of proof. *Schweiker v. McClure*, 456 U.S. 188, 196 (1982). "The courts have long stated that there is a rebuttable presumption that the officers presiding over hearings are unbiased and that bias is required to be of a personal nature before it can be held to taint proceedings." See Appeal Decision 2658 (ELSIK) citing *Roberts v. Morton*, 549 F.2d 158, 164 (10th Cir. 1977). If the ALJ denies the motion for disqualification, the moving party may raise the issue on appeal once the S&R hearing has concluded. See 33 C.F.R. § 20.204(b)(2).

A review of the record shows that the ALJ, more often than not, ruled against Respondent with respect to his numerous motions and objections. However, consistent adverse rulings, even if done in a derogatory manner, are not sufficient to justify withdrawal or disqualification. See Appeal Decision 2658 (ELSIK). Evidence of bias must be of a personal nature before it can be held to taint proceedings. See *Roberts v. Morton*, 549 F.2d 158, 164 (10th Cir. 1977). Alternatively, Respondent must show that the ALJ's mind was "irrevocably closed" on the particular issue being decided before disqualification will be deemed necessary. See, e.g., *Southern Pac. Communications v. American Tel. & Tel. Co.*, 740 F.2d 980, 991 (D.C. Cir. 1984).

The record shows that there is no evidence to support a conclusion that the ALJ either harbored any personal bias toward Respondent or that he had an unalterably closed mind as to the matters critical to the disposition of this case. To the contrary, although often clearly frustrated with Respondent's behavior during both the October 23, 2007, Prehearing Conference and the May, 2008, hearing, the ALJ exhibited significant restraint. In consideration of Respondent's *pro se* status, the ALJ made a substantial

effort to accommodate Respondent's apparent lack of understanding of the procedural aspects of the S&R hearing. [Tr. at 783-785, 841-845] Consequently, I find that the ALJ did not err by refusing to grant Respondent's request for recusal/withdrawal.

It is unclear from Respondent's appeal whether he is also asserting error with respect to his request for recusal of the original sitting ALJ (ALJ McKenna), prior to the remand. To the extent that Respondent is making such a claim and using the same criteria discussed above, the fact that ALJ McKenna did, in fact, recuse himself prior to the convening of the second hearing renders that issue moot. Accordingly, Respondent's assertions regarding recusal of the ALJ are not persuasive.

V.

Whether the ALJ erred by not disqualifying the Coast Guard "prosecutor" (Investigative Officer) and whether the Investigating Officer committed misconduct

Throughout the proceedings, Respondent has alleged that the Investigating Officer should have been disqualified from "prosecuting" this case because he was previously involved with investigating other matters related to Respondent's shipboard activities and frequently called for his disqualification. An example of his claims:

The prosecutor is a Judge Advocate General Officer in the Officer Corps of the Coast Guard as a Military Attorney in a Military Uniform of a self-proclaimed Special Branch of Military that is not supposed to adjudicate any civilian affairs, let alone labor disputes either for personnel working directly for the Coast Guard as Civil Servants, or even for their own spouses or children or family members, but it wishes to extend its authority out over individuals it is not supposed to have any "authority" over as a Branch of Military as the fact of being a Branch of Military itself acts as a Bar such proceedings.

Beyond this as laid out in other sections there is not separation of powers whatsoever, let alone separation of duties, as the JAG Prosecutor was also acting as the Complainant, Citing Officer, Summoning Officer, Investigating Officer and the JAG Uniformed Military JAG Prosecutor as

well. This is in violation of the Separation of Powers Doctrine, and the Separation of Duties as its own governing regs as well.

[Respondent's Appeal Brief at 297]

Respondent alleges that it is improper for one individual to serve as the Investigating Officer, "charging officer," and "prosecutor" in the same case. This is but one more area that demonstrates Respondent's profound mischaracterization of the administrative hearing process as a criminal trial.

Coast Guard S&R actions are administrative proceedings that are remedial, not penal in nature, fix neither criminal nor civil liability, and are "intended to help maintain standards for competence and conduct essential to the promotion of safety at sea." 46 C.F.R. § 5.5. While the Coast Guard has enacted regulations to protect the due process rights of individuals during the administration of their cases, those regulations are to "be construed so as to obtain a just, speedy, and economical determination of the issues presented." 46 C.F.R. § 5.51. As such, those rights normally afforded to trials, such as trial by jury, do not apply to administrative hearings. *See, Appeal Decisions 2049 (OWEN) and 1405 (POWELL)*. Moreover, contentions of improper separation of functions with respect to members of the Coast Guard participating in administrative hearings are improper in these proceedings. *See Appeal Decision 2167 (JONES)*. That is because it is fully in accordance with Coast Guard regulations that members of the Coast Guard participate in the process of S&R proceedings. *Id.* Therefore, the ALJ did not err by refusing to disqualify the Investigating Officer.

The record shows that the actions of the Investigating Officer throughout the course of these proceedings were undertaken in accordance with 33 C.F.R. Part 20 and 46 C.F.R Part 5. Respondent has not demonstrated that there has been any impropriety

committed in the disposition of his case. Furthermore, Respondent has not demonstrated that the regulations governing these proceedings fail to provide adequate separation of functions and contact. As such, Respondent's claims of Investigating Officer misconduct are not persuasive.

VI.

Whether the ALJ erred by allowing certain witnesses for the Coast Guard to testify

Respondent asserts that the witnesses presented by the Coast Guard were biased, hostile, or lacked necessary knowledge/expertise to render a valid opinion.

The record shows that, during the hearing, the Coast Guard presented three witnesses. The first two were mariners who served with Respondent on two different seagoing ships. [Tr. at 61, 202] Respondent asserts that their testimony should not have been allowed since they were either named or interested parties to civil proceedings filed by Respondent in Federal District Court⁵ and should have, at a minimum, been declared "hostile⁶." [Tr. at 50, 56, 166] Respondent further asserts that the Coast Guard's third witness, Chief of the Coast Guard Medical Evaluations Office, should not have testified since he was a Coast Guard officer and not a psychiatrist. [Tr. at 523, 547, 558, 573]

After careful scrutiny, it appears that the crux of Respondent's argument is one of credibility. Respondent argues that the three Coast Guard witnesses had improper biases against him which rendered their testimony not creditable. [Respondent's Appeal Brief at 432 - 445]

⁵ Starting in 2001, Respondent filed several actions in Federal court, apparently related to various labor disputes between himself, his labor union, and his employer(s). They have no bearing on these proceedings; I merely note that all the cases have been listed as closed, the last one in June, 2008.

⁶ Respondent could not/would not accept the explanation that only witnesses adverse to a party in direct testimony could be declared hostile.

“In evaluating the evidence presented at a hearing, the ALJ is in the best position to weigh the testimony of witnesses and assess the credibility of evidence.” Appeal Decision 2632 (WHITE) citing Appeal Decisions 2584 (SHAKESPEARE), 2421 (RADER), 2319 (PAVELIC), 2589 (MEYER), 2592 (MASON) and 2598 (CATTON). The ALJ has broad discretion in making determinations regarding the credibility of witnesses and in resolving inconsistencies in evidence. *Id.*, citing Appeal Decisions 2560 (CLIFTON), 2519 (JEPSON), 2516 (ESTRADA), 2503 (MOULDS), 2492 (RATH), 2598 (CATTON), 2382 (NILSEN), 2365 (EASTMAN), 2302 (FRAPPIER), and 2290 (DUGGINS). I will not reverse the ALJ’s decision on appeal unless his findings are arbitrary, capricious, clearly erroneous, or based on inherently incredible evidence. *See, e.g., Appeal Decisions 2584 (SHAKESPEARE), 2570 (HARRIS), aff’d NTSB Order No. EM-182, 2390 (PURSER), 2363 (MANN), 2344 (KOHAJTA), 2333 (AYALA), 2581 (DRIGGERS), 2474 (CARMIENKE), 2589 (MEYER), 2592 (MASON) and 2560 (CLIFTON).*

The record shows that the issue of witness bias/credibility was brought up repeatedly by Respondent during the May 2008 hearing. [Tr. at 56, 64, 68, 110, 228, 252, 314, 341, 344, 387, 640] As such, it is reasonable to conclude that the ALJ considered such potential bias in his deliberations. *See Appeal Decision 2643 (WALKER).* A review of the hearing transcripts does not indicate that the three Coast Guard witness’ testimonies were clearly implausible or conflicted.

As the trier of fact, the ALJ in this case had the opportunity to observe the demeanor of the witnesses and determine their credibility and veracity. Considering the above standard of review, I find that the ALJ’s determinations regarding witness

testimony, credibility, and the evidentiary value of such testimony were not arbitrary, capricious, clearly erroneous, or based on inherently incredible evidence. Nothing in the record indicates that ALJ Brudzinski abused this discretion. As such, I will not second guess his conclusions.

VII.

Whether the ALJ improperly denied Respondent the opportunity to call witnesses

Respondent has consistently alleged that he was denied the opportunity to call defense witnesses during the hearing. [Tr. at 54] He continues to raise this issue on appeal.

Respondent's first witness list contained over 170 names and demanded that the Coast Guard issue subpoenas to all of them. The list included United States Senators (Senator Barbara Boxer and Senator Dianne Feinstein), a Congressman (Congressman Elijah Cummings), Secretaries of the Department of Transportation (Secretary Norman Mineta and Former Secretary Andrew Card), several judges, five Coast Guard admirals, a host of Coast Guard personnel, and several merchant mariners. [Respondent's "NOTICE; AND MOTION IN RESPONSE AND OPPOSITION TO "STATUS NOTICE AND ORDER" AS PERTAINING TO WITNESS LIST; AND MOTION IN RESPONSE AND OPPOSITION TO "STATUS NOTICE AND ORDER" AS PERTAINING TO WITNESS LIST" (Pleading No. 55, filed May 1, 2008)] Absent from Respondent's first witness list was any explanation regarding the need for the putative witnesses' testimony. Also absent was any contact information. The ALJ denied Respondent's request for witness subpoenas. Thereafter, on the first day of the hearing,

Respondent submitted an amended witness list that reduced the requested number of court ordered subpoenas to approximately 45 individuals.

Under Coast Guard regulations, the ALJ may issue a subpoena for “the attendance of a person, the giving of testimony, or the production of books, papers, documents, or any other *relevant evidence*.” 33 C.F.R. § 20.608 (emphasis added). Respondent, even in his amended (and untimely) witness list, failed to both justify the issuance of subpoenas for the individuals named and to show how the testimony of those individuals was relevant to the issue at hand (medical incompetence). See Appeal Decision 2328 (MINTZ). Accordingly, the ALJ did not err in declining to issue the subpoenas requested by Respondent.

Moreover, denial of the issuance of subpoenas does not equate to the refusal to allow Respondent to call witnesses to testify. The record shows that, during the hearing, Respondent was free, and in fact encouraged to call witnesses. Instead, Respondent chose not to call any witnesses. [D&O at 34, Tr. at 898-904] Despite having full opportunity to present evidence in support of his defense in the form of witnesses, Respondent offered no testimony. I find that insofar as the ALJ refused to issue court ordered subpoenas, he neither erred nor unfairly prejudiced Respondent.

VIII.

Whether the ALJ conducted improper EX PARTE proceedings

Respondent makes numerous claims that the ALJ had improper *ex parte* discussions with various individuals, asserting that *any* communication, whether written, telephonic or in person, between the ALJ and a party, without all interested parties

present, constitutes an improper *ex parte* communication. [Respondent's Post Hearing Brief at 86-87] Respondent's definition of *ex parte* communications is clearly broader than that which is proscribed by the APA.

The Administrative Procedure Act prohibits *ex parte* communication relevant to *the merits* of the proceeding. 5 U.S.C. § 557(d) (*emphasis added*). In addition, an ALJ cannot consult with a person or party regarding a fact at issue without notice and an opportunity for all parties to participate. 5 U.S.C. § 554(d)(1).

It is difficult to address Respondent's claims because of his overly broad interpretation of what constitutes improper *ex parte* communications. He alleges that the ALJ frequently engaged in such actions with the Coast Guard without identifying the specific conduct. [Tr. at 42, 46, 237, 315, 780] I have made an extensive review of the record and while it is possible that the ALJ may have engaged in some communication with the Coast Guard Investigating Officer during a hearing recess, and certainly did so in the form of pleadings when issuing orders or notices, there is no indication that he or any of his staff discussed any fact at issue relevant to the proceedings with the Investigating Officer or any interested person unless all parties were present; the record does not contain any evidence to support a conclusion that the ALJ had communications that ran contrary to APA requirements. *See Appeal Decision 2655 (KILGROE)*. Therefore, I do not find this basis for appeal persuasive.

IX.

Whether the ALJ erred by ordering Respondent to submit to a medical evaluation

Respondent asserts that his due process rights were violated because he was ordered, without a hearing, to undergo a psychiatric examination with a doctor who had an alleged conflict of interest.

As noted above, Respondent was ordered to submit to a psychiatric evaluation by a physician designated by the ALJ. Respondent filed a motion in opposition to the ALJ's order, comprised of 67 pages of largely indecipherable arguments with an additional 100 pages of attachments. Citing 33 C.F.R. § 20.309(a), the ALJ denied the motion, leaving the order for psychiatric evaluation intact. Respondent refused to submit to the examination. [Tr. at 12-13, 797-798]

Respondent maintains that an evidentiary "due process hearing" should have been held to determine whether there was a need for psychiatric examination.

[RESPONDENT'S NOTICE; AND MOTION IN OPPOSITION TO "ORDER DIRECTING PSYCHIATRIC EXAMINATION" at 14-15; Prehearing Conference Transcript at 101-102] Additionally, he claims that because the designated psychiatrist personally called him to schedule an appointment, he was somehow "conflicted." [Tr. at 12-13, 797-798]

33 C.F.R. § 20.1313 states in relevant part:

In any proceeding in which the physical or mental condition of the respondent is relevant, the ALJ may order him or her to undergo a medical examination. Any examination ordered by the ALJ is conducted, at Federal expense, by a physician designated by the ALJ. If the respondent fails or refuses to undergo any such examination, the failure or refusal receives due weight and may be sufficient for the ALJ to infer that the results would have been adverse to the respondent.

The central issue presented in Respondent's case was whether Respondent was medically competent to hold a merchant mariner credential. As such, Respondent's mental

condition was relevant. Moreover, the applicable regulations do not require any type of "evidentiary" or "due process" hearing before the ALJ may require a Respondent to submit to a medical evaluation of any kind.

The notion that a designated examining physician who personally calls the Respondent to schedule an interview is *de facto* "conflicted" and should therefore be disqualified is an issue of first impression in these proceedings. However, I can find no reason to conclude that such an act would render a medical professional incapable of forming an unbiased medical opinion. Moreover, the record is devoid of any facts to support such an assertion in this case. Accordingly, Respondent's argument that he was justified in refusing to submit to the psychiatric examination is not persuasive and, as such, the ALJ did not err in ordering Respondent to undergo a medical examination in this case.

X.

Whether Respondent had/has a right to privacy and privilege with respect to medical/personal records pertaining to his medical condition

Respondent has repeatedly claimed that his medical records are privileged and cannot be used against him in this proceeding.

The physician-patient privilege does not exist between a physician and a respondent for the purposes of S&R proceedings. 46 C.F.R. § 5.67. Moreover, there is nothing in the record indicating that records were improperly obtained. Accordingly, Respondent's claims on this issue are without merit.

XI.

Whether there was excessive delay of the proceedings as a whole

Respondent has often made note of the excessive duration of these proceedings (approaching ten years), but does not articulate an actual issue for appeal. It seems that Respondent is alleging that the Coast Guard has intentionally drawn out the S&R process in his case, resulting in some harm or hardship to Respondent. There is no doubt that the process of considering the Coast Guard's claims with respect to Respondent has been a lengthy one.

Excessive and unexplained delay in the proceedings may be grounds for reversal. Appeal Decision 2064 (WOOD). However, delay, in and of itself, is not *per se* grounds for reversal. Appeal Decision 1972 (SIBLEY). Before making a determination of excessive delay, a review of the record is necessary to determine the cause of the delay, and whether there was any resulting unfair prejudice to the holder of the credential. *Id.*

The two incidents that gave rise to the claim of medical incompetence at issue here occurred aboard the vessels M/V MAUI and M/V PRESIDENT JACKSON on June 11, 2001, and January 5, 2002, respectively. The record shows that the Coast Guard issued a Complaint to Respondent on March 6, 2003, approximately 15 months after the second incident occurred.

The time limitations for the Coast Guard to provide service of a Complaint related to an act of incompetence "shall be within five years after commission of the offense alleged therein." 46 C.F.R. § 5.55. Nonetheless, merely filing a complaint within the applicable statute of limitations is not, itself, controlling and the due process clause of the Fifth Amendment to the U.S. Constitution requires a balancing of the reasonableness of a delay against any resultant prejudice. *See U.S. v. Jackson*, 504 F. 2d 337, 339 (8th Cir. 1974).

In the instant case, it is evident that significant investigation was necessary to determine whether issuance of a complaint was justified. The investigation involved contacting various parties and reviewing a significant amount of documentation. During this time, Respondent still held his merchant mariner license and could obtain employment. Respondent has failed to make any showing that this delay was unreasonable. Accordingly, I find no excessive delay with respect to the time that it took the Coast Guard to issue a Complaint to Respondent.

The time between the original two incidents and the filing of the Complaint, however, accounts for less than two years of the overall time up to the ALJ's D&O on November 13, 2008, making a review of the duration of proceedings following the filing of the Complaint justified. [Tr. at 60-679, 202-258; Coast Guard Ex. 3,4] A careful review of the docket and the pleadings contained therein makes it evident that Respondent, himself, is the primary cause for the subsequent prolongation of the proceedings before the ALJ.

As noted above, prior to the remand, the record contained 179 filings, 67 of which were filed by Respondent and most of the remainder were required responses to Respondent's pleadings. Following the remand, 73 additional filings were added to the record, again, the bulk of which were either filed by Respondent, or required responses thereto. In short, the vast majority of the filings were either generated by Respondent or filed by the Coast Guard or the ALJ in response. The record further indicates that Respondent often requested continuances, both by motion and during the hearings, claiming that he needed more time to consider the claims against him and the Coast Guard's exhibits.

Many of Respondent's filings were lengthy, numbering in the hundreds of pages, did not conform to the motion practice of 33 C.F.R § 20.309, and were often ambiguous and/or frivolous. Nonetheless, their submission necessitated consideration by the Coast Guard for response and, thereafter, by the ALJ prior to rendering a decision. The record further indicates that Respondent requested additional "evidentiary hearings" during these proceedings.

I do not suggest that Respondent does not have a right to put forth a comprehensive defense on his behalf during all stages of the proceedings. However, it belies Respondent's claims of harmful delay when his own actions significantly contributed to delays associated with these proceedings.

In any event, Respondent has not demonstrated how he has been unfairly prejudiced by the "delay." Nor has he made any showing that any particular "delay" was unreasonable. Furthermore, the record does not contain any evidence to support a conclusion that the "delay" that occurred in this case had a negative effect (or any effect) on locating witnesses or their ability to testify. Nor is there any indication that the "delay" substantially altered any witnesses' ability to recall facts or events. *See, generally Appeal Decisions 2064 (WOOD).* Accordingly, Respondents assertions regarding "delay" are not persuasive.

XII.

Whether the Coast Guard carried its burden of proof

A final issue, not fully articulated by Respondent, centers on whether the Coast Guard successfully carried its burden to prove that Respondent is medically incompetent.

In these proceedings, the Coast Guard bears the burden of proving its case by a preponderance of the evidence. 33 C.F.R. §§ 20.701-702. In the instant case, the ALJ had to decide whether the Coast Guard proved that Respondent is medically incompetent, necessitating revocation of his merchant mariner credential. Appeal Decision 2181 (BURKE). As noted at the onset of this opinion, I will not disturb the ALJ's findings absent a determination that they are arbitrary, capricious, clearly erroneous, or based on inherently incredible evidence.

I will not recount the Coast Guard's case in chief here. I will consider whether the findings in the ALJ's D&O are supported by reliable, probative, and substantial evidence. The Coast Guard's first two witnesses established that Respondent's actions on board vessels in which he was employed were of such a nature that they detrimentally affected the safety of those vessels. The Coast Guard's exhibits, including medical documents prepared by Respondent in support of his claims of disability to his union, employers and the State of California, and other documents prepared by various health care officials and doctors, established that Respondent continues to suffer from a mental illness and will not seek treatment. Respondent's further refusal to submit to a psychiatric examination adds weight to this determination. Testimony of the Chief of the Coast Guard's Medical Evaluations Branch at the National Maritime Center established that medical/mental impairments such as those suffered by Respondent would result in an unsafe/unseaworthy condition should he continue to serve under his credentials aboard a merchant vessel.

Respondent failed to impeach any of the Coast Guard witnesses. He did not contradict the wealth of documentation attesting to the extent of his mental illness. He

failed to provide any affirmative defense or establish any reason to doubt the Coast Guard's evidence. Therefore, the ALJ's findings of fact were supported by substantial evidence and will not be disturbed.

CONCLUSION

The findings of the ALJ had a legally sufficient basis. As has been discussed herein, the ALJ's decision was not arbitrary, capricious, or clearly erroneous. Competent, substantial, reliable, and probative evidence existed to support the findings of the ALJ. Therefore, Respondent's bases of appeal, such that can be identified, are not persuasive and are without merit.

ORDER

The order of the ALJ, dated on November 13, 2008, at New York, New York, is
AFFIRMED.

Sally Brice-O'Hara, VADM, USCG
Vice Commandant SEP 30 2010

Signed at Washington, D.C. this _____ day of _____, 2010.

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD

Complainant

vs.

ERIC NORMAN SHINE

Respondent.

Docket Number: CG S&R 03-0166
CG Case No. 1671475

DECISION AND ORDER

Issued: November 13, 2008

Issued by: Walter J. Brudzinski, Administrative Law Judge

Appearances:

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For Respondent
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I. PROCEDURAL HISTORY

On March 6, 2003, the United States Coast Guard (Coast Guard) issued a Complaint against Eric Norman Shine (Respondent) that alleged he is medically incompetent due to a major depressive disorder or other psychiatric condition. In this Complaint, the Coast Guard sought revocation of Respondent's Coast Guard issued credentials. Respondent filed a timely Answer denying the factual and jurisdictional allegations. This case was heavily litigated and approximately 129 documents were filed prior to the original presiding Administrative Law Judge's (ALJ), Parlen L. McKenna, issuance of a Summary Decision. Judge McKenna issued his Summary Decision on February 20, 2004, revoking Respondent's merchant mariner credentials. Judge McKenna found Respondent suffered from mental impairment of sufficient disabling character which rendered him unable to safely perform his duties aboard a merchant vessel. Respondent appealed the Decision and on December 27, 2006, the Vice Commandant of the Coast Guard issued a Decision finding that a genuine issue of material fact existed. Appeal Decision 2661 (SHINE)(2006). The Vice Commandant vacated Judge McKenna's Summary Decision and remanded the case for hearing. Id.

On January 5, 2007, Judge McKenna issued an Order recusing himself from any further participation in this matter. On January 30, 2007, the Chief Administrative Law Judge assigned the remanded case to the undersigned for adjudication.

This case continued to be heavily litigated. More than forty (40) motions, replies, and orders were filed prior to this final Decision and Order.¹ During the remand, Respondent submitted many lengthy motions that individually approached or exceeded 100 pages in length.

¹ Attachment A includes a complete index of the filings and issuances made in this case.

These motions raised a multitude of opinions and objections. In an effort to address these and other issues, I ordered an in-person pre-hearing conference to be held on October 23, 2007. On October 29, 2007, I issued a Memorandum and Order of Pre-Hearing Conference addressing the many matters that were heard during the pre-hearing conference.

On May 20, 2008, a hearing on these matters commenced in Long Beach, California; the hearing lasted for four (4) days and concluded on May 23, 2008. I conducted these proceedings in accordance with the Administrative Procedure Act, as amended and codified at 5 U.S.C. 551-59 and Coast Guard regulations located at 46 CFR Part 5 and 33 CFR Part 20. Lieutenant Commander Christopher Tribolet represented the Coast Guard at the hearing. Respondent appeared at the hearing *pro se*.

The Coast Guard introduced seventy-one (71) exhibits and the testimony of three (3) witnesses. The Respondent offered no witnesses and introduced two (2) exhibits into evidence. The witnesses and exhibits are listed in Attachment B.

On July 9, 2008, Respondent filed a 170 page post-hearing brief entitled "CONCLUSIONS [sic] OF LAW AND FACT ORDERED FILED BY JULY 10, 2008 - FILED UNDER DURESS AND BY COMPULSION." The Coast Guard chose not to file a post-hearing brief.

After careful review of the entire record, including witness testimony, applicable statutes, regulations, and case law, the factual allegation of incompetence, in violation of 46 U.S.C. 7703, is found PROVED.

II. FINDINGS OF FACT

1. Respondent was the holder of the Coast Guard issued license number 918736 which was issued June 1, 2000 and expired on June 1, 2005. (IO Ex. 2).²
2. Respondent graduated from the U.S. Merchant Marine Academy at Kings Point in 1991. (Tr. at 4).

A. SS MAUI

3. Matson Navigation Company, Incorporated employed Respondent as a second assistant engineer on board the Steamship (SS) MAUI between March 6, 2001 and June 11, 2001. (Tr. at 60-63; IO Ex. 3).
4. The SS MAUI is a 24,544 gross ton, coastwise container ship. (IO Ex. 3).
5. On June 11, 2001, appropriate authority ordered Respondent to stand watch from 0400-0800. One of his responsibilities was to oversee the boilers in the engine room. (Tr. at 64-67; IO Ex. 6).
6. As a second assistant engineer, Respondent's job required that he assist in repairs conducted in the engine room. (Tr. at 67-74; IO Ex. 7).
7. On June 11, 2001, Respondent was permitted to go to breakfast while standing watch from 0400-0800. Following breakfast, the First Engineer and Chief Engineer ordered Respondent to return to the engine room and resume his watch. (Tr. at 66-68).
8. Respondent refused the direct order to return to his duty station. (Tr. 68, 75-76, 127).
9. Respondent was discharged for cause from the SS Maui for failure to return to his duty station on June 11, 2001. (Tr. at 79; IO Ex. 6, 7).
10. For unknown reasons, Matson Navigation Company, Incorporated later rescinded Respondent's discharge. (Tr. at 130, 145-46, 151; IO Ex. 8).

B. M/V PRESIDENT JACKSON

11. American Ship Management employed Respondent as a third assistant engineer on board the Motor Vessel (M/V) PRESIDENT JACKSON between December 2, 2001, and January 5, 2002. (Tr. at 202; IO Ex. 4).

² Citations referencing the transcript are as follows: Transcript followed by the page number (Tr. at ___); Citations referring to Agency Exhibits are as follows: Investigation Officer followed by the exhibit number (IO Ex. ___). Citations referencing to Respondent's Post Hearing Brief are as follows: Respondent's Post Hearing Brief followed by the page number (Rept's PHB at ___).

12. The M/V PRESIDENT JACKSON is a 50,205 gross ton, coastwise container ship. (IO Ex. 4).
13. Allen Hochstetler served as the First Assistant Engineer aboard the M/V PRESIDENT JACKSON between December 2, 2001, and January 5, 2002 and was Respondent's direct supervisor. (Tr. at 201-240).
14. Part of Respondent's duties as a third assistant engineer was to rotate "duty days" with the other engineers. During a duty day, the engineer would roam the engine room, generally observe and inspect the components therein to ensure the equipment was working properly. (Tr. at 202-03).
15. The "duty day" required an engineer to work eight (8) hours during the day and then to be on call during the night. (Tr. at 202-03).
16. When an engineer is not serving a "duty day," the First Engineer or Chief Engineer assigns the engineer individual tasks to complete. (Tr. at 202-05).
17. The First Engineer assigned Respondent only simple welding jobs because he deemed Respondent not competent to perform many of the tasks a third assistant engineer should be capable of performing. (Tr. at 208-09).
18. When conducting welding operations, the general practice is that a welder advises the bridge where the welding is occurring. The bridge then turns off or secures the appropriate fire alarm. When the job is complete, the welder so advises the bridge and the fire alarm is reengaged. (Tr. at 210-11).
19. During the shifts in question, Respondent would occasionally forget to inform the bridge when he completed his welding jobs. As a result, the area Respondent was working would be unprotected by fire alarms, affecting the safety of the ship. (Tr. at 211-13).
20. The engineers aboard the M/V PRESIDENT JACKSON conducted firefighter training drills. During the training drills, it was common for one member of the team to dress in a fire-suit on a rotational basis. The fire-suit includes a breathing apparatus, a full suit, and boots — it is uncomfortable to wear. (Tr. at 215-16).
21. Respondent resisted heavily when it was his turn to wear the fire-suit. When he did put on the suit, there were instances where he would make a mockery of the drill and disrupt training. (Tr. at 216-17).
22. On one occasion, the engineers discovered a switch in the engine room of the M/V PRESIDENT JACKSON but no one knew what it operated. It is dangerous to turn on a switch not knowing what it will do. (Tr. at 222-23).

23. The First Assistant Engineer ordered Respondent to trace the switch to its source. Instead of tracing the switch, Respondent disobeyed the order and flipped the switch on and off several times. (Tr. at 222-23).
24. On December 24, 2001, the Chief Engineer decided that no one would work on Christmas Day except Allen Hochstetler, the First Assistant Engineer, who was the duty day engineer. Knowing that Respondent was slow to follow orders, Mr. Hochstetler ordered Respondent several times not to work on Christmas Day. Respondent still showed up to work on Christmas Day as if it was a normal working day. (Tr. at 224-25).
25. Appropriate authority ordered Respondent to stand watch in the Engine Control Room at 0800 on December 31, 2001. Respondent showed up late for duty and received a letter of warning. (Tr. at 226-29, 290-94; IO Ex. 10).
26. Respondent informed the other engineers, including his supervisors, that he had attended Kings Point Merchant Marine Academy and that anyone who did not attend Kings Point was not as capable as he was. (Tr. at 214-15).
27. Respondent told Allen Hochstetler that he (Respondent) had sued people in the past who have caused him problems. Respondent also told Mr. Hochstetler that he (Respondent) had accessed the personnel records of the ship and had the entire crews' home addresses, and knew where Mr. Hochstetler lived. Respondent was not authorized to have access to this information. (Tr. at 243-46; IO Ex. 11-12).
28. The First Assistant Engineer sent an e-mail to his supervisors aboard the M/V PRESIDENT JACKSON on January 3, 2002 stating that because of Respondent's aggression and continuous threats of litigation, he feared for his safety and livelihood and requested that he not supervise Respondent on the upcoming voyage. (Tr. at 238-41; IO Ex. 12).
29. Donald Bazille, an electrician aboard the M/V PRESIDENT JACKSON, wrote a letter to American Ship Management on January 3, 2002 stating that Respondent's continued threats of lawsuits had made the entire ship an unpleasant place to work. (Tr. at 247-48; IO Ex. 11).
30. Richard English, the M/V PRESIDENT JACKSON's Chief Mate, wrote a letter to the ship's Master on January 4, 2002. In this letter, Mr. English stated that Respondent was the most disruptive crew member he had dealt with during his thirty-three (33) year mariner career. He stated that Respondent has made continuous threats of litigation against the crew and ship. (Tr. at 247-48; IO Ex. 14).
31. On January 5, 2002, Respondent was discharged for cause from the M/V PRESIDENT JACKSON because of his insubordination, continued intimidation of crew and officers, his confrontational attitude, unprofessional behavior, continued threats of lawsuits, and aggressive behavior. (Tr. at 250-58; IO Ex. 19).

C. Mental Health Treatment

32. On July 18, 2002, Respondent filed disability insurance paperwork stating he was under a doctor's care and on January 30, 2002 was diagnosed with severe depression. (Tr. at 357-58; IO Ex. 24).
33. On October 1, 2002, Respondent sent a letter to the Marine Engineers' Beneficial Association (MEBA) Medical Plans Administrator requesting his medical coverage be reinstated. He claimed that Drs. Shafer, Riddle, and Tadros filed the proper insurance paperwork for him to obtain coverage. He further claims that he was diagnosed as "severely depressed," suffering from a "mood disorder," totally unable to work, and was treated by Dr. Tadros for emergency mental health care. (Tr. at 358-59; IO Ex. 25).
34. On November 13, 2002, Respondent filed a request with the Federal Family Education Loan Program to defer payment of his loans because he was disabled. He included a physician's statement that on January 30, 2002, he became unable to work and suffered from severe depression and "rule out bipolar." (Tr. at 361-64; IO Ex. 70).
35. The term "rule out" is a medical term meaning a certain diagnosis has not been confirmed, but that the particular diagnosis is highly suspected. (Tr. at 362; IO Ex. 32 at 162).
36. Severe depression and bipolar are lifelong conditions and are not temporary. (Tr. at 363-65).
37. Dr. Pamela Schafer, M.D. is a psychiatrist who treated Respondent. On February 20, 2002, Dr. Schafer sent a letter to Respondent informing him he needed to avoid conflict since he is "highly irritable and not as aware of it as you should/could/would be. I do think you need medicine for the irritability, depression, & disrepair." (Tr. at 369-76; IO Ex. 28, emphasis in original).
38. Dr. Emad Tadros, M.D. is a psychiatrist who treated Respondent. He diagnosed him as likely suffering from major depression and suggested that he avoid any stressful changes in this life. (Tr. at 358-59, 380-88; IO Ex. 25, 29, 30, 31).
39. On admission to Sharp Mesa Vista Hospital in San Diego, California on January 21, 2003, Respondent received a Global Assessment of Functioning (GAF) of 25-30. He was ultimately diagnosed with bipolar manic-depressive disorder and an unidentified personality disorder. The diagnosis also mentioned that he likely suffers from narcissistic and paranoid personality traits. (Tr. at 404-06; IO Ex. 71).
40. The DSM-IV is the standard diagnostic and statistical manual used by mental health providers in the United States. (Tr. at 383).

41. The DSM-IV contains the GAF scale. This scale is from zero (0) to one-hundred (100), with ninety (90) being normal. (Tr. at 382; DSM-IV at 34, (4th Ed. 2003, Text Revision)).
42. A GAF of 20-30 is characterized by behavior that "is considerably influenced by delusions, or hallucinations, or serious impairment in communication and judgment, e.g. sometimes incoherent, acts grossly inappropriately, suicidal preoccupation, or inability to function in almost all areas. Stays in bed all day. No job. No friends." (Tr. at 412).
43. A personality disorder "is an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture. It is pervasive and inflexible. It has an onset in adolescent or early adulthood. It is stable over time and leads to distress or impairment." (Tr. at 414).
44. Personality disorders are not treatable and last a lifetime. (Tr. at 416, 483).
45. Personality disorders normally manifest in early adulthood. (Tr. at 414, 553).
46. "Narcissism is a self-grandiose opinion of yourself and stature. A narcissistic personality disorder is a pattern of grandiosity, need for admiration, and lack of empathy." (Tr. at 415).
47. An individual who is bipolar manic will act in an uncontrolled manner. (Tr. at 417). Such behavior will often result in increased productivity but the activities will often be nonproductive and self-destructive. (Id.).
48. An individual who is bipolar depressive will suffer from symptoms of depression which can affect cognitive thinking. (Tr. at 417).
49. Dr. Francine Kulick, Ph.D. is a licensed psychologist who conducted a mental health examination of Respondent. This examination was conducted as part of Respondent's lawsuit against American Ship Management. (Tr. at 423-38; IO Ex. 32 at 162).
50. Dr. Kulick diagnosed Respondent as having a major depressive disorder and a personality disorder with paranoid, obsessive-compulsive, and narcissistic features. (Id.)
51. Dr. Kulick diagnosed Respondent as having a "rule out" diagnosis of delusional disorder. (Id.)
52. Respondent took the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) test on January 29, 2003. The results show that he has a moderate to severe level of functional instability. Test diagnoses show Respondent has emotionally explosive personalities to include paranoid personalities and states, passive aggressive personalities, atypical depressive, and suicidal thoughts. (Tr. at 429-35; IO Ex. 32).

53. Major depression is caused when there is a chemical imbalance in the brain. Although medication can treat the imbalance, the individual will always have the disease. Precipitating events, such as job loss and bereavement, can trigger an episode of major depression. (Tr. at 436).

III. DISCUSSION

The purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea. 46 U.S.C. 7701. To assist in this goal, Administrative Law Judges (ALJs) have the authority to revoke mariner credentials if a mariner commits an act of incompetence when acting under the authority of those credentials. See 46 U.S.C. 7703.³ Under Coast Guard procedural rules and regulations, the Coast Guard bears the burden of proof and shall prove any allegations of incompetence by a preponderance of the evidence. See 33 CFR 20.701-702; see also Appeal Decision 2485 (YATES)(1989). In this case, the Coast Guard seeks to prove Respondent is medically incompetent.

A. Jurisdiction

Jurisdiction is a question of fact and must be determined before the substantive issues of the case are decided. Appeal Decision 2620 (COX)(2001). Under 46 U.S.C. 7703(1), the Coast Guard has jurisdictional authority to revoke a respondent's license if the respondent committed an act of incompetence "when acting under the authority of that license" A mariner is considered acting under the authority of their license if the holding of that license is required by law or is required by an employer as a condition of employment. 46 CFR 5.57(a); see also Appeal Decision 2615 (DALE)(2000); Appeal Decision 2393 (STEWART)(1985).

In this case, the Coast Guard asserts Respondent is medically incompetent; therefore, his merchant mariner license should be revoked. The Coast Guard alleged Respondent, while

³ Since the alleged factual allegations occurred between March 6, 2001 and March 6, 2003 (filing of Complaint), all statutory and regulatory references, unless procedural in nature, will reflect the 2001-2003 laws.

serving aboard the Steamship (SS) MAUI between March 6, 2001 and June 11, 2001, and the Motor Vessel (M/V) PRESIDENT JACKSON between December 2, 2001 and January 5, 2002, committed acts of incompetence. During these dates, Respondent was the holder the Coast Guard issued license number 918736. (IO Ex. 2; Tr. at 101).

Respondent's employment aboard the SS MAUI and M/V PRESIDENT JACKSON satisfies the "required by law test." The SS MAUI is a 24,544 gross ton coastwise container ship whereas the M/V PRESIDENT JACKSON is a 50,205 gross ton coastwise container ship. (IO Ex. 3, 4). Title 46 U.S.C. 8701 requires individuals serving on coastwise vessels over 100 gross tons to hold a Coast Guard issued credential. Because Coast Guard issued credentials are required for service aboard the SS MAUI and M/V PRESIDENT JACKSON, such service on those vessels constitutes "acting under the authority" of the credentials. See Appeal Decision 2414 (HOLLOWELL)(1985) (interpreting the predecessor statute to 46 U.S.C. 7701 and 46 CFR 12.02-7). Thus, the Coast Guard has established Respondent was acting under the authority of his credentials while serving aboard the SS MAUI and M/V PRESIDENT JACKSON. As such, the Coast Guard has jurisdiction to determine if Respondent committed an act of incompetence while working under those credentials.

B. Mental Incompetence

The term "incompetence" is defined as "the inability on the part of a person to perform required duties, whether due to professional deficiencies, physical disability, mental incapacity, or any combination thereof." 46 CFR § 5.31. A person who suffers from mental incompetence may not "serve aboard any vessel, whether in port or at sea, in any capacity in which he could cause serious harm to himself, to others, or to the vessel itself." Appeal Decision 2181

(BURKE)(1980). The Coast Guard may investigate and issue a Complaint if reasonable grounds exist to believe the holder of a Coast Guard issued credential committed an act of incompetence while acting under the authority of that credential. See 46 CFR sections 5.101(a) (1) and 5.105(a). An ALJ finding of mental incompetence "must rest upon substantial evidence of a reliable and probative character showing that the person charged suffers from a mental impairment of sufficient disabling character to support a finding that he is not competent to perform safely his duties aboard a merchant vessel." Appeal Decision 2417 (YOUNG)(1985). Ordinarily, allegations of mental incompetence should be based upon evidence subsequent to any fit for duty examination and issuance of a merchant mariner credential. Appeal Decision 2280 (ARNOLD)(1982).

C. Coast Guard's Case in Chief

In this case, the Coast Guard alleges Respondent suffers from a major depressive disorder or other psychiatric condition which renders him medically incompetent. The Coast Guard first seeks to prove these allegations by providing evidence that Respondent exhibited erratic behavior while serving as an engineer aboard the SS MAUI and the M/V PRESIDENT JACKSON. The Coast Guard also introduced reports from numerous psychotherapists who treated Respondent. These reports diagnosed Respondent as suffering from major depression and personality disorders. Finally, the Coast Guard presented expert witness testimony of Dr. Arthur French, M.D. Dr. French has knowledge of which medical conditions, including psychiatric, can affect maritime safety. Dr. French testified that Respondent's psychiatric disorders, which manifested while serving aboard the SS MAUI and M/V PRESIDENT JACKSON, undoubtedly makes Respondent a danger to maritime safety.

1. Respondent's Behavior Aboard Vessels

Respondent graduated from the U.S. Merchant Marine Academy at Kings Point in 1991, obtained a Coast Guard issued merchant mariner license, and has served aboard several marine vessels as an engineer. (Tr. at 4; IO Ex. 32). The Coast Guard alleged Respondent displayed erratic and paranoid behavior while serving aboard marine vessels. Specifically, the Coast Guard provided evidence of Respondent's irrational behavior while working as an engineer on the SS MAUI and the M/V PRESIDENT JACKSON. The Coast Guard believes the evidence shows that Respondent has a mental impairment which affects his ability to serve safely aboard maritime vessels.

SS MAUI

Between March 6, 2001, and June 11, 2001, Matson Navigation Company employed Respondent as a second assistant engineer on board the 24,544 gross ton coastwise SS MAUI. (Tr. at 60-63; IO Ex. 3). Cecil Ray was the SS MAUI's Chief Engineer during this time period and was Respondent's supervisor. (Tr. at 62). Mr. Ray graduated from the California Maritime Academy in 1970 and is a well respected mariner. (Tr. at 56-60). Mr. Ray testified on behalf of the Coast Guard concerning Respondent's actions onboard the SS MAUI.

On June 11, 2001, Respondent was ordered to stand watch from 0400 to 0800 in the SS MAUI's engine room. (Tr. at 64-67; IO Ex. 6). Respondent's principle responsibility was to oversee the boilers, which were experiencing problems and in need of repair. (*Id.*). During his watch, Respondent was permitted to obtain breakfast, but was ordered to return to his watch station after eating breakfast. (*Id.*). However, following breakfast, Respondent told his supervisors that union rules prohibited him from continuing to stand watch and he refused to return to his duty station. (Tr. 68, 75-76, 127).

As the Chief Engineer, Mr. Ray was in Respondent's chain-of-command and served as Respondent's supervisor aboard the SS MAUI. (Id.). A command structure and the ability of individuals to follow orders are very important aboard merchant marine vessels as it promotes safety at sea. (Tr. at 78). Respondent's refusal to return to work negatively impacted the ability of the Chief Engineer to complete the needed repairs to the boiler, creating a potential safety issue. (Tr. at 74-75, 134-35). While an employee has the right to refuse an order which would put someone in danger, Respondent's refusal to work was based on a contractual dispute. (Tr. at 68, 140). As a result, Respondent was discharged for cause from the SS Maui for failure to return to his duty station on June 11, 2001. (Tr. at 79; IO Ex. 6, 7). Matson Navigation Company later rescinded Respondent's discharge; it is not known why the discharge was rescinded (Tr. at 130, 145-46, 151; IO Ex. 8).

Respondent's refusal to work on June 11, 2001 was not an isolated incident. Mr. Ray had the opportunity to work with Respondent over a period of about six (6) months and found Respondent very hard to supervise and direct. (Tr. at 96-97, 165-80). In a performance evaluation of Respondent, Mr. Ray wrote "Mr. Shine is a professional victim. He can never accept fault for his own actions or lack thereof . . . [h]e lacks the skill to be a [second assistant engineer and] lacks the personality to seek knowledge from his fellow engineers." (Tr. at 92-94; IO Ex. 7). Mr. Ray testified that while Respondent is intelligent, he is very difficult to work with, has a hard time focusing on his job, and should not be serving as a merchant mariner. (Tr. at 180). I find Mr. Ray's testimony highly credible.

MV PRESIDENT JACKSON

Between December 2, 2001, and January 5, 2002, American Ship Management employed Respondent as a third assistant engineer on board the 50,205 gross ton coastwise MV

PRESIDENT JACKSON. (Tr. at 202; IO Ex. 4). Mr. Allen Hochstetler served as the First Assistant Engineer aboard the M/V PRESIDENT JACKSON during this time period and was Respondent's direct supervisor. (Tr. at 201-240). Mr. Hochstetler testified on behalf of the Coast Guard concerning Respondent's actions aboard the M/V PRESIDENT JACKSON. I find his testimony to be highly credible.

Part of Respondent's responsibilities aboard the M/V PRESIDENT JACKSON were to rotate "duty days" with other engineers. (Tr. at 202-03). A duty day required the engineer on duty to roam the engine room, keep an overall eye on everything, and ensure the equipment was working properly. (Id.). When an engineer was not serving a "duty day," the First or Chief Engineer assigned that engineer various tasks. (Tr. at 202-05). Respondent did not have the skills or desire to accomplish many of the tasks a third engineer was expected to undertake. (Tr. at 208-09 and his inability to perform complicated tasks interfered with the ability of the First Engineer to effectively delegate work within the engine room. (Id.). However, Respondent was capable of completing simple welding jobs and was often assigned such tasks. (Id.).

When conducting welding aboard a vessel, the welder needs to secure the fire zone in the area of the ship in which he is working. (Tr. at 210-11). This is accomplished by informing the bridge that welding is occurring and the bridge then turns off the fire alarm. (Id.). After the welding is finished, the welder informs the bridge the work is completed, and the bridge reengages the fire alarm. (Id.). When Respondent conducted welding, he would frequently forget to inform the bridge when he completed his work. (Tr. at 211-13). As a result, the area Respondent was working would be unprotected by fire alarms, affecting the safety of the ship. (Id.). Respondent's supervisors informed Respondent such actions were unacceptable and he needed to be more diligent. (Id.).

The engineers aboard the M/V PRESIDENT JACKSON also conducted firefighter training drills. (Tr. at 215-16). During training drills, it was common for one member of the team to dress in a fire-suit. (Id.). The fire-suit included a breathing apparatus, a full suit, and boots—it was uncomfortable to wear. (Id.). While each member of the team was ordered to wear the suit, Respondent would always protest greatly when it was his turn to put on the suit. (Tr. at 216-17). When Respondent would eventually dress in the suit he would proceed to make a mockery of the drill and disrupt the training. (Id.).

While Respondent did eventually obey orders to wear the fire-suit, Respondent did not always obey direct orders. For example, an unknown-switch was discovered in the engine room of the M/V PRESIDENT JACKSON. (Tr. at 222). Mr. Hochstetler ordered Respondent to not turn the switch on, but instead to trace the switch to its source; it can be dangerous to turn on a switch not knowing what it will do. (Tr. at 222-23). Instead of tracing the switch, Respondent disobeyed the order and flipped the switch on and off several times. (Id.).

Another example of Respondent's inability to follow orders concerns his actions on Christmas Day 2001. On December 24, 2001, the Chief Engineer decided that no one would work on Christmas Day except Mr. Hochstetler, who was the duty day engineer. (Tr. at 224-25). Knowing Respondent was slow to follow orders, Mr. Hochstetler ordered Respondent several times not to work on Christmas Day. (Id.). However, Respondent still showed up to work on Christmas Day and proceeded as if it was a normal working day. (Id.).

Respondent's failure to effectively follow orders was not the only manner in which he created a disruptive environment aboard the M/V PRESIDENT JACKSON. He was often confrontational with other officers and crew. For example, Respondent frequently informed other engineers, including his supervisors, that he attended Kings Point Merchant Marine

Academy and that anyone who did not attend Kings Point was not as capable as he. (Tr. at 214-15). Respondent would also inform crew members that he would sue anyone who caused him problems. (Tr. at 243-46; IO Ex. 11-12). In addition to this implicit threat, Respondent told Mr. Hochstetler that he had access to the personnel records of the ship and he knew the entire crews' home addresses, including where Mr. Hochstetler lived. (Id.). Mr. Hochstetler believed Respondent's assertions even though Respondent was not supposed to have access to this information. (Id.).

Mr. Hochstetler was concerned about Respondent's actions and wrote an e-mail to his supervisors on January 3, 2002. (Tr. at 238-41; IO Ex. 12). In this e-mail, Mr. Hochstetler stated because of Mr. Shine's aggression and continuous threats of litigation, he feared for his safety and livelihood and requested that he not supervise Respondent on the upcoming voyage. (Id.). This was not the only letter filed with the ship's chain-of-command addressing concerns related to Respondent. Donald Bazille, an electrician aboard the M/V PRESIDENT JACKSON, wrote a letter to American Ship Management on January 3, 2002. (Tr. at 247-48; IO Ex. 11). In this letter, Mr. Bazill stated Respondent's continued threats of law suits had made the entire ship an unpleasant place to work. (Id.). Richard English, the M/V PRESIDENT JACKSON's Chief Mate, wrote a letter to the ship's Master on January 4, 2002. (Tr. at 247-48; IO Ex. 14). In this letter, Mr. English said Respondent was the most disruptive crew member he had dealt with during his thirty-three (33) year mariner career. (Id.).

On January 5, 2002, Respondent was discharged for cause from the M/V PRESIDENT JACKSON because of his insubordination, continued intimidation of crew and officers, confrontational behavior, continued threats of lawsuits, and aggressive behavior. (Tr. at 250-58; IO Ex. 19).

2. Respondent's Mental Health Evaluations

ALJ Ordered Medical Evaluation

In this case, the Coast Guard alleges Respondent is medically incompetent due to a major depressive disorder or other psychiatric condition. Per the regulations, "[i]n any proceeding in which the physical or mental condition of the respondent is relevant, the ALJ may order him or her to undergo a medical examination." 33 CFR 20.1313. Since this case concerns Respondent's mental condition, the undersigned issued an order directing Respondent to undergo a medical examination by psychiatrist Dr. Nathan Lavid at government expense. During the hearing, Respondent stated Dr. Lavid called Respondent at his house in an attempt to schedule an appointment. (Tr. at 12-13, 797-98). Respondent took great offense to Dr. Lavid's call and found it an invasion of privacy. (*Id.*). Respondent's position is that Dr. Lavid's staff should have called Respondent to make the appointment; he believes Dr. Lavid calling himself shows prejudice. (*Id.*). As a result, Respondent refused to undergo the ALJ ordered medical examination. (*Id.*).

A respondent's refusal to undergo an ALJ ordered medical examination may be sufficient grounds for the ALJ to infer the results of such an examination would have been adverse to the respondent. 33 CFR 20.1313. While Respondent asserts Dr. Lavid is prejudiced, Respondent's only basis for this determination is that Dr. Lavid called Respondent to make an appointment. A doctor's attempt to schedule an appointment does not establish prejudice and is not sufficient grounds to refuse a medical examination. As a result, an inference is drawn, in accordance with 33 CFR 20.1313, that the results of the examination would have been adverse to Respondent.

Respondent's Admissions and Medical Record

During the hearing, the Coast Guard introduced medical records and admissions made by Respondent concerning his mental health. As no physician-patient privilege exists in suspension and revocation hearings, the Coast Guard is allowed to introduce such evidence as long it is relevant to the charges alleged. See 33 CFR 20.802, 46 CFR 5.67. Since this case concerns Respondent's mental condition, Respondent's medical records and admissions concerning his mental health are relevant. Furthermore, in light of Respondent's refusal to be examined by a court appointed psychiatrist, these documents are of significant probative value. The following is a summary of Respondent mental health admissions and records.

Dr. Pamela Schafer is a psychiatrist who treated Respondent. (Tr. at 369-76; IO Ex. 28). On February 20, 2002, Dr. Schafer mailed a letter to Respondent informing him his insurance would cover an additional twenty-seven (27) sessions. (Id.). Within the letter, Dr. Schafer also informed Respondent she did not think he should leave town for school. (Id.). She wrote, "I think that you are too ill and will just get into more conflict there. You need time away from the conflict. You are highly irritable and not as aware of it as you should/could/would be. I do think you need medicine for the irritability, depression, & disrepair." (Id. – emphasis in original).

On October 1, 2002, Respondent filed a letter with his health insurance company requesting his medical coverage be continued. (Tr. at 358-59; IO Ex. 25). Respondent stated he was diagnosed as being "severely depressed" and suffering from a "mood disorder." (Id.). Respondent asserted his condition made him unable to work; he was being treated for emergency mental health care; and he needed his insurance to continue so he could continue his psychotropic medication. (Id.).

On November 13, 2002, Respondent filed a request with the Federal Family Education Loan Program to defer his educational loan payments because he was disabled. (Tr. at 661-64; IO Ex. 70). Within this request, a physician stated that on January 30, 2002, Respondent became unable to work and was diagnosed with severe depression and rule-out bipolar. (Id.). The term "rule out" is a medical term meaning a certain diagnosis has not been confirmed, but the particular diagnosis is highly suspected. (Tr. at 362; IO Ex. 32 at 162).

On January 21, 2003, Respondent was admitted into Sharp Mesa Vista Hospital in San Diego California. (Tr. at 404-06; IO Ex. 71). During his stay, Respondent was diagnosed with bipolar manic-depressive disorder, an unidentified personality disorder, and likely suffering from narcissistic and paranoid personality traits. (Id.). The psychiatrist treating Respondent was Dr. Emad Tadros. (Id.). Dr. Tadros treated Respondent for several months prior to the January 21, 2003 hospital admission and had previously diagnosed Respondent as likely suffering from major depression. (Tr. at 358-59, 380-88; IO Ex. 25, 29, 30, 31).

While at Sharp Mesa Vista Hospital, Respondent was given a Global Assessment of Functioning (GAF) rating of twenty-five (25) to thirty (30) upon admission. (IO Ex. 71). The GAF is a scale used by mental health professionals to assess a person's current mental state. (Tr. at 382-84). This scale is from zero (0) to one-hundred (100), with ninety (90) being normal. (Id.). A GAF rating of twenty-five (25) to thirty (30) is characterized by behavior that "is considerably influenced by delusions, or hallucinations, or serious impairment in communication and judgment, e.g. sometimes incoherent, acts grossly inappropriately, suicidal preoccupation, or inability to function in almost all areas. Stays in bed all day. No job. No friends." (Tr. at 412).

On January 23, 2003, Dr. Francine Kulick, a licensed psychologist, conducted a mental health exam of Respondent. (Tr. at 423-38; IO Ex. 32 at 162). This exam was conducted as part

of Respondent's lawsuit against American Ship Management. (Id.). Dr. Kulick diagnosed Respondent as having a major depressive disorder and a personality disorder with paranoid, obsessive compulsive, and narcissistic features. (Id.). She stated there is a "narcissistic quality is Mr. Shine's grandiosity about his accomplishments." (IO Ex. 32 at 162). Dr. Kulick also wrote that Respondent has a rule out diagnosis of delusional disorder and consistent with this diagnosis, Respondent "seems to feel conspired against and the victim of an injustice that must be remedied by legal action." (Tr. at 423-38; IO Ex. 32 at 162). She asserts Respondent's work is the focus of his life; however, his personality disorders create longstanding problems with his jobs. (IO Ex. 32 at 163).

On January 29, 2003, Respondent took the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). (Tr. at 429-35; IO Ex. 32). The test results found Respondent has a moderate to severe level of functional instability. (Id.). It further indicated that Respondent has emotionally explosive personalities to include paranoid personalities and states, passive aggressive personalities, atypical depressive, and suicidal thoughts. (Id.).

3. Mental Conditions and Danger to Maritime Safety

Coast Guard regulations do not list specific mental conditions that disqualify a mariner from holding a merchant marine document or license; however, the Coast Guard provides guidelines for evaluating a mariner's medical eligibility in its published Navigation and Vessel Inspection Circular (NVIC 2-98). (Tr. at 328-43; IO Ex. 63, 64). NVIC 2-98 addresses some, but not all mental health disorders which may disqualify an individual from holding a merchant mariner credential. (Id.). Examples of potentially disqualifying disorders include: having been diagnosed with a primary psychosis, having a condition requiring the use of psychotropic medications, and exhibiting suicidal behavior. (Id.). If a mariner is found to have a

disqualifying mental disorder and is denied a Coast Guard issued credential, the mariner may request a wavier from the National Maritime Center. (Tr. at 339-47; IO Ex. 64). Dr. Arthur French is Chief of the Medical Evolutions Branch at the National Maritime Center. (Tr. at 323). His department is responsible for determining if a mariner's medical condition will affect marine safety and if a wavier should be granted. (Tr. at 346-47).

Dr. Arthur French testified on behalf of the Coast Guard and provided an opinion on how Respondent's mental condition could affect marine safety. Dr. French entered the Coast Guard Academy in 1969, attended medical school in 1984, and continues to serve with the Coast Guard as a medical doctor. (Tr. at 323-27). Dr. French is knowledgeable on issues concerning mental health and has treated patients with psychiatric disorders. (Id.). Dr. French is not a psychiatrist and is not an expert at the diagnoses of mental conditions. (Tr. at 547, 558-59). However, a review of Dr. French's background and testimony establish that Dr. French has a strong understanding of how individual medical conditions can affect safe maritime operations. Therefore, instead of providing a diagnosis of Respondent, Dr. French reviewed the diagnoses previously made on Respondent and discussed how such medical conditions could affect maritime safety. Dr. French's testimony was found to be highly credible. Dr. French concluded that a mariner with Respondent's medical conditions would represent a great danger to himself and to others if allowed to operate under merchant mariner credentials. (Tr. at 638). I accord great weight to Dr. French's opinion.

As addressed above, Respondent has been diagnosed as suffering from several severe mental health conditions to include: mood disorders, personality disorders, and delusional disorder. Dr. French asserts that each of these conditions can affect a mariner's ability to safely perform duties aboard a vessel. Let us first consider Respondent's mood disorders.

Respondent was diagnosed as suffering from two (2) mood disorders, to include a major depressive disorder and as experiencing manic episodes. Major depressive disorder is caused by a chemical imbalance in the brain and results in loss of concentration and affects an individual's cognitive thinking. (Tr. at 417, 436, 476). Precipitating events, such as job loss and bereavement, can trigger episodes of major depression. (Id.). Likewise, manic individuals will often behave in an uncontrolled manner. (Tr. at 417-18). Such behavior may result in increased productivity; however the activities will often be ineffectual and self-destructive. (Id.). An individual who suffers from major depressive disorder and is manic is considered to be bi-polar manic depressive. Dr. French states the physical and cognitive manifestations of a person suffering from bi-polar manic depressive disorder are not conducive to a safe maritime environment. (Tr. at 416-17, 424-25). The ability to be in control of ones actions and to have rational thinking is necessary for adequate performance when working under maritime credentials. (Id.). While mood disorders can be treatable, they are lifelong conditions and are not temporary. (Tr. at 363-65, 480). Respondent provided no evidence he is currently seeking treatment for his mood disorders.

Respondent has also been diagnosed as suffering from, or has been deemed likely to possess, several personality disorders to include, narcissistic, obsessive-compulsive, and paranoid personality disorders. An individual with a narcissistic personality disorder will display a pattern of grandiosity, need for admiration, and lack of empathy. (Tr. at 415); DSM-IV at 714 (4th Ed. 2003, Text Revision). An individual with obsessive-compulsive personality disorder is preoccupied with interpersonal control at the expense of flexibility, openness, and efficiency. DSM-IV at 725. An individual with a paranoid personality disorder displays a pattern of distrust of others such that their motives are interpreted as malevolent. DSM-IV at 690. Personality

disorders are not treatable, last a lifetime, are always present, and get better or worse depending on the conditions. (Tr. at 416, 480-83). Dr. French attributes Respondent's argumentativeness, inflexibility, and inability to follow orders as outward manifestations of his personality disorders. (Tr. at 446, 480-84). Such behaviors result in more mishaps aboard maritime vessels. (*Id.*). Individuals with these types of personality disorders are dangerous to maritime safety. (Tr. at 480-84).

Finally, Respondent was also diagnosed as likely suffering from a delusional disorder. A person suffering from a delusional disorder will have one or more non-bizarre delusions that persist for at least a month. (Tr. at 437; DSM-IV at 323). Consistent with this diagnosis, a doctor who treated Respondent stated that "Mr. Shine seems to feel conspired against and the victim of an injustice that must be remedied by legal action." (Tr. at 438; IO Ex. 32 at 162). Dr. French states that such delusional thoughts can be exacerbated by precipitating events and a stressful environment. (Tr. at 556)

Dr. French summarizes his testimony by stating Respondent suffers from a bad disease and "is not medically, physically competent to hold a mariner's credential." (Tr. at 638). Certain events and environments can exacerbate Respondent's mental conditions, which cause delusional thoughts, paranoia, and aggression. (Tr. at 556-57). Dr. French states that while Respondent might be able to function in a job which entails very little social interaction, Respondent certainly is not able to function aboard a merchant vessel. (*Id.*). A merchant vessel creates lots of stresses on individuals, is very structured, and has a para-military environment. (*Id.*). Dr. French asserts that "[t]he personality disorders that Mr. Shine has are not consistent with the safe operation in that environment." (Tr. at 557).

4. The Coast Guard has Satisfied its Burden of Proof

The Coast Guard introduced substantial evidence establishing Respondent suffers from many severe mental health conditions, to include mood disorders, personality disorders, and a delusional disorder. As Respondent refused to undergo an ALJ ordered medical examination, an inference is drawn that the court ordered test would have confirmed Respondent suffers from these mental health conditions. In addition to medical records, the Coast Guard introduced evidence of Respondent's disruptive behavior aboard the SS MAUI and M/V PRESIDENT JACKSON. The Coast Guard's expert witnesses testified that these actions, which include argumentativeness, inflexibility, and inability to follow orders, are outward manifestations of Respondent's psychiatric disorders. Such behaviors result in more mishaps aboard maritime vessels and are not conducive to safe maritime operations. The undersigned finds the Coast Guard introduced substantial evidence of reliable and probative value which established Respondent suffers from a mental impairment which renders him unable to safely perform his duties aboard a merchant vessel. Absent a rebuttal of such evidence, the Coast Guard has put forth sufficient evidence establishing Respondent is a danger to himself and others, and should not be allowed to serve aboard a maritime vessel.

D. Respondent's Rebuttal

Respondent's actions throughout these proceedings have been very erratic and difficult to understand. Respondent's filings were often in excess of 100 pages in length and lacked coherent trains of thought. During the hearing, Respondent was very combative with all parties, made continuous interruptions of the judge and witnesses, and showed total discontent for the proceedings. The undersigned inquired with Respondent of why he continuously interrupted the judge and Respondent replied, "[b]ecause you're not a real judge." (Tr. at 116-17). In

accordance with 33 CFR 20.202(i), the undersigned was well within his power to exclude Respondent from the hearing for disrespect and rebellious conduct. However, taking into consideration Respondent was *pro se* and the Coast Guard charged Respondent with suffering from a mental impairment, the undersigned permitted Respondent to remain at the hearing. Furthermore, due to the convoluted nature of most of Respondent's arguments, it would have been within the power of the undersigned to dismiss such arguments outright as being not probative and without merit. However, the undersigned has attempted to decipher Respondent's arguments. After reviewing the transcript in-depth and upon studying Respondent's 170 post-hearing brief topics (which contained no subtitles, subsections, or enumerated findings of fact and conclusions of law), the undersigned determined Respondent's arguments fall within five (5) general categories. These categories are, (1) there is an inappropriate underlying reason behind the charges, (2) the ALJ acted inappropriately during the hearing, (3) the Coast Guard failed to present evidence of incompetence, (4) Respondent was not allowed to present his case, and (5) this is a military tribunal which has no jurisdiction over Respondent. These five (5) arguments will be addressed below.

1. Underlying Reason Behind Charges

Respondent asserts his competency is not the real reason why the Coast Guard has initiated these proceedings against him. Instead, Respondent states "[s]omething is very wrong here and it is not a problem with the Respondent, it is what he knows and what the Coast Guard continues to try and quash and not allow to be heard, and not just now, but for the past five years or more" (Rept's PHB at 14). Respondent believes the Coast Guard has levied the charges against him as part of a larger plan to attack American shipping interests and likewise improve Europe's maritime fleet. (Rept's PHB at 77). Respondent asserts,

There is much, much more going on here, and no matter what one wants to imagine or believe the Coast Guard is being used as a Trojan Horse of sorts to administratively attack and injure American Flag shipping, and American Flag Federal Maritime Officers and crew, while the Germans begin to set to sea in numbers not seen since before World War II. One needs to stop and think about what the European Union actually is, and what it has been up to since the end of World War II before dismissing any of this or working aggressively to declare the Respondent 'incompetent.' Anyone who moves in this direction, rather than moving toward informing NAVAL INTELLIGENCE is and should be considered a spy and enemy of Americans.
(Rept's PHB at 77)

The matters going on with former Governor and Attorney General Don Siegelman from Alabama, those that have occurred with Military Cpl. Pat Tillman, and CIA Agent Valerie Plume, Border Patrol Agents Jose Campean and Ignacio Ramos and other are all tied to these instant matters, as are the recent firing of the 8-9 U.S. Attorneys as one of them Carol C. Lam has been involved in these matters directly and was one of the 8-9 who were terminated, and there are many others as well.
(Rept's PHB at 56)

Respondent believes the Coast Guard targets mariners who stand up to such injustice. And, since Respondent rocked the boat by reporting a violation (whistle blowing) aboard the merchant marine vessel SS Comet, the Coast Guard has targeted Respondent. (Tr. at 35). Respondent believes that while the investigating officer, LCDR Tribolet, is trying to cover "up the incidents from the SS Comet," he does not think LCDR Tribolet is aware of the grand scheme of the government to dismantle American shipping. (Rept's PHB at 18). However, Respondent believes LCDR Tribolet "is becoming more and more aware [of the conspiracy], or willingly looking the other way as he has been placed on Notice." (*Id.*). Respondent asserts that he is now being treated like a Japanese prisoner during World War II and what the Coast Guard

is doing to him is "nothing less then a 'twist' of sorts on 'water-boarding'." (Rept's PHB at 24 – emphasis in original, 72).

Respondent provided no evidence of the allegations he alleges. For example, Respondent did not provide documentary or testimonial evidence addressing his "whistle blowing" actions aboard the SS Comet or why such actions relate to this case. The allegation of a governmental wide conspiracy to dismantle American shipping is also not supported by evidence. However, the lack of such evidence is immaterial. The purpose of these proceedings is not to review evidence and determine why charges were brought. Instead, the purpose of these proceedings is review evidence and determine if a mariner committed an act of incompetence. See 46 U.S.C. 7701, 7703. Respondent's allegations that the charges were brought because of an improper, alternative reason are found to be without merit and are irrelevant.

2. Inappropriate Behavior of ALJ

Respondent argues that the actions of the undersigned during the hearing were inappropriate and clearly demonstrate a "stacking of the deck" against Respondent. For example, Respondent claims the undersigned purposely delayed lunch on the second day of the hearing because he knew Respondent did not have the opportunity to eat breakfast. (Rept's PHB at 69). Respondent states, "after the Respondent had somehow weathered the first day of the proceedings, Respondent raised the issue of when the proceedings might break for lunch as it was 11:45 am and Respondent had not had an opportunity to eat in the morning." (Rept's PHB at 69; Tr. at 429, 452). Lunch was not taken until 12:25 pm. (Tr. at 452). Respondent also claims he was treated unfairly because the air conditioning in the courtroom was not operating well. (Rept's PHB at 68, 74). In an effort to suggest the Coast Guard is skilled at "playing games," Respondent states "[o]ne can easily forget about the broken AC in Room '5150' of the

Glen Anderson Federal Building” (Id.). In a more serious allegation, Respondent also accused the undersigned of instigating many ex-parte communications during the hearing. Respondent asserts the undersigned committed these, along with other, inappropriate actions during the hearing.

Such allegations are somewhat difficult to address because of their frivolousness. Respondent’s assertion the undersigned “delaying” lunch until 12:25 pm in an effort to impair Respondent is false. First, 12:25 pm is not a “late” time to take lunch and, second, lunch was taken at this time in an effort to allow a witness to finish his testimony at an appropriate point. (Tr. at 452). Respondent’s allegation the undersigned intentionally broke the air conditioning in the courtroom to impair Respondent is also false. While the courtroom was not overly cool, the air conditioning was working. And, upon a request from Respondent, the undersigned’s law clerk asked the buildings’ maintenance staff to attempt to lower the courtroom’s temperature.

Respondent also asserted that these proceedings were rife with ex-parte communications. These accusations are without merit; neither the undersigned nor did his staff discussed the merits of the case with either party separately. As set forth in 5 U.S.C. 557, unless both parties are present, an interested person is prohibited from making statements, to an ALJ, relevant to the merits of a pending proceeding. This is not Respondent’s definition of an ex-parte communication. Respondent asserts any communication “off the record” is ex-parte, even if such communications include both parties. (Rept’s PHB at 87; Tr. at 85). Respondent considers all pre-hearing telephone conferences ex-parte unless recorded. (Id.). Respondent also asserts communications between himself and fact witnesses are ex-parte communication. (Tr. at 75-77). For example, a Coast Guard witnesses testified as to Respondent’s actions aboard a merchant

mariner vessel. (Id.). Respondent believes communication between that witness and himself, while on board the vessel, are ex-parte communications. (Id.).

Respondent's definition of ex-parte communication is clearly divergent from the type of ex-parte communications restricted within statutory and case law. At no time did the undersigned or his staff discuss the merits of the case with any interested person unless both parties were present. Respondent's allegation that these proceedings were rife with ex-parte communications is found to be without merit.

3. Coast Guard's Evidence is Insufficient

Respondent argues the Coast's Guards evidence establishing incompetence is insufficient and flawed in several ways. First, Respondent attempts to discredit the testimony of Dr. French, the Coast Guard's expert witness, by asserting he is not an expert in the interpretation of medical records. Respondent's supports this assertion by stating Dr. French is neither a psychiatrist nor does he make mental health diagnoses. (Rept's PHB at 135-43). These facts are not in dispute. However, Respondent attempts to expound upon his argument by stating that since Dr. French is not a psychiatrist, he is also not qualified to review or interpret mental health reports. (Rept's PHB at 141). Such assertions are incorrect.

As previously stated, Dr. French has served as a medical doctor within the Coast Guard for over twenty (20) years, treated patients with psychiatric disorders, and has extensive knowledge concerning the field of mental health. Furthermore, Dr. French's position as the Chief of the Medical Evaluation Branch at the National Maritime Center has allowed him to gain considerable expertise in reviewing mental health diagnoses and making determinations on how such diagnoses can affect maritime safety. Dr. French's opinion assisted the trier of fact not only in understanding the nature of Respondent's medical conditions but also how those

conditions affect his ability to perform the duties of a licensed merchant mariner. His knowledge, skill, training, and experience were very helpful in determining the central fact in issue.

Therefore, I find Respondent's assertion that Dr. French lacks the required expertise to evaluate and comment on mental health evaluations to be without merit.

Second, Respondent asserts the Coast Guard introduced little to no evidence from "health care providers" establishing Respondent suffers from a mental impairment. (Rept's PHB at 87, 144-45). Upon citing to Webster's Dictionary and the Federal Register, Respondent states that "the basic understanding and definition that can be drawn from these are that a 'Health Care Provider' is someone who is contracted with and so as to provide health care services to an individual as agreed to by that individual." (Rept's PHB at 146-47 -- emphasis omitted). Since Respondent made no agreement with the Coast Guard or the undersigned to obtain health services, Respondent asserts the Coast Guard and undersigned are not "Health Care Providers" and are therefore unable to diagnose Respondent or interpret his medical records. (Rept's PHB at 149). Furthermore, in accordance with Respondent's definition, the Coast Guard introduced no documentation from a "true and proper 'HEALTH CARE PROVIDER' of Respondent" (Id.). Respondent's position is that since the Coast Guard lacks sufficient diagnoses of Respondent from proper "health care providers," the Coast Guard cannot find Respondent medically incompetent.

Respondent's argument is convoluted and flawed. Neither the regulations nor case law require the undersigned to base his finding of mental incompetence upon the diagnosis of "health care providers" as defined by Respondent. Instead, an ALJ finding of mental incompetence "must rest upon substantial evidence of a reliable and probative character showing that the person charged suffers from a mental impairment of sufficient disabling character to support a

finding that he is not competent to perform his duties aboard a merchant vessel." Appeal Decision 2417 (YOUNG)(1985). As addressed above, the Coast Guard has introduced substantial evidence comprised of witness testimony and exhibits establishing Respondent suffers from several severe mental health conditions, to include mood disorders, personality disorders, and a delusional disorder. Respondent's argument that no "health care provider" has diagnosed Respondent as suffering from mental incompetence and therefore the charges are unsubstantiated is without merit.

A third manner in which Respondent attempts to discredit the Coast Guard's evidence is by inquiring with Dr. French as to why he gave little weight to the mental health evaluation provided by Dr. Richard Rappaport, M.D. (Tr. at 533-34). Pursuant to a request from Peter Forgie, Esquire, Respondent's prior counsel, Dr. Rappaport conducted a psychiatric examination of Respondent on August 1 and 22, 2003. (IO Ex. 68 at 757, IO Ex. 69 at 777). This examination concluded that Respondent is "too smart for his own good and parts of the world were not ready for him . . . Eric is not 'crazy.'" (IO Ex. 68 at 769-71). Dr. Rappaport's report which found Respondent competent, was in stark contrast to other evaluations which found Respondent suffered from severe mental health impairments. (IO Ex. 68; Tr. at 440-445). Respondent inquired with Dr. French as to why he did not give as much weight to Dr. Rappaport's mental health evaluation as Dr. French gave to other evaluations. (Tr. at 533-34).

Dr. French testified that Dr. Rappaport's evaluation contained extraneous and trivial information, did not appear to be objective, and failed to give a comprehensive evaluation. (Tr. at 534.). For example, Dr. Rappaport's report did not provide a standard Axis 1-5 diagnosis of Respondent, the report's verbiage such as "the world is not ready for him" is generally not used when making mental health evaluations, and the report did not detail Respondent's past medical

history. (Tr. at 440-44, 472-73, 534). Dr. Rappaport's report stated there is no evidence Respondent is incompetent or unable to perform his duties. (Tr. at 443-44). Such a finding clearly failed to consider Respondent's extensive mental health history. In accordance with Dr. French's opinion, the undersigned finds Dr. Rappaport's report failed to provide a comprehensive evaluation of Respondent and therefore accords it less weight than accorded the other evaluations.

As the record shows, the undersigned has been provided a substantial amount of documentary and witness testimony concerning Respondent's mental health and actions aboard maritime vessels. This evidence, as detailed above, sufficiently establishes Respondent's mental condition would create a danger to himself and others if allowed to serve aboard maritime vessels.

4. Not Allowed to Present Case

During the hearing and in his filings, Respondent asserted he was not allowed to present his case. Respondent's two (2) chief-complaints are that he was unable to call witnesses and was not allowed to introduce exhibits. Such accusations are false. The issue of the allowance of witnesses is addressed first. On May 1, 2008, Respondent filed a Motion that was in essence his witness list. Within this Motion, Respondent listed 130 separate witnesses, including, Senator Feinstein, Senator Boxer, Admiral Thad Allen, Congressman Elijah Cummings, the undersigned, the undersigned's paralegal, the undersigned's attorney-advisor, and all personnel working in the ALJ Docketing Center. Respondent demanded "[a]ny and all individuals identified or unidentified at this point in time who have any knowledge of Coast Guard's EXHIBITS or WITNESSES are considered to be a part of the Respondent's EXHIBIT LIST and also

WITNESS LIST.” (Rept’s Motion - May 1, 2008). Respondent stated he required subpoenas issued by the undersigned for all witnesses.

In a May 12, 2008 Order, the undersigned denied Respondent’s request for subpoenas. Citing to 33 CFR 20.608, the Order stated any party may request the ALJ issue subpoenas for the attendance of witnesses at a hearing; however, subpoenas for witnesses will be limited to those whose testimony is deemed likely to be relevant to the issue at hand. See Appeal Decision 2328 (MINTZ)(1983); See 33 CFR 20.608. Respondent submitted an exhaustive witness list and failed to provide a summary of the expected witness testimonies. Respondent also failed to establish why each witness’s testimony would be relevant. Having failed to comply with the regulations, Respondent’s request for subpoenas was denied. The order did not restrict Respondent from calling witnesses to testify, telephonically or in person; the order merely denied Respondent’s request for court ordered subpoenas.

Respondent continued to assert that “[n]o matter how you look at this, the Respondent was denied, multiple times the ability to have any witnesses WHATSOEVER at the proceedings. . . .” (Rept’s PHB at 163). Respondent declared the denial of his subpoenas is the same as denying him a right to call witnesses. (Id.; Tr. at 54-55, 197-99, 644). Respondent further believes it is the duty of the Coast Guard to find his witnesses and order them to the hearing. (Tr. at 644). When the undersigned informed Respondent it was not the responsibility of the Coast Guard or the undersigned to locate Respondent’s witnesses, Respondent sarcastically stated “I understand that it’s hard for Homeland Security to find Senator Feinstein or some of the other individuals [on Respondent’s witness and subpoena list].” (Tr. at 625). Such statements typify Respondent’s conduct and convoluted actions throughout the proceedings. Respondent was provided ample opportunity to call witnesses that would attest to relevant facts, but

Respondent choose not to call such witnesses. Respondent's assertion that he was denied the ability to call witnesses is wholly false.

In addition to alleging he was unable to call witnesses, Respondent also alleges he was unable to introduce evidence. (Tr. at 708-09). On the third-day of the hearing, following the Coast Guard's case-in-chief, Respondent was offered the opportunity to put forth evidence. (Tr. at 658-60). At the beginning of the third-day, Respondent provided the Coast Guard and the undersigned a stack of documents which Respondent intended to introduce as exhibits 1-180. (Tr. at 658-65). However, these documents were not marked, tabbed, or arranged in any organized manner. (Tr. at 663-64). Respondent requested he be allowed to go through each document and match up the stack-of-paper with his exhibit list. (Tr. at 664). Respondent started to sort through and discuss his exhibits; however, considering the time it would take for Respondent to organize 180 exhibits individually, the Coast Guard offered to assist in the sorting and marking of documents. (Tr. at 669-73). Respondent appreciated the offered help; a recess was taken, and the parties attempted to organize Respondent's documents. (Id.).

Following the recess, the Coast Guard stated they would not object if Respondent's 180 exhibits were entered in bulk. (Tr. at 678). The undersigned agreed to admit all of Respondent's exhibits, but Respondent objected. (Tr. at 678-779). Respondent stated he had not had the opportunity to review his exhibits and was not sure if there were issues of privacy or privilege in the documents he intended to introduce. (Tr. at 681). Furthermore, the documents were still out of order and did not match Respondent's exhibit list. (Tr. at 689-95). Respondent stated he had the documents copied at Kinko's and it was not his fault the exhibits were mixed-up. (Id.).

Respondent was clearly unprepared and unwilling to introduce exhibits; the hearing was postponed for the day in order to allow Respondent to further organize his exhibits. (Tr. at 784-

85). The undersigned informed the parties the hearing would commence the next morning and, since the Coast Guard did not object to the introduction of Respondent's exhibits, Respondent's exhibits would be entered in bulk the following morning. (Id.).

At the beginning of the fourth-day of hearings, the undersigned inquired with Respondent if he was prepared to introduce evidence; however, Respondent stated he was still not ready to introduce exhibits. (Tr. at 863). Respondent then proceeded to assert that the undersigned lacked jurisdiction and did not have authority over Respondent. (Tr. at 789-91, 891). Only two (2) of Respondent's exhibits, which were introduced on the third-day of hearings, were entered into evidence.⁴ (Tr. at 793-94, 898). Respondent made no attempt to introduce the remainder of his 180 exhibits. (Tr. at 793-94, 898). Respondent's assertions that he was unable to introduce evidence are without merit. The Coast Guard did not object to the entering of any of Respondent's exhibits and the undersigned proposed multiple times that Respondent's exhibits may be entered into evidence. Respondent himself, having not organized or reviewed his exhibits, chose not to introduce his own exhibits.

5. Lack of Jurisdiction

Respondent has maintained throughout these proceedings that proper authority for jurisdiction is lacking. Respondent states that the Coast Guard "believes and asserts, that now as a Special Branch of the Military that it can 'Regulate' civilians affairs let alone adjudicate them." (Rept's PHB at 100). Respondent thinks only shipping commissioners, serving under the Shipping Commissioner's Act of 1871, have the jurisdictional authority to initiate an administrative proceeding against Respondent. (Rept's PHB at 128; Tr. at 891-904).

⁴ These exhibits were designated as Respondent's Exhibits 179 and 180. (Tr. at 660-668). Exhibits 1-178 were not entered into evidence.

Respondent states the shipping articles are constitutional in nature because the founding fathers, not statutory law, enacted them. (Tr. at 38). Respondent's argument is that since the undersigned is not a shipping commissioner, the undersigned has no authority to adjudicate these matters. Respondent believes these proceedings are therefore unconstitutional and are like a "Special Court Martial coupled with a Medical Board all carried out by a Branch of Military upon an alleged civilian that is not in this Uniformed Branch of [self-declared] 'Military Service.'" (Rept's PHB 12, 73, 106). Respondent cannot understand why a "military branch" is "prosecuting" a civilian. (Rept's PHB at 51, 127).

Respondent's assertion that only shipping commissions have jurisdictional authority to adjudicate these matters is without merit. Respondent was the holder of Coast Guard issued credentials, and in accordance with 46 U.S.C. 7703, the Coast Guard has jurisdictional authority to revoke Coast Guard issued credentials if the holder is found to have committed an act of incompetence while acting under those credentials. As addressed above in the jurisdiction section of this Decision and Order, the undersigned found Respondent was acting under the authority of his license during factual allegations alleged by the Coast Guard. In accordance with the statutory law, the Coast Guard does have jurisdictional authority to take action against Respondent's credentials. Respondent's assertion, that only shipping commissions may initiate administrative proceedings against Coast Guard issued credentials, is without merit.

6. Proceedings Influence Labor Dispute

Respondent argued in both his Post Hearing Brief and during the hearing that these proceedings were initiated as a means of influencing a labor dispute. (Rept's PHB at 15, 74; Tr. at 41, 64, 361). Respondent believes the Coast Guard intentionally inserted itself into a pre-existing labor dispute and "[t]his very type of behavior, to favor on side in any sort of labor

dispute, shows just what the Coast Guard is really up to" (Rept's PHB at 15, 74).

Respondent cited to 46 CFR 5.71 which states the Coast Guard shall not exercise its authority for the purpose of favoring any party in a maritime labor controversy. (Id.).

Respondent's assertion that these proceedings are invalid because they are intended to influence a labor dispute is without merit. First, Respondent has failed to provide evidence that a labor dispute exists. A labor dispute "includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U.S.C. 113(c). During the hearing, Respondent presented no witness or documentary evidence detailing the alleged employment controversy. Nor has Respondent articulated how the Coast Guard is favoring a party in the alleged labor controversy. And second, even if Respondent had provided evidence that a labor dispute existed, action can be taken if maritime safety is a concern. In accordance with 46 CFR 5.71, if the "the safety of the vessel or persons on board is presented, the [maritime labor dispute] shall be thoroughly investigated and when a violation of existing statutes or regulations is indicated, appropriate action will be taken." In this case, the Coast Guard alleged Respondent violated 46 U.S.C. 7703 by committing an act of incompetence. Substantial evidence has established that Respondent's mental incompetence has manifested in Respondent acting erratically while serving aboard maritime vessels. Such manifestations of mental incompetence are not conducive to safe maritime operations. As such, even if a maritime labor dispute existed, the Coast Guard can intervene since Respondent's mental incompetence affects maritime safety.

IV. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent, Eric Norman Shine, and the subject matter of this hearing are within the jurisdiction vested in the Coast Guard under 46 U.S.C. 7703.
2. Respondent suffers from bi-polar, manic depressive disorder.

3. Bi-polar, manic depressive disorder negatively affects a person's ability to think rationally and is not conducive to safe maritime operations.
4. Respondent also suffers from several personality disorders to include, narcissistic, obsessive-compulsive, and paranoid personality disorders.
5. Individuals with the above mentioned personality disorders are argumentative, inflexible, have a difficult time following orders, and present a danger to maritime safety.
6. Respondent suffers from a delusional disorder which makes him feel conspired against.
7. Respondent is not currently seeking treatment for his psychiatric disorders.
8. Respondent's disruptive and erratic behavior aboard the SS MAUI between March 6, 2001 and June 11, 2001, and the M/V PRESIDENT JACKSON between December 2, 2001 and January 5, 2002, affected the safety of those vessels.
9. Respondent's disruptive and erratic behavior aboard the SS MAUI and M/V PRESIDENT JACKSON, which include argumentativeness, inflexibility, and inability of follow orders, were outward manifestations of Respondent's psychiatric disorders.
10. Respondent is suffering from mental impairments of sufficient disabling character to support a finding that he is not competent to perform safely his duties aboard a merchant vessel.

V. SANCTION

Pursuant to the Table of Suggested Range of an Appropriate Order codified in 46 C.F.R. 5.569(d), the only proper order for a charge of Incompetence found proved is Revocation. The Commandant has repeatedly held that a person suffering from a psychiatric disability should not be permitted to serve aboard any vessel in a capacity in which he could cause serious harm to himself, to others, or to the vessel itself. See Appeal Decision 2514 (NILSEN)(1999); see also Appeal Decision 2460 (REED)(1987). Accordingly, outright Revocation of Respondent's license and merchant mariner credentials is the only appropriate order.


WHEREFORE,

VI. ORDER

IT IS HEREBY ORDERED that all valid licenses, documents, and endorsements issued by the Coast Guard to Eric Norman Shine are **REVOKED**. Respondent shall turn over his license together with other Coast Guard issued credentials, if any, to the Investigating Officer immediately.

PLEASE TAKE NOTICE that service of this Decision on the parties and/or parties' representative(s) serves as notice of appeal rights set forth in 33 CFR 20.1001-20.1004. (Attachment C).

Done and dated November 13, 2008
New York, New York



HON. WALTER J. BRUDZINSKI
ADMINISTRATIVE LAW JUDGE
U.S. COAST GUARD

ATTACHMENT A

CHRONOLOGICAL HISTORY -- PLEADINGS FILED PRIOR TO REMAND

<u>DOCUMENT</u>	<u>DATE RECEIVED/ISSUED</u>
1. LETTER FROM USCG TO DR. EBAD TADROS (with attachments)	January 30, 2003
2. THE COMPLAINT Initiated by MSO SAN FRANCISCO BAY Collected By: USCG Gathered; LT TRIBOLET, Witnessed By: USCG Witness; LT BRIAN HILL	March 6, 2003
3. MOTION FOR EXTENSION OF TIME TO RESPOND	March 24, 2003
4. REPLY OF USCG TO MOTION FOR EXTENSION OF TIME TO RESPOND	March 27, 2003
5. ORDER GRANTING IN PART AND ORDER DENYING IN PART RESPONDENT'S MOTION FOR EXTENSION OF TIME TO RESPOND	March 28, 2003
6. ANSWER OF RESPONDENT ERIC NORMAN SHINE	April 9, 2003
7. NOTICE OF ASSIGNMENT TO JUDGE MCKENNA	April 10, 2003
8. USCG MOTION FOR PRE-HEARING CONFERENCE	April 11, 2003
9. ORDER GRANTING IN-PERSON PREHEARING CONFERENCE FOR MAY 14, 2003 IN ALAMEDA, CA	April 15, 2003
10. USCG MEMORANDUM OF POINTS & AUTHORITIES ON RESPONDENT'S THIRTEEN AFFIRMATIVE DEFENSES	May 1, 2003
11. RESPONDENT'S ERIC NORMAN SHINE'S REQUEST FOR EXTENSION OF TIME TO RESPOND TO USCG MEMORANDUM OF POINTS AND AUTHORITIES	May 2, 2003
12. USCG REPLY TO RESPONDENT'S REQUEST FOR EXTENSION OF TIME TO RESPOND TO U.S. COAST GUARD MEMORANDUM OF POINTS & AUTHORITIES	May 5, 2003
13. ORDER GRANTING EXTENSION OF TIME	May 6, 2003

14. RESPONDENT'S COUNSEL HAIGHT BROWN & BONESTEEL'S APPLICATION TO WITHDRAW AS COUNSEL FOR RESPONDENT ERIC NORMAN SHINE & REQUEST TO CONTINUE BRIEFING RESPONSE DATE AND PREHEARING CONFERENCE UNTIL NEW COUNSEL IS APPOINTED May 12, 2003
15. REPLY OF THE CG TO WITHDRAWAL OF HAIGHT, BROWN & BONESTEEL, LLP AS ATTORNEYS FOR RESPONDENT (includes a 21 page attachment) May 13, 2003
16. ORDER (Granting Motion to Withdrawal; allowing Respondent Until May 20, 2003, to obtain new counsel; on or before May 30, 2003, Respondent shall file a Reply to CG's Memorandum of Points & Authorities; and pre-hearing conference set for June 3, 2003. May 14, 2003
17. USCG EXHIBIT LISTS (listing 1-64 CG Exhibits) May 27, 2003
18. LETTER FROM SHAWN STEEL TO JUDGE MCKENNA May 28, 2003
19. RESPONDENT'S EX PARTE MOTION FOR CONTINUANCE OF JUNE 3rd HEARING: TO BE TAKEN AND CONSIDERED UNDER SEAL May 30, 2003
20. ORDER (Denying Respondent's Ex Parte Motion for Continuance) May 30, 2003
21. ORDER (Respondent agrees to Filing a Notice of Appearance by New Counsel by June 9, 2003) June 3, 2003
22. NOTICE OF APPEARANCE June 9, 2003
23. USCG MOTION FOR ORDER FOR PRODUCTION OF MEDICAL, PSYCHOLOGICAL & DISABILITY RECORDS June 9, 2003
24. RESPONDENT'S NOTICE OF INTENTION TO OPPOSE MOTION FOR ORDER FOR PRODUCTION OF MEDICAL, PSYCHOLOGICAL & DISABILITY RECORDS June 13, 2003
25. RESPONDENT'S MOTION TO VACATE PRIOR COURT ORDERS June 13, 2003
26. RESPONDENT'S MOTION FOR DISCOVERY June 13, 2003

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| 27. | REPLY OF THE CG TO RESPONDENT'S MOTION TO VACATE PRIOR COURT ORDERS & MOTION TO DENY NEW AFFIRMATIVE DEFENSES | June 17, 2003 |
| 28. | REPLY OF THE CG TO RESPONDENT'S MOTION FOR DISCOVERY | June 17, 2003 |
| 29. | LETTER FROM C.A. TRIBOLET TO NAVAL MEDICAL CENTER DAN DIEGO | June 17, 2003 |
| 30. | REPLY OF THE CG TO RESPONDENT'S REQUEST FOR EXTENSION TO FILE AFFIRMATIVE DEFENSES | June 19, 2003 |
| 31. | ORDER DENYING MOTION TO VACATE | June 19, 2003 |
| 32. | RESPONDENT'S REQUEST FOR EXTENSION TO FILE AFFIRMATIVE DEFENSES | June 19, 2003 |
| 33. | ORDER - NOTICE OF HEARING | June 20, 2003 |
| 34. | RESPONDENT'S AMENDED ANSWER OF ERIC N. SHINE (original document) | June 25, 2003 |
| 35. | RESPONDENT'S OPPOSITION TO USCG'S REQUEST FOR ISSUANCE OF SUBPOENAS AND/OR THE ACQUISITION OF RESPONDENT'S MEDICAL/ PSYCHOLOGICAL RECORDS (original document) | June 25, 2003 |
| 36. | RESPONDENT'S REQUEST FOR EXTENSION TO FILE AMENDED ANSWER | June 26, 2003 |
| 37. | ORDER DENYING EX PARTE MOTION FOR CONTINUANCE OF JUNE 3 RD PRE-HEARING CONFERENCE | June 30, 2003 |
| 38. | ORDER DENYING IN PART RESPONDENT'S MOTION FOR DISCOVERY | June 30, 2003 |
| 39. | ORDER GRANTING IN PART MOTION FOR PRODUCTION OF MEDICAL, PSYCHOLOGICAL & DISABILITY RECORDS | July 1, 2003 |
| 40. | REQUEST CONTINUANCE OF HEARING
(Doc. # 40 is missing from the case file) | July 4, 2003 |
| 41. | RESPONDENT'S MOTION TO STAY PENDING UNLAWFUL DETAINER ACTION | July 7, 2003 |

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| 42. | ORDER (denying Motion for Continuance of the July 22, 2003 hearing) | July 7, 2003 |
| 43. | RESPONDENT'S MOTION TO EXTEND TIME WITHIN WHICH TO EXCHANGE DOCUMENTS | July 7, 2003 |
| 44. | RESPONDENT'S WITNESS LIST | July 7, 2003 |
| 45. | USCG WITNESS LIST | July 7, 2003 |
| 46. | ORDER DENYING RESPONDENT'S MOTION TO STAY | July 7, 2003 |
| 47. | ORDER TO SHOW CAUSE (affirmative defenses) | July 8, 2003 |
| 48. | ORDER GRANTING RESPONDENT'S REQUEST FOR EXTENSION TO FILE AMENDED ANSWER | July 8, 2003 |
| 49. | ORDER REJECTING RESPONDENT'S AFFIRMATIVE DEFENSES THAT ASSERT LACK OF JURISDICTION AND AUTHORITY | July 9, 2003 |
| 50. | ORDER (submission of summary as to what Respondent believes each witness will testify) | July 9, 2003 |
| 51. | SUBPOENA RESPONSE OF DR. EMAD TADROS (with attachments) | July 10, 2003 |
| 52. | LETTER FROM PAMELA R. SCHAFER, M.D. TO COMMANDING OFFICER, ALAMEDA, CA | July 11, 2003 |
| 53. | USCG MOTION FOR CONTINUANCE & DATE-CERTAIN FOR PRODUCTION OF MEDICAL AND OTHER RECORDS | July 11, 2003 |
| 54. | USCG NOTICE OF APPEARANCE AND CHANGE OF INVESTIGATING OFFICER | July 11, 2003 |
| 55. | LETTER FROM GEORGIANA G. RODIGER, Ph.D. TO COMMANDING OFFICER, ALAMEDA, CA | July 15, 2003 |
| 56. | ORDER (Granting of CG unopposed Motion for Continuance. Hearing reschedule to August 25, 2003, San Diego) | July 15, 2003 |
| 57. | USCG MOTION FOR MENTAL HEALTH EXAMINATION | July 15, 2003 |

58. LETTER FROM PAMELA N. LAIDLAW, PH.D. TO
COMMANDING OFFICER, ALAMEDA, CA July 16, 2003
59. RESPONDENT'S OBJECTION TO MOTION FOR
MENTAL HEALTH EXAMINATION July 16, 2003
60. LETTER FROM PETER S. FORGIE TO JUDGE MCKENNA
(Re: designation as the agreed Medical Examiner) July 16, 2003
61. LETTER FROM ROBERT C. STREPLY, PH.D TO
COMMANDING OFFICER, ALAMEDA, CA July 17, 2004
62. MEMORANDUM FROM D.A. HOPPER, LT TO BRIAN HILL, LT
RE: SUBPOENA DUCES DECUM; DR. DOUGLAS RIDDLE July 18, 2003
63. LETTER FROM C.A. TRIBOLET TO PETER FORGIE July 21, 2003
64. USCG WITNESS SUMMARY July 21, 2003
65. AFFIDAVIT REGARDING ACQUISITION OF
MEDICAL/PSYCHOLOGICAL RECORDS July 21, 2003
66. RESPONDENT'S MOTION TO EXTEND TIME TO
SUBMIT WITNESS SUMMARY July 22, 2003
67. ORDER (Granting Respondent's unopposed Motion to Extend
Time to Submit Witness Summary List from July 21, 2003 to
July 25, 2003) July 22, 2003
68. SCHEDULING ORDER - NOTICE OF HEARING DATE
CHANGE July 23, 2003
69. USCG NOTICE OF INTENT TO DELAY OBJECTION TO
RESPONDENT'S WITNESS LIST & TO DELAY
PROVIDING A REBUTTAL WITNESS LIST July 24, 2003
70. RESPONDENT'S WITNESS SUMMARY AS REQUIRED
BY COURT ORDER July 25, 2003
71. DECLARATION OF CUSTODIAN OF RECORDS FROM
MARY R. July 25, 2003
72. RESPONDENT'S RESPONSE TO COURT ORDER TO
SHOW CAUSE RE: CERTAIN AFFIRMATIVE
DEFENSES (includes a 66 page attachment) July 25, 2003

- 73. RESPONDENT'S SECOND MOTION FOR DISCOVERY July 28, 2003
- 74. USCG REPLY & MOTION TO STRIKE RESPONDENT'S WITNESS LIST AND WITNESS SUMMARY July 29, 2003
- 75. USCG REPLY TO RESPONDENT'S RESPONSE TO COURT ORDER TO SHOW CAUSE July 29, 2003
- 76. ORDER DENYING RESPONDENT'S SECOND MOTION FOR DISCOVERY July 30, 2003
- 77. ORDER REGARDING PSYCHOLOGICAL EXAMINATION July 30, 2003
- 78. RESPONDENT'S MOTION FOR RECONSIDERATION OF ORDER REGARDING PRODUCTION OF MEDICAL AND PSYCHOLOGICAL RECORDS July 31, 2003
- 79. USCG REPLY TO RESPONDENT'S RESPONSE TO COURT ORDER REGARDING PSYCHOLOGICAL EXAMINATION August 1, 2003
- 80. RESPONDENT'S RESPONSE TO COURT ORDER REGARDING PSYCHOLOGICAL EXAMINATION August 1, 2003
- 81. USCG REPLY TO RESPONDENT'S MOTION FOR RECONSIDERATION OF ORDER REGARDING PRODUCTION OF MEDICAL & PSYCHOLOGICAL RECORDS August 2, 2003
- 82. ORDER DENYING MOTION FOR RECONSIDERATION OF MEDICAL & PSYCHOLOGICAL RECORDS August 4, 2003
- 83. ORDER (denying Respondent Motion for Reconsideration of the psychological examination) August 4, 2003
- 84. FACSIMILE TO PETER FORGIE FROM CINDY ROBERSON August 6, 2003
- 85. RESPONDENT'S MOTION FOR ORDER REQUIRING USCG TO TRANSMIT DISCOVERY DOCUMENTS AND/OR EXHIBITS DIGITALLY OR ELECTRONICALLY August 6, 2003
- 86. RESPONDENT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER OF AUGUST 4, 2003 CONCERNING THE PSYCHOLOGICAL EXAM August 6, 2003

87. RESPONDENT'S MOTION FOR ORDER PRECLUDING PSYCHOLOGICAL RECORDS AND TESTIMONY AT HEARING August 6, 2003
88. RESPONDENT'S MOTION FOR ISSUANCE OF SUBPOENA'S FOR ATTENDANCE AT HEARING August 6, 2003
89. RESPONDENT'S MOTION FOR ORDER REQUIRING CLARIFICATION OF USCG ALLEGATIONS REGARDING "MENTAL INCOMPETENCE" AND/OR "MEDICAL INCOMPETENCE" August 6, 2003
90. RESPONDENT'S MOTION TO CONTINUE HEARING August 6, 2003
91. RESPONDENT'S MOTION TO SET SETTLEMENT CONFERENCE August 6, 2003
92. ORDER DENYING MOTION FOR CLARIFICATION OF USCG ALLEGATIONS August 12, 2003
93. REPLY MEMORANDUM OF RESPONDENT ERIC SHINE IN SUPPORT OF MOTION FOR RECONSIDERATION OF THE COURT'S ORDER OF AUGUST 4, 2003 CONCERNING THE PSYCHOLOGICAL EXAM August 12, 2003
94. ORDER (granting joint agreement for settlement conference) August 13, 2003
95. RESPONDENT'S REQUEST OF TRANSCRIPTS OF ALL PROCEEDINGS August 15, 2003
96. RESPONDENT'S MOTION FOR ORDER PRECLUDING USE OF MEDICAL RECORDS FOR ANY PURPOSE August 15, 2003
97. RESPONDENT'S MOTION FOR ORDER PRECLUDING EVIDENCE OF ANY COMMUNICATIONS BETWEEN RESPONDENT ERIC SHINE AND HIS PRIOR ATTORNEYS August 15, 2003
98. RESPONDENT'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF THE COURT'S ORDER OF AUGUST 4, 2003, CONCERNING THE PSYCHOLOGICAL EXAM (*duplicate filing of Aug 12, 2003*) August 15, 2003
99. RESPONDENT'S MOTION FOR ORDER THAT ALJ HAS THE ABILITY TO ORDER THE ISSUANCE OF A LICENSE AT A LOWER GRADE AS OPPOSED TO REVOKING LICENSE August 15, 2003

100. OPPOSITION TO UNITED STATES COAST GUARD'S
MOTION TO STRIKE RESPONDENT'S WITNESS
SUMMARY August 18, 2003
101. RESPONDENT'S MOTION FOR ORDER APPLYING
ADMINISTRATIVE LAW JUDGE BENCHBOOK TO
THESE PROCEEDINGS August 19, 2003
102. RESPONDENT'S MOTION FOR ORDER PRECLUDING
INTRODUCTION OF ANY DOCUMENTS AUTHORED
BY RESPONDENT ERIC SHINE COMPLAINING
ABOUT HIS UNION August 20, 2003
103. RESPONDENT'S RESPONSE TO COAST GUARD TO
SHOW CAUSE RE: CERTAIN AFFIRMATIVE DEFENSES August 23, 2003
104. USCG REPLY TO RESPONDENT'S MOTION FOR
ORDER APPLYING ADMINISTRATIVE LAW JUDGE
BENCHBOOK TO THESE PROCEEDINGS August 25, 2003
105. USCG MOTION (no title specifying filed Motion) August 25, 2003
106. USCG REPLY TO RESPONDENT'S MOTION FOR ORDER
PRECLUDING EVIDENCE OF COMMUNICATION BETWEEN
ERIC SHINE AND HIS PRIOR ATTORNEYS August 25, 2003
107. RESPONDENT'S BRIEF RE: COAST GUARD'S BURDEN
OF PROOF & PSYCHOLOGICAL RECORDS/EXAMINATION August 25, 2003
108. RESPONDENT'S MOTION TO ORDER PARTIES INTO
ALTERNATIVE DISPUTE RESOLUTION August 26, 2003
109. RESPONDENT'S MOTION FOR ORDER CORRECTING
THE COURT'S ORDER OF JULY 30, 2003 August 28, 2003
110. RESPONDENT'S THIRD MOTION FOR DISCOVERY August 28, 2003
111. ORDER (denying Respondent's Motion requesting that the
Procedural and evidentiary guidelines in Longshore & Harbor
Workers Compensation Act be utilized in this proceeding) August 28, 2003
112. RESPONDENT'S MOTION FOR ORDER REGARDING
JURISDICTION OVER RESPONDENT ERIC SHINE August 28, 2003

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| 113. | RESPONDENT'S NOTICE OF RELATED CASES AND
MOTION FOR REMAND | August 29, 2003 |
| 114. | ORDER (denying Respondent's August 20, 2003 Motion) | September 2, 2003 |
| 115. | USCG REPLY TO RESPONDENT'S MOTION FOR
COAST GUARD TO TRANSMIT DISCOVERY
DOCUMENTS AND/OR EXHIBITS DIGITALLY OR
ELECTRONICALLY | September 2, 2003 |
| 116. | ORDER (denying Respondent's August 15, 2003 Motion) | September 2, 2003 |
| 117. | ORDER (denying Respondent's motion to be provided
transcripts) | September 3, 2003 |
| 118. | ORDER GRANTING MOTION IN PART & DENYING
MOTION IN PART | September 3, 2003 |
| 119. | ORDER (90 day continuance from Aug 26, 2003) | September 4, 2003 |
| 120. | ORDER (granted in part/denied in part to Respondent's
August 6, 2003 Motion) | September 4, 2003 |
| 121. | ORDER DIRECTING PSYCHOLOGICAL EXAMINATION
(<i>Doc. # 121 is missing from the case file</i>) | September 5, 2003 |
| 122. | RESPONDENT'S MOTION FOR ORDER CLARIFYING
THE COURT'S STATEMENTS REGARDING THE
PSYCHOLOGICAL EXAMINATION | September 5, 2003 |
| 123. | ORDER DENYING MOTION TO ORDER PARTIES
INTO ALTERNATIVE DISPUTE RESOLUTION
(denying Respondent's Motion dated August 6, 2003) | September 8, 2003 |
| 124. | FINAL ORDER DIRECTING PSYCHOLOGICAL
EXAMINATION | September 8, 2003 |
| 125. | ORDER DENYING MOTION AS MOOT | September 9, 2003 |
| 126. | ORDER REJECTING CERTAIN AFFIRMATIVE
DEFENSES | September 9, 2003 |
| 127. | ERRATA ORDER | September 9, 2003 |
| 128. | ORDER (denying Respondent's Motion dated August 28, 2003) | September 10, 2003 |

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| 129. | USCG CONTINGENT MOTION FOR SUMMARY JUDGMENT | September 10, 2003 |
| 130. | LETTER FROM FORGIE JACOBS & LEONARD TO LT BRIAN HILL | September 10, 2003 |
| 131. | ORDER RULING ON RESPONDENT'S PROPOSED WITNESS LIST | September 12, 2003 |
| 132. | COMPLAINT FOR VIOLATIONS OF DUE PROCESS RIGHTS UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION; AND FOR DAMAGES; DEMAND FOR JURY TRIAL | September 12, 2003 |
| 133. | MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION | September 12, 2003 |
| 134. | NOTICE OF MOTION AND MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION | September 12, 2003 |
| 135. | RESPONDENT'S MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER & PRELIMINARY INJUNCTION | September 12, 2003 |
| 136. | DECLARATION OF PETER FORGIE IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER, AND PRELIMINARY INJUNCTION | September 12, 2003 |
| 137. | ORDER DENYING RESPONDENT'S NOTICE OF RELATED CASES AND MOTIONS FOR REMAND | September 12, 2003 |
| 138. | LETTER FROM LENA INGRANDE TO JUDGE MCKENNA | September 16, 2003 |
| 139. | RESPONDENT'S RESPONSE TO FINAL COURT ORDER DIRECTING PSYCHOLOGICAL EXAMINATION | September 16, 2003 |
| 140. | USCG REPLY OF THE COAST GUARD TO RESPONDENT'S PROPOSED SUBMISSION OF DOCUMENTS TO DR. HAROUN | September 16, 2003 |
| 141. | RESPONDENT'S PROOF OF SERVICE | September 16, 2003 |

- 142. LETTER TO DR. ANSAR HAROUN FROM JUDGE MCKENNA September 17, 2003

- 143. RESPONDENT'S STATEMENT OF ATTEMPTED COMPLIANCE WITH COURT ORDER REGARDING THE PSYCHOLOGICAL EXAMINATION September 19, 2003

- 144. ORDER AND NOTICE OF FAILURE TO COMPLY September 23, 2003

- 145. ORDER ISSUED BY HON. THOMAS J. WHELAN (United States District Court, Southern District of California) DISMISSING CASE FOR LACK OF SUBJECT MATTER September 23, 2003

- 146. LETTER FROM LT BRIAN HILL TO PETER FORGIE RE: SETTLEMENT REQUIREMENTS September 25, 2003

- 147. RESPONDENT'S MOTION FOR RECONSIDERATION OF COURT'S ORDER AND NOTICE OF FAILURE TO COMPLY September 30, 2003

- 148. DECLARATION OF PETER FORGIE IN SUPPORT OF MOTION FOR RECONSIDERATION OF COURT'S ORDER AND NOTICE OF FAILURE TO COMPLY September 30, 2003

- 149. RESPONDENT'S MOTION FOR RECUSAL OF ALJ HON. PARLEN L. MCKENNA October 1, 2003

- 150. AFFIDAVIT OF ERIC NORMAN SHINE IN SUPPORT OF MOTION FOR RECUSAL OF ALJ HON. PARLEN L. MCKENNA October 1, 2003

- 151. RESPONDENT'S OPPOSITION TO CONTINGENT MOTION FOR SUMMARY JUDGMENT October 1, 2003

- 152. DECLARATION OF ERIC SHINE IN SUPPORT OF HIS OPPOSITION TO COAST GUARD'S MOTION FOR SUMMARY JUDGMENT October 1, 2003

- 153. DECLARATION OF RICHARD G. RAPPAPORT, M.D. (with attachments) October 1, 2003

- 154. USCG REPLY TO RESPONDENT'S MOTION FOR RECONSIDERATION OF COURT'S ORDER AND NOTICE OF FAILURE TO COMPLY October 1, 2003

155. OPPOSITION TO CONTINGENT MOTION FOR SUMMARY JUDGMENT (ATTACHED IS COURT REPORTERS TRANSCRIPT ETC., RECEIVED OCTOBER 8, 2003) October 2, 2003
156. USCG REPLY TO RESPONDENT'S OPPOSITION TO CONTINGENT MOTION FOR SUMMARY JUDGMENT October 3, 2003
157. USCG REPLY TO RESPONDENT'S MOTION FOR RECUSAL October 6, 2003
158. RESPONDENT'S RESPONSE TO USCG'S REPLY TO OPPOSITION TO CONTINGENT MOTION FOR SUMMARY JUDGMENT October 7, 2003
159. LETTER FROM DEBRA M. GUNDY, DOCKET CENTER TO COMMANDANT (G-LMI) November 4, 2003
160. ORDER – OFFICIAL NOTICE OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (DSM-IV-TR) November 18, 2003
161. ORDER – NOTICE OF INTENT TO GRANT COAST GUARD'S MOTION FOR SUMMARY DECISION AND ORDER REQUIRING RESPONDENT TO SUBMIT A BRIEF DETAILING ANY AND ALL ALLEGED SUBSTANTIVE ERROR'S THE RESPONDENT/ COUNSEL WILL ASSERT ON APPEAL November 19, 2003
162. ORDER DENYING RESPONDENT'S MOTION FOR RECUSAL November 20, 2003
163. RESPONDENT'S APPEAL TO THE USCG COMMANDANT IN RESPONSE TO JUDGE MCKENNA'S NOVEMBER 20, 2003, "ORDER DENYING RESPONDENT'S MOTION FOR RECUSAL" (Volumes I, II and III) November 24, 2003
164. LETTER FROM KENNETH V. WILSON TO COMMANDANT (G-LMI) Re: Respondent's Appeal November 24, 2003
165. RESPONDENT'S RESPONSE TO COURT'S NOTICE OF INTENT TO TAKE OFFICIAL NOTICE OF DSM-IV-TR November 24, 2003
166. RESPONDENT'S RESPONSE TO COURT'S ORDER DIRECTING RESPONDENT TO FILE BRIEF December 2, 2003

167.	ORDER & CLARIFICATION AS REQUESTED BY RESPONDENT REGARDING PROPOSED TAKING OF OFFICIAL NOTICE OF DSM-IV-TR	December 10, 2003
168.	RESPONDENT'S RESPONSE TO ORDER OF CLARIFICATION; REQUEST FOR HEARING	December 12, 2003
169.	FACSIMILE FROM SCOTT DOW TO JUDGE MCKENNA	January 5, 2004
170.	RESPONDENT'S APPEAL TO USCG COMMANDANT REGARDING ALJ RECUSAL (Reassertion of Appeal)	January 12, 2004
171.	ORDER (Clarification Re: Counsel's representative to Respondent)	February 5, 2004
172.	RESPONDENT RESPONSE TO ORDER OF THE COURT ISSUED FEBRUARY 5, 2004; REQUEST FOR SCHEDULING CONFERENCE	February 10, 2004
173.	RESPONDENT'S NOTICE OF APPEAL (On USCG's Decision On Appeal – Appeal Decision No. 2644; Motion to the Ninth Circuit to proceed in Forma Pauperis under 28 USCA 1915 OR as a "Seaman" under 28 USCA 1916) with attachments	February 17, 2004
174.	ORDER GRANTING SUMMARY DECISION	February 20, 2004
175.	RESPONDENT'S NOTICE OF APPEAL(S)	March 9, 2004
176.	LETTER FROM KENNETH V. WILSON, DOCKET CENTER TO ERIC N. SHINE Re: NOTICE OF APPEAL	March 12, 2004
177.	DENIAL OF STAY UNDER 46 CFR 5.707 AND ISSUANCE OF PROTECTIVE ORDER	March 29, 2004
178.	NOTICE OF WITHDRAWAL OF COUNSEL	April 12, 2004
179.	PROTECTIVE ORDER	April 20, 2004

ATTACHMENT A (cont'd)

CHRONOLOGICAL HISTORY -- PLEADINGS FILED AFTER REMAND

<u>DOCUMENT</u>	<u>DATE RECEIVED/ISSUED</u>
1. DECISION OF THE VICE COMMANDANT ON APPEAL (NO. 2661)	December 27, 2006
2. ORDER OF RECUSAL ISSUED BY ALJ PARLEN L. McKENNA	January 5, 2007
3. NOTICE OF REMAND ASSIGNMENT TO ALJ WALTER BRUDZINSKI	January 30, 2007
4. LETTER TO ALJ BRUDZINSKI FROM PETER S. FORGIE, FORGIE & LEONARD DATED MARCH 8, 2007 (to advise the ALJ that he does not represent respondent)	March 8, 2007
5. ORDER (to parties to advise ALJ of availability to participate in a Pre-hearing Conference by April 17, 2007)	March 28, 2007
6. RESPONDENT'S NOTICE OF RECEIPT OF "NOTICE OF REMAND ASSIGNMENT"; NOTICE OF INCORPORATION OF RELATED INFORMATION; AND NOTICE OF RELATED CASES; NOTICE OF RECEIPT AND LIMITED RESPONSE TO EXECUTIVE OFFICER WALTER J. BRUDZINSKI'S ORDER OF MARCH 28, 2007	April 17, 2007
7. SCHEDULING ORDER -- NOTICE OF HEARING (hearing scheduled to commence on September 25, 2007, Long Beach, CA)	June 20, 2007
8. NOTICE OF APPEARANCE BY LCDR CHRISTOPHER A. TRIBOLET ON BEHALF OF THE UNITED STATES COAST GUARD	August 27, 2007
9. COAST GUARD'S MOTION FOR STAY OF PROCEEDINGS PENDING REVIEW OF RESPONDENT'S APPEAL BY THE COMMANDANT	August 27, 2007
10. COAST GUARD'S REQUEST FOR PRE-HEARING CONFERENCE	August 27, 2007
11. NOTICE OF PRE-HEARING TELECONFERENCE (Pre-hearing teleconference scheduled for September 5, 2007 at 12:00 (PST))	August 28, 2007
12. VARIOUS NOTICES (FIRST PAGE ONLY) IN WHICH THE RESPONDENT ATTEMPTED TO FILE VIA FACSIMILE	September 5, 2007
13. NOTICE OF DEFICIENT FILING ISSUED TO RESPONDENT FROM ALJ DOCKETING CENTER	September 6, 2007
14. NOTICE OF PROCEDURAL HEARING ("In-Person" Pre-hearing Conference scheduled for September 25, 2007)	September 6, 2007

15. RESPONDENT'S NOTICE OF MOTION REGARDING UNKNOWN STATUS OF APRIL 17TH, 2007 MOTION AS FILED BY ALLEGED RESPONDENT IN RESPONSE TO ALJ ORDER OF MARCH 28, 2007 THAT ALLEGED RESPONDENT RESPONDED TO BUT COMPLAINANT DID NOT, DATED SEPTEMBER 4, 2007
September 10, 2007
16. RESPONDENT'S NOTICE OF MOTION IN OPPOSITION TO "NOTICE OF APPEARANCE" OF AND BY LT. TRIBOLET - [NOW LCDR] DUE TO CONFLICTS OF INTEREST; AND PREVIOUS AND ONGOING PROSECUTORIAL MISCONDUCT; DERELECTION OF DUTY; AND FAILURE TO "APPEAR", DATED SEPTEMBER 4, 2007
September 10, 2007
17. RESPONDENT'S NOTICE OF MOTION REGARDING RECUSAL OF ALJ BRUDZINSKI DUE TO CONFLICTS OF INTEREST, DATED SEPTEMBER 5, 2007
September 10, 2007
18. RESPONDENT'S NOTICE OF MOTION IN OPPOSITION TO UNTIMELY APPEARANCE BY LCDR TRIBOLET; AND DUE TO CONFLICTS OF INTEREST AND PROSECUTORIAL AND PROCEDURAL MISCONDUCT, DATED SEPTEMBER 5, 2007
September 10, 2007
19. RESPONDENT'S NOTICE OF MOTION IN OPPOSITION TO "MOTION FOR STAY OF PROCEEDINGS PENDING REVIEW OF RESPONDENT'S APPEAL BY THE COMMANDANT" AS PROCEDURALLY DEFECTIVE; OPPOSITION TO MATTERS BEING TAKEN OUT OF ORDER, DATED SEPTEMBER 5, 2007
September 10, 2007
20. RESPONDENT'S NOTICE OF MOTION TO SEPT. 5TH, 2007 PRE-HEARING CONFERENCE AND DEFEREMENT OF ALL MATTERS TO SEPT. 25TH HEARING AND CONVERSION OF SEPT. 25TH "HEARING" TO INITIAL APPEARANCES AND DISCUSSION OF PROCEDURAL DUE PROCESS CONCERNS; VACATING ORDER FOR SEPT. 5TH CONFERENCE, DATED SEPTEMBER 5, 2007
September 10, 2007
21. RESPONDENT'S NOTICE OF MOTION ON ERRATA TO CORRECT MISSING ORDER FOR SEPT. 25TH HEARING, DATED SEPTEMBER 5, 2007
September 10, 2007
22. RESPONDENT'S NOTICE OF MOTION REGARDING UNTIMELY NOTIFICATION OF CALENDARED SEPTEMBER 25TH, 2007 "HEARING" AND DUE PROCESS VIOLATIONS ARISING THEREFROM AND CONVERSION DATED SEPTEMBER 5, 2007
September 10, 2007
23. RESPONDENT'S NOTICE OF MOTION REGARDING UNTIMELY RECEIPT OF NOTICE, MOTION AND ORDER FOR SEPT. 5TH 2007 "TELE-CONFERENCE" DATED SEPTEMBER 5, 2007
September 10, 2007

24. RESPONDENT'S NOTICE [ONLY] OF ERRATA; AND NOTICE [ONLY] OF MOTIONS IN OPPOSITION AND CORRECTION OF SUBSTANTIVE AND PROCEDURAL MATTERS AFFECTING DUE PROCESS AS PRESENTED WITHIN COMMANDANT'S ORDER ON APPEAL TO "VACATE ORDER FOR SUMMARY JUDGEMENT", DATED SEPTEMBER 5, 2007
September 10, 2007
25. COAST GUARD'S NOTICE OF UNAVAILABILITY FOR THE SEPTEMBER 25, 2007 PROCEDURAL HEARING
September 12, 2007
26. RESPONDENT'S SECONDARY NOTICE; AND INITIAL UNPERFECTED MOTION IN OPPOSITION TO "MOTION FOR STAY OF PROCEEDINGS PENDING REVIEW OF RESPONDENT'S APPEAL BY THE COMMANDANT" AS PROCEDURALLY DEFECTIVE; OPPOSITION TO MATTERS BEING TAKEN OUT OF ORDER; NOTICE AND MOTION IN OPPOSITION TO UNAVAILABILITY FOR THE SEPTEMBER 25TH, 2007 PROCEDURAL HEARING
September 17, 2007
27. NOTICE AND ORDER OF PROCEDURAL HEARING ("In-Person" Pre-hearing Conference rescheduled to October 23, 2007)
September 19, 2007
28. RESPONDENT'S NOTICE OF; AND RESPONSE IN OPPOSITION TO "NOTICE OF DEFICIENT FILING" AS FRIVOLOUS AND WITHOUT MERIT; NOTICE AND MOTION IN RESPONSE AND DECLARATION OF "NOTICE OF DEFICIENT FILING" AS MOOT, IMMATERIAL AND INACCURATE, DATED SEPTEMBER 18, 2007
September 20, 2007
29. RESPONDENT'S NOTICE; AND MOTIONS IN OPPOSITION TO "NOTICE OF UNAVAILABILITY FOR SEPTEMBER 25TH, 2007 PROCEDURAL HEARING; ADDITIONAL NOTICE OF MOTIONS FOR RECUSAL OF MR. TRIBOLET DUE TO CONFLICTS OF INTEREST AND MISCONDUCT; AND SECONDARY NOTICE AND INITIAL MOTION OF RECUSAL OF ALJ [AS UNPERFECTED], DATED SEPTEMBER 26, 2007
October 1, 2007
30. ORDER DENYING RESPONDENT'S MOTION OF SEPTEMBER 26, 2007
October 11, 2007
31. NOTICE AND ORDER OF PROCEDURAL HEARING
October 11, 2007
32. RESPONDENT'S NOTICE; AND UNPERFECTED MOTIONS ON INITIAL PRIMA FACIE SHOWING TOWARD RECUSAL; AND CONFLICTS OF INTEREST AND INVESTIGATORY; PROSECUTORIAL AND JUDICIAL MISCONDUCT; SECOND NOTICE AND AMENDED OF RELATED CASES W/ATTACHMENTS, DATED OCTOBER 23, 2007
October 26, 2007
33. TRANSCRIPT (CONDENSED VERSION) OF THE OCTOBER 23, 2007, IN-PERSON PRE-HEARING CONFERENCE IN LONG BEACH, CA

34. RESPONDENT'S NOTICE OF ERRATA ON SERVICE FOR: NOTICE;
AND UNPERFECTED MOTIONS ON INITIAL PRIMA FACIE SHOWING
TOWARD RECUSAL; AND CONFLICTS OF INTEREST AND
INVESTIGATORY; PROSECUTORIAL AND JUDICIAL MISCONDUCT;
SECOND NOTICE AND AMENDED OF RELATED CASES,
DATED OCTOBER 26, 2007 October 30, 2007
35. MEMORANDUM AND ORDER OF PRE-HEARING CONFERENCE October 29, 2007
36. LETTER TO ERIC SHINE (RESPONDENT) FROM LCDR TRIBOLET
(COAST GUARD) WITH ATTACHED COPY OF "COAST GUARD
MEMORANDUM OF POINTS & AUTHORITIES DATED
MAY 1, 2003", DATED OCTOBER 29, 2007 November 5, 2007
37. LETTER TO ERIC SHINE (RESPONDENT) FROM LCDR TRIBOLET
(COAST GUARD) RE: EXHIBITS. COAST GUARD'S EXHIBITS
NOS. 1 THROUGH 64 ATTACHED DATED NOVEMBER 9, 2007 November 29, 2007
38. COAST GUARD'S REQUEST FOR STATUS CONFERENCE February 22, 2008
39. ORDER DIRECTING PSYCHIATRIC EXAMINATION February 26, 2008
40. RESPONDENT'S NOTICE; AND MOTION IN OPPOSITION TO
"ORDER DIRECTING PSYCHIATRIC EXAMINATION"
[ISSUED FEBRUARY 26, 2008 BY LCDR. WALTER J. BRUDZINSKI -
ACTIVE DUTY COAST GUARD] AS PROCEDURALLY,
SUBSTANTIVELY, LEGALLY AND CONSTITUTIONALLY DEFECTIVE;
OPPOSITION TO MATTERS BEING TAKEN OUT OF ORDER;
OPPOSITION TO DESTRUCTION OF RECORDS AND INTENTIONAL
SPOILIATION OF RECORDS AND EVIDENCE BEFORE RECORDS HAVE
EVEN BEEN CREATED; NOTICE; AND MOTION REGARDING ORDER
AND RECUSAL OF SAID DOCTOR, DATED MARCH 26, 2008 March 27, 2008
41. COAST GUARD'S MOTION FOR STATUS CONFERENCE,
DATED MARCH 24, 2008 March 28, 2008
42. COAST GUARD'S MOTION AND REPLY TO RESPONDENT'S
"NOTICE" DATED MARCH 26, 2008 March 31, 2008
43. STATUS NOTICE AND ORDER (Hearing scheduled to commence
May 20, 2008, Long Beach, CA; Supplemental or resubmission of
exhibit/witness list due May 1, 2008; Motions for Telephonic Testimony
due May 1, 2008) April 11, 2008
44. RESPONDENT'S NOTICE; AND MOTION IN RESPONSE AND
OPPOSITION TO THE COAST GUARD / JAG PROSECUTOR
LCDR. CHRISTOPHER TRIBOLET'S "MOTION FOR STATUS
CONFERENCE" [WHICH WAS NOT RECEIVED IN A TIMELY
FASHION AND NO ABILITY TO RESPOND HAS BEEN ALLOWED];
NOTICE; UNPERFECTED [PARTIAL] ANSWER TO APRIL 11, 08
"STATUS NOTICE AND ORDER" NOTICE; AND MOTION AS

- ANSWER TO OR IN RESPONSE TO "COAST GUARD'S MOTION AND REPLY TO RESPONDENT'S "NOTICE" DATED MARCH 26, 2008 . . . NOTICE; AND MOTION IN OPPOSITION TO "ORDER DIRECTING PSYCHIATRIC EXAMINATION . . .", DATED APRIL 15, 2008
45. MEMORANDUM AND ORDER (RULING ON RESPONDENT'S "NOTICE AND MOTION IN OPPOSITION TO ORDER DIRECTING PSYCHIATRIC EXAMINATION. MOTION DENIED)
46. RESPONDENT'S NOTICE; AND MOTION TO DEMAND A FULL, FAIR, OPEN, VISUALLY AND AUDIBLY RECORDED HEARING ON MAY 20, 2007 TOWARD ALL MATTERS IN THIS ENTIRE PROCEEDING, DATED APRIL 22, 2008
47. RESPONDENT'S NOTICE; AND MOTION IN OPPOSITION AND RESPONSE TO COAST GUARD'S "MEMORANDUM AND ORDER" ISSUED APRIL 16, 2008, DATED APRIL 23, 2008
48. RESPONDENT'S NOTICE; AND MOTION IN OPPOSITION AND RESPONSE TO COAST GUARD'S "STATUS NOTICE AND ORDER" ISSUED APRIL 11, 2008, DATED APRIL 28, 2008
49. COAST GUARD'S REPLY TO RESPONDENT'S APRIL 22, 2008 MOTION
50. COAST GUARD AMENDED WITNESS LIST
51. COAST GUARD'S AMENDED EXHIBIT LIST (to include Exhibit Nos. 32A; 58A; 65; 66; 67)
52. COAST GUARD'S MOTION FOR TELEPHONIC TESTIMONY
53. LETTER TO RESPONDENT FROM ALJ DOCKETING CENTER TO INCLUDE A CHRONOLOGICAL HISTORY OF ALL ACTIVITIES, MOTIONS, ETC. IN THIS MATTER; PURSUANT TO RESPONDENT'S REQUEST
54. ORDER (denying Respondent's Notice; And Motion to Demand a Full, Fair, Open, Visually and Audibly Recorded HEARING on May 20, 2007 Toward All Matters In This Entire Proceeding)
55. RESPONDENT'S NOTICE; AND MOTION IN RESPONSE AND OPPOSITION TO "STATUS NOTICE AND ORDER" AS PERTAINING TO WITNESS LIST; AND NOTICE; AND MOTION IN RESPONSE AND OPPOSITION TO "STATUS NOTICE AND ORDER" AS PERTAINING TO EXHIBIT LIST, DATED MAY 1, 2008
56. ORDER (denying Respondent's motion for oral hearing on all notices and motions, separately convened from the hearing on the allegation. Respondent's request to plead to the charges is DENIED)

April 16, 2008

April 16, 2008

April 28, 2008

April 28, 2008

May 1, 2008

May 1, 2008

May 1, 2008

May 1, 2008

May 1, 2008

May 1, 2008

May 2, 2008

May 6, 2008

May 7, 2008

- 57. ORDER DIRECTING PSYCHIATRIC EXAMINATION May 7, 2008
- 58. SCHEDULING ORDER – NOTICE OF HEARING May 7, 2008
- 59. LETTER TO ERIC SHINE (RESPONDENT) FROM LCDR TRIBOLET (COAST GUARD) WITH ATTACHED DOCUMENTS RECEIVED FROM DR. FRENCH, DATED MAY 9, 2008 May 12, 2008
- 60. ORDER GRANTING COAST GUARD'S MOTION FOR TELEPHONIC TESTIMONY May 12, 2008
- 61. ORDER DENYING RESPONDENT'S MOTIONS OF MAY 1, 2008 May 12, 2008
- 62. RESPONDENT'S NOTICE; PETITION AND COUNTERCLAIM TO UNTIMELY FILING AND NOTICE OF COAST GUARD'S LETTER AND ATTACHED DOCUMENTS DATED 09 MAY 08 AS FORWARDED ON FROM COAST GUARD CHIEF MEDICAL OFFICER CAPTAIN FRENCH LEAVING INSUFFICIENT NOTICE FOR TRIAL PREPARATION FOR SIMULTANEOUS PUBLIC TRIAL AND UNNOTICED AND UNCALENDARED PUBLIC HEARING ON PUBLIC MENTAL HEALTH EXAMS, UNDATED May 22, 2008
- 63. RESPONDENT'S NOTICE; MOTION; PETITION AND COUNTERCLAIM IN RESPONSE AND OPPOSITION TO UNTIMELY FILING AND NOTICE OF COAST GUARD MILITARY JUDGE'S "SCHEDULING ORDER – NOTICE OF HEARING" AS ISSUED BY LCDR. ALJ / MLJ BRUDZINSKI ON MAY 07, 2008 FOR TRIAL ON MAY 20, 2008 LEAVING INSUFFICIENT NOTICE FOR TRIAL PREPARATION", UNDATED May 22, 2008
- 64. RESPONDENT'S PETITION FOR LEGISLATIVE /EXECUTIVE AND JUDICIAL NOTICE AS TO HR 2830, DATED MAY 19, 2008 May 22, 2008
- 65. RESPONDENT'S UNPERFECTED [PARTIAL] AMENDED WITNESS LIST AND [PARTIAL] SUMMARY, DATED MAY 20, 2008 May 27, 2008
- 66. LETTER FROM THE COAST GUARD TO THE ALJ RE: TRANSCRIPT OF HEARING, DATED JUNE 3, 2008 June 4, 2008
- 67. POST HEARING BRIEF SCHEDULING ORDER June 10, 2008
- 68. AFFIDAVIT AND DECLARATION OF RESPONDENT LT ERIC N. SHINE ON COAST GUARD "KANGAROO COURTS" AND NEED OF TRANSCRIPTS DATED JUNE 11, 2008 June 16, 2008
- 69. CORRESPONDENCE FROM RESPONDENT TO LINDA JACKSON, CEO/PRESIDENT OF PREMIERE ANALYSIS, UNDATED June 17, 2008

70. RESPONDENT'S NOTICE OF FILING OF: COUNTER-COMPLAINT AGAINST COAST GUARD, ALJ/LCDR. BRUDZINSKI, ADM. CREA, ADM ALLEN, AND LCDR. TRIBOLET, ET AL AND CONCLUSIONS OF LAW AND FACT AS ORDERED TO FILE BY COAST GUARD BY JULY 10, 2008, DATED JULY 9, 2008 July 11, 2008
71. RESPONDENT'S "CONCLUSIONS OF LAW AND FACT ORDERED FILED BY JULY 10, 2008" "FILED UNDER DURESS AND BY COMPULSION" DATED JULY 9, 2008 July 11, 2008
72. "REGARDING CONCLUSIONS OF LAW AND FACT - ORDERED BY JULY 10, 2008" "FILED UNDER DURESS AND BY COMPULSION" SUBMITTED BY RESPONDENT, DATED JULY 22, 2008 July 23, 2008
73. DECISION AND ORDER November 13, 2008

ATTACHMENT B

WITNESS AND EXHIBIT LIST

Respondent Witnesses – no witnesses called

Coast Guard Witnesses

1. Cecil Ray
2. Allen Hochstetler
3. Dr. Arthur French, M.D., CAPT USPHS

Respondent Exhibits

- 179. Articles Referenced by Dr. French and Letter
- 180. Amnesty International Article

* Exhibits 1-178 were not entered into evidence

Coast Guard Exhibits

1. The Complaint
2. License, Merchant Mariner Document and STCW certificate
3. Certificates of Discharge from the vessel MAUI, and "Coast Guard Vessel Documentation" printed out for the MAUI
4. Certificate of Discharge from the vessel PRESIDENT JACKSON, and "Coast Guard Vessel Documentation" print out for the PRESIDENT JACKSON
5. MATSON OER completed by Captain Marshall, dated 04/09/2001
6. Letter of Discharge for cause, signed by C/E Ray, dated 06/11/2001
7. MATSON OER completed by Chief Engineer Ray dated 06/11/2000
8. Mr. Percival's letter to Mr. Shine dated 08/27/2001
9. Letter of Warning, signed by C/E McMillan dated 12/28/2001
10. Letter of Warning signed by C/E McMillan dated 12/31/2001
11. Mr. Bazille's letter to ASM management dated 01/03/2002
12. Mr. Hochstetler's email to ASM management dated 01/03/2002
13. Mr. Hochstetler's fax to Mr. Morgan dated 02/08/2002
14. Chief Mate English's letter to Capt Kovary dated 01/04/2002
15. Mr. Soderlund's letter to Chief Engineer McMillan dated 01/04/2002
16. Captain Kovary's e-mail to ASM management dated 12/31/2001
17. Captain Kovary's e-mail to ASM management dated 01/02/2002
18. Captain Kovary's e-mail to ASM labor relations dated 01/03/2002

19. Entry of Official Logbook of the PRESIDENT JACKSON dated 01/05/2002
20. State of California, Notice of Automatic Disability Payment effective 1/30/2002
21. Complaint in the Matter of Eric Shine v. Matson, dated 10/05/2001
22. MESA Benefits computer printout dated 06/03/2002
23. MESA Statement of Claim for Members signed by Respondent and dated 06/07/2002
24. Respondent's appeal to the State of California concerning disability, dated 07/18/2002
25. Respondent's letter to the MESA Plan dated 10/01/2002
26. EDD Disability Status Inquiry, submitted by Respondent, dated 09/18/2002
27. Plaintiff Eric Shine's Response to Defendant's First Set of Interrogatories dated 10/10/2002
28. Dr Schafer's letter to Respondent dated 02/20/2002/
29. Dr Tadros' letter to MEBS Plans dated 10/04/2002
30. Dr Tadros' psychiatric evaluation of the Respondent dated 09/20/2002
31. Dr Tadros' letter "To Whom It May Concern" dated 11/22/2002
32. Dr. Kulick's report on the Respondent's psychological condition dated 02/20/2003
33. Regional Exam Center file of Eric Shine
34. Coast Guard investigation of Respondent's misconduct on the MV SUE LYKES on 04/01/1995
35. Chief Engineer's letter to ASM concerning the Respondent's termination from CAPE ISABEL dated 05/08/2000, and Letter of Disciplinary Warning, dated 05/30/2000
36. MATSON's response to NLRB investigation concerning Respondent's allegations dated 09/27/2001
37. Withdrawal of NLRB charges against MATSON at Respondent's request, dated 11/01/2001
38. Respondent's letter to Mr. Morgan dated 11/14/2001
39. ASM response to NLRB complaint concerning Respondent's termination from the CAPE ISABEL, dated 11/15/2001
40. Withdrawal of NLRB charges against ASM
41. Respondent's letter to Senior Chief Fong (MSO San Francisco), dated 11/17/2001
42. Respondent's letter to ASM CFO, Captain Kovary, dated 12/30/2001 (1700 hrs)
43. Respondent's letter to ASM CFO, Captain Kovary, dated 01/05/2002 (0800 hrs)
44. Respondent's letter to ASM CFO, Captain Kovary, dated 01/05/2002 (1608 hrs)
45. Respondent's e-mail to ASM CFO (Ms. Collins) dated 01/06/2002
46. Mr. Morgan's letter to the Respondent dated 01/08/2002
47. Respondent's letter to LT Tribolet (MSO San Francisco), dated 01/09/2002
48. Respondent's letter to ASM CFO (Ms. Collins) dated 01/16/2002
49. LT Wiley's investigative findings
50. LT Wiley (MSD Unalaska, Alaska) e-mail to Captain McCormick (PRESIDENT JACKSON) dated 01/25/2002
51. Respondent's letter to the Commandant of the Coast Guard, dated 01/28/2002
52. Coast Guard investigation of the SS COMET, dated 01/29/2002
53. Respondent's letter to CDR Metruck (MSO San Diego), dated 05/16/2002

54. Respondent's e-mail to Mr. Farley (Coast Guard Headquarters), dated 05/18/2002
55. LCDR Kummerfeld (MSO LAILB) e-mail to CDR Cummings (MSO LAILB), dated 05/21/2002
56. Respondent's e-mail to Mr. Farley (Coast Guard Headquarters), dated 05/22/2002
57. Coast Guard findings in the investigation of the MORMACSUN, as of 05/22/2002
58. Withdrawal of Mr. Haney as Respondent's attorney, dated 06/18/2002, and associated documents
59. Respondent's e-mail to the FBI, dated 07/08/2002
60. Respondent's e-mail to RADM Stewart, William Schubert, etc, dated 12/27/2002
61. Respondent's letter to Norm Mineta (Secretary of Transportation) dated 03/01/2003, Respondent's "Post-It Note," appended to MSO LAILB's letter dated June 10, 2002 the Coast Guard's final agency action dated 4/11/2003
62. Respondent's e-mail to LT Tribolet (MSO San Francisco) dated 05/06/2003
63. NVIC 6-89
64. NVIC 2-98
65. Official Navy Service Record of Mr. Shine
66. Policy letter detailing DD-214
67. Certain Department of the Navy Policies pertaining to issuance of Form DD-214
68. Declaration of Richard Rappaport
69. Declaration of Peter Forgie, Esquire
70. Temporary Total Disability Deferment Request
71. Sharp Mesa Vista Hospital Report

ATTACHMENT C

NOTICE OF ADMINISTRATIVE APPEAL RIGHTS

33 CFR 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

33 CFR 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
 - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
 - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 CFR 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
 - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --
 - (i) Basis for the appeal;

- (ii) Reasons supporting the appeal; and
 - (iii) Relief requested in the appeal.
- (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
- (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
- (c) No party may file more than one appellate brief or reply brief, unless --
- (1) The party has petitioned the Commandant in writing; and
 - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
- (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

33 CFR 20.1004 Decisions on appeal.

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.

CERTIFICATE OF SERVICE

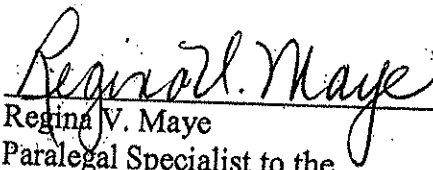
I hereby certify that I have this day served the foregoing *Decision and Order* by express mail courier (Federal Express) upon the following parties and limited participants (or designated representative) in this proceeding at the addresses indicated as follows:

LCDR Christopher A. Tribolet
Coast Guard MLCPAC
Building 54A, Coast Guard Island
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USCG - ALJ Docketing Center
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Baltimore, MD 21202-4022
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Done and dated November 13, 2008
New York, New York


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Administrative Law Judge
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