

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

UNITED STATES COAST GUARD

Complainant

vs.

MARK STINZIANO

Respondent

Docket Number: 2020-0328
Enforcement Activity No. 5783758

COAST GUARD POST REMAND BRIEF:

**46 U.S.C. §7704a IS APPLICABLE TO
RESPONDENT'S ACTS OF ABUSIVE SEXUAL CONTACT**

Attorney

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I. INTRODUCTION

The United States Coast Guard initiated an administrative action against Mark Steven Stinziano on August 20, 2020, seeking revocation of Mark Steven Stinziano’s (“Respondent”) Merchant Mariner Credential (MMC) Nos. [REDACTED] and [REDACTED]. The Decision and Order (“D&O”) issued by the Honorable Michael J. Devine, Administrative Law Judge (“ALJ”) on April 20, 2022, dismissed Charges 1 and 2 as not proven and dismissed Charge 6 as time barred, but found the acts charged as abusive sexual contact in charges 3,4 and 5 to be proven as non-sexual assault and battery. USCG v. STINZIANO Decision and Order (D&O), Docket No. 2020-0328, 2022 WL 1907412, at 39 (April 20, 2020). On January 6, 2023, the Vice Commandant for the Coast Guard remanded the case for review of the ALJ’s interpretation 18 U.S.C. §§ 2244(b) and 2246(3) as applied to Charges 3, 4 and 5 of the Complaint. Appeal Decision 2737 (STINZIANO) 2023 WL 2584472 at 8, 11 (January 6, 2023).

This Post Remand Brief addresses the applicability of 46 U.S.C. §7704a to Respondent’s acts of non-consensual sexual contact as found proven by the original ALJ in Charges 3, 4 and 5.¹ Accordingly, the Coast Guard respectfully requests this Court find §7704a(b) to be the proper basis for a final decision in this Suspension and Revocation (S&R) administrative action against Respondent’s MMC for his acts of abusive sexual contact in violation of 18 U.S.C. §2244(b), and issue an Order of revocation.

¹ The Coast Guard’s companion Post Remand Brief: Respondent’s Acts are Abusive Sexual Contact in Violation of 18 U.S.C. §2244(b), addresses these issues and is herein incorporated by reference. Accordingly, the Coast Guard respectfully asks the Court to find Respondent’s acts of impermissibly touching Deck Cadet’s buttocks with his hand and groin with the intent to abuse, harass, degrade or humiliate to be sexual contact as defined by 18 U.S.C. §2246(3) and in violation of 18 U.S.C. §2244(b).

II. PROCEDURAL HISTORY AND FACTS

The Coast Guard initiated this administrative action against Respondent's MMC on August 20, 2020. Charges 1 through 4 were based on Respondents violation of 18 U.S.C. § 2244(b), that while acting as Chief Mate of the MAERSK IDAHO, he perpetrated abusive sexual contact against Deck Cadet 1 and Second Mate by, touching the Second Mates inner thigh and genital area; and touching Deck Cadet 1's buttocks and pressing his groin against his buttocks to simulate a sexual act. Charges 5 and 6 each alleged twelve separate violations of Maersk Line Limited's Anti-Discrimination, Anti-Harassment, and Equal Opportunity Policy ("MLL Policy") for Respondent's harassing behavior against the Second Mate, Deck Cadet 1 and Engine Cadet to include the acts of physical contact against Deck Cadet 1.

An in-person hearing was held on June 8 and 9, 2021, in Baltimore Maryland, and continued June 14, 2021, remotely via zoom for Government Application. The Honorable Michael J. Devine issued the D&O on this matter on April 20, 2022, ultimately finding Respondent did not commit any sexual misconduct in any of his actions. The ALJ dismissed all charges alleging Respondent committed abusive sexual contact against Second Mate based on credibility issues. D&O at 16, 39. The ALJ also dismissed the charges of violation of MLL's policy not involving physical contact because although they were sexual jokes, the ALJ determined Respondent's actions did not amount to sexual molestation under 46 C.F.R. §5.61(a) and where therefore time barred. Id. at 33, 39. The ALJ did determine Respondent's impermissible touching of Deck Cadet 1 buttocks with his hand and groin to be the lesser offense of assault and battery, constituting interference with a government official under 46 C.F.R § 5.61(a)(10). Id. at 39. The ALJ determined these acts also violated MLL's Policy, however he held they were multiplicitous with

the acts proven in Charges 3 and 4 and merged them for sanction determination purposes. *Id.* at 42. The ALJ ordered a sanction of four months outright suspension, followed by 8 months suspension remitted upon completion of a 12-month probation period. *Id.* at 43.

The Coast Guard timely appealed the ALJ's finding in their entirety, arguing the ALJ had not supported his findings by substantial evidence; his conclusions of law were not in accordance with applicable law, precedent, and public policy; and he had abused his discretion in finding none of Respondent's actions constituted sexual misconduct. Respondent filed his Reply, alleging the D&O was correctly decided.

On January 6, 2023, the Vice Commandant issued his decision on appeal. The Vice Commandant affirmed all the ALJ's findings, with the exception of his findings regarding Respondent's impermissible physical contact towards Deck Cadet 1. *STINZIANO* at 11. The ALJ's Order of suspension was set aside and the case remanded because of the "uncertainties with respect to the [ALJ's] interpretation of 18 U.S.C. § 2244(b) and 18 U.S.C. § 2246(3)." *Id.* The Vice Commandant noted the ALJ had not provided an explanation why Respondent's actions could be considered "hazing" and "harassment" for the purposes of assault and battery and violations of MLL policy but would not meet the statutory definition of sexual contact, which allows for the requisite intent to be to "abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person." *Id.* at 7-8; 18 U.S.C. § 2246(3) [emphasis added].

On December 23, 2022, 46 U.S.C. Chapter 77 Suspension and Revocation, was amended by the 2023 National Defense Authorization Act (NDAA), Pub. Law 117-263, Title CXVI, 136 Stat. 2395 (December 23, 2022) (codified at 46 U.S.C. §§ 2101, 7704a, 7541, 11101, 2114(a),

3203, 4901, 10104, 10105). The amendments included enacting both statutory definitions and independent basis for S&R when a credentialed mariner commits act(s) of sexual assault or sexual harassment.

The ALJ who issued the D&O retired and is unavailable to preside over this remand. Accordingly, this Court was assigned this matter to adjudicate the remanded issues on February 16, 2023. On September 14, 2023, this Court held a pre-hearing conference to discuss the procedure of this remand case. The Court identified two issues to be discussed on this remand: (1) the applicability of 46 U.S.C. § 7704a to Respondent's acts of non-consensual physical contact as found proven by the original ALJ in Charges 3, 4 and 5 and (2) if the ALJ erred in his interpretation of 18 U.S.C. §§ 2244(b) and 2246(3) by not applying its provisions to Respondent's acts of non-consensual physical contact as found proven by the original ALJ in Charges 3, 4 and 5. Order Memorializing Pre-Hearing Conference and Scheduling Order, October 4, 2023, at 3 ("October 4 Order").

This Post Remand Brief addresses the question of the applicability of 46 U.S.C. §7704a to Respondent's acts of non-consensual physical contact as found proven by the original ALJ in Charges 3, 4 and 5. The Coast Guard respectfully requests this Court find Respondent's acts to be properly adjudicated under the provisions of 46 U.S.C. §7704a.

III. ARGUMENT

The Complaint in this matter charged Respondent with six counts of misconduct as described by 46 U.S.C. § 7703(1)(B) and defined by 46 C.F.R. § 5.27. This Court is considering on remand

the acts alleged in Charges 3, 4 and 5 for violations of 18 U.S.C. §2244(b) based on Respondent's acts of sexual contact, as defined by 18 U.S.C. §2246(3). STINZIANO at 8.

Subsequent to the initiation of this S&R administrative proceeding, but prior to a final decision being reached on the remanded questions, the enactment of 46 U.S.C. §7704a(b) provided an independent S&R basis for sexual assault, defined as “any form of abuse or contact as defined in chapter 109A of Title 18”. 46 U.S.C. 2101(45). It is appropriate for this Court apply 46 U.S.C. §7704a(b) to Respondent's acts of sexual contact because this Court is not limited to a decision on the pleadings as originally filed, provided the parties have had notice and opportunity to respond. Furthermore, the clear statutory language of 46 U.S.C. §7704a mandates its application to Respondent's acts of sexual contact against Deck Cadet 1 occurring prior to the statute's December 2022 enactment.

A. THIS COURT IS NOT LIMITED TO RENDERING DECISION ON THE CHARGES AS INITIALLY FILED IN THE AUGUST 2020 COMPLAINT.

This Court is well within its purview to consider issues beyond what was originally pled in this matter. Because a decision on the nature of Respondent's acts of non-consensual physical contact as found proven by the original ALJ in Charges 3, 4 and 5 have been remanded to this Court, there has not been a final decision issued in this S&R administrative proceeding. Therefore, the timing of the application of 46 U.S.C. §7704a as the basis for S&R in this matter is not an issue because the question “of whether a pleading may be amended is not based on the timing of the amendment but on whether there has been notice and an opportunity to litigate the amended charge.” Appeal Decision 2630 (BAARSVIK), citing Kuhn v. Civil Aeronautics Board, 183 F.2d 839, 841 (D.C. 1950).

The facts of Respondent’s conduct underpinning the remanded issue of the proper application of 18 U.S.C. §§2244(b) and 2246(3) have been charged by the Coast Guard, defended by the Respondent and found proven by the original ALJ. These same proven facts are now proper grounds for S&R based on a finding of sexual assault under 46 U.S.C. §7704a(b). Accordingly, this Court’s decision is not limited to the charges as alleged in the original Complaint, filed prior to the enactment of 46 U.S.C. §7704a, as there has not yet been a final decision on the proper basis for S&R in this matter, and Respondent has had notice of the issues and an opportunity to litigate against the revised basis for an S&R administrative finding.

Both Coast Guard Commandant Decisions on Appeal and Federal case law support this Court’s ability to apply 46 U.S.C. §7704a(b) to Respondent’s conduct constituting sexual contact under 18 U.S.C. §2246(3). The Commandant has allowed pleadings to be amended after a hearing, provided there has been notice and an opportunity to litigate the amended charge. Appeal Decision 2393 (STEWART); see Appeal Decision 2613 (SLACK) (“Findings that lead to the suspension or revocation of a license can be made without regard to the framing of the original specification as long as the Appellant has actual notice and the questions are litigated.”); Appeal Decisions 2545 (JARDIN); 2422 (GIBBONS); 2416 (MOORE) ; 1792 (PHILLIPS); 2578 (CALLAHAN). Similarly, under Coast Guard regulations, it is a non-discretionary charge that if there is a material change that “may affect the outcome of the administrative proceeding”, the party “**shall** amend or supplement a previously filed pleading” provided the amendment “does not broaden the issues without the opportunity [...] both to reply and prepare for the broadened issues.” 33 C.F.R. §20.305(a) [emphasis added].

At the time the Complaint was filed, misconduct was the only charge available to the Coast Guard to initiate an administrative S&R action for acts of sexual contact as defined in Chapter 109A of Title 18. Misconduct is an established basis for S&R administrative actions under Title 46, Chapter 77 Suspension and Revocation. 46 U.S.C. 7703(1)(B). A mariner commits an act of misconduct when they violate a “formal, duly established rule”, including the violation of statutory requirements. 46 C.F.R §5.27. Accordingly, the Complaint originally charged Respondent with acts of sexual contact as misconduct for violation of the duly established rule of 18 U.S.C. §2244(b).² The Coast Guard has jurisdiction over Respondent’s acts of misconduct if the mariner was acting under the authority of the credential when the misconduct occurred. 46 U.S.C. §7703(1)(B). A mariner acts under the authority of his or her credential when they are either (1) employed in the service of a vessel and the holding of the credential is required by law, regulation, or the employer’s conditions; or (2) engaging in official matters regarding the credential, such as applying for renewal, taking examinations for endorsements, or requesting duplicate or replacement credentials. 46 C.F.R. § 5.57.

The enactment of 46 U.S.C. §7704a(b) created a distinct S&R basis for acts of sexual assault:

“If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or merchant mariner’s document issued under this part, within 10 years before the beginning of the suspension and revocation proceedings, is the subject of an official finding of sexual assault, then the license, certificate of registry, or merchant mariner’s document shall be revoked.” 46 U.S.C. §7704a(b)

² The Coast Guard alleged in its Complaint, as a matter in aggravation to each Charge, that Respondent’s conduct constituted sexual molestation pursuant to 46 C.F.R. § 5.61(a)(3), extending the time limitation to initiate the S&R action to five years from the date of the alleged acts, excluding any time that Respondent could not be served by reason of being outside of the United States, on foreign voyages. 46 C.F.R. § 5.55(a)(2) and (b).

Sexual assault is defined as:

“any form of abuse or contact as defined in chapter 109A of title 18, or a substantially similar offense under State, local, or Tribal law.
“46 U.S.C. §2101(45)

In this matter, Respondent has notice and ample opportunity to reply and prepare a defense to the question of if his conduct was sexual contact as defined in chapter 109A of title 18. Although the question of the legal nature of Respondent’s acts was originally in the context of a misconduct basis for S&R, the arguments remain the same for newly enacted sexual assault basis for S&R because the common question is if Respondent’s conduct constituted sexual contact, thereby violating 18 U.S.C. §2244(b). Accordingly, it is proper for this Court apply the S&R provisions specific to sexual assault to Respondent’s acts in violation chapter 109A, of title 18.

1. RESPONDENT HAS HAD NOTICE AND OPPORTUNITY TO REPLY TO AND PREPARE FOR THE APPLICATION OF 46 U.S.C. §7704a TO HIS CONDUCT

As a threshold matter, this Court provided notice to the parties it would be considering the appropriateness of applying 46 U.S.C. §7704a in both the July 26th and October 4th Orders, as well as affording the parties the opportunity to orally present their respective position on its application during the September 14 pre-hearing conference. Respondent has therefore had notice and an opportunity to litigate the specific and distinct question of the application of 46 U.S.C. §7704a to his acts charged as violations of 18 U.S.C. §2244(b) being considered on remand.

In addition, to the notice and opportunity afforded Respondent by this Court, all the elements of a misconduct charge based on violations of 18 U.S.C. §2244(b) satisfy a finding of sexual assault under 46 U.S.C. §7704a(b). Respondent has already litigated the applicable issues of

jurisdiction, charges of violations of 18 U.S.C. §2244(b) and sanction. Each issue is discussed below.

a. Jurisdiction over Respondent's MMC

A finding of misconduct under 46 U.S.C. §7703(1)(B) requires a finding that Respondent acted under the authority of his MMC to establish jurisdiction, while a finding of sexual assault under 46 U.S.C. §7704a(b) requires Respondent to only be a holder of an MMC with no additional restrictions on jurisdiction. To defend against the originally charged jurisdictional allegation in this matter, it was implicit that Respondent was both a holder of his MMC and acting under its authority when he committed the contested acts of sexual misconduct because he could not be acting under the authority of an MMC he did not hold.

It is long standing precedent that Courts may properly apply statutes conferring or withholding jurisdiction regardless of the Court's jurisdiction at the time an action was filed. Landgraf v. USI Film Products, 511 U.S. 244, 275 (1994); see also Republic National Bank of Maimi v. United States, 506 U.S. 80, 100 (1992) (jurisdictional statutes “speak to the power of the court rather than to the rights or obligations of the parties”). In the present case, Respondent has never contested the jurisdictional allegations in this matter. Respondent's Answer. Furthermore, the initial ALJ determined Respondent to be acting under the authority of his MMC when he committed that conduct at issue. D&O at 6. Given that jurisdiction is not a right or obligation and that Respondent must be a holder of his MMC to act under its authority, Respondent has had notice and an opportunity to reply to any jurisdictional allegation that he held an MMC at all relevant times to this action.

b. Charge of Violations of 18 U.S.C. §2244(b)

The underlying facts and applicable definition of sexual contact in Chapter 109A of Title 18 the same for both a finding of misconduct and a finding of sexual assault under Chapter 77 of Title 46. Both require a determination that Respondent committed acts of sexual contact as defined by 18 U.S.C. § 2246(3) in violation of 18 U.S.C. §2244(b). Accordingly, Respondent had notice that the Coast Guard was charging his acts as abusive sexual contact from the initiation of this S&R proceeding. Respondent has been aware of the nature of these charges and has vigorously defended against the allegations since the filing of his Answer on September 9, 2020. See Respondent Answer and Defenses, Respondent Notice of Witness and Exhibits, S&R Hearing Transcript, Respondent Post Hearing Brief, Respondent Reply Appeal Brief. Therefore, Respondent has had ample opportunity to litigate the issue of whether his conduct constituted a form or contact as defined Chapter 109A of Title 18.

c. Sanction of Revocation

If a mariner is found to have committed an act of misconduct under 46 U.S.C. 7703(1)(B), the ALJ may order either the suspension or revocation of his MMC. However, if a mariner is found to have committed an act of sexual assault under 46 U.S.C. §7704a(b), the mariner's MMC "shall" be revoked. In the present case, although revocation was not originally a mandatory sanction, Coast Guard has consistently represented that it is seeking revocation as proper sanction.

In the original Complaint, the Coast Guard charged as a matter in aggravation that Respondent's acts of abusive sexual contact are sexual misconduct constituting acts or offenses for which revocation of an MMC is properly sought. 46 C.F.R. § 5.61. Although revocation is not mandated for acts of sexual misconduct classified under 46 C.F.R §5.61(a), if found proven

there is a regulatory presumption the mariner is “presumed not compatible with safety at sea, subject to rebuttal” by the mariner. 46 C.F.R. § 5.707(c). Additionally, it was well established prior to the enactment of 46 U.S.C. §7704a(b) that the Commandant considered revocation as the appropriate sanction when the misconduct involves acts of sexual misconduct. Appeal Decision 1042 (MOLINA) 1958 WL 58775, *3 (June 2, 1958); see also Appeal Decision 1876 (PENDERGRASS) 1972 WL 126076, at *4 (May 1, 1972) (ALJ found the touching of a crewmember’s testicles merits an order of revocation, without the need to consider the additional charges); Appeal Decision 2573 (JONES) 1996 WL 33408494 at *3 (January 17, 1996) (revocation appropriate where multiple incidents of perversion were found proven and Appellant held a position of authority over the crewmembers he victimized).

Accordingly, there is no increase in liability to Respondent as he has always had notice and the opportunity to litigate against the possible revocation of Respondent’s MMC throughout the entirety of these proceeding, whether the revocation be a statutory mandate or under the ALJ’s discretion.

B. CONGRESS ENACTED 46 U.S.C. §7704a TO HAVE RETROACTIVE EFFECT

As discussed *supra*, the Vice Commandant remanded this case for this Court to issue a decision on the initial ALJ’s findings regarding the proper application of 18 U.S.C. §§2244(b) and 2246(3) to Respondent’s acts impermissibly touching the Deck Cadet’s buttocks with his hand and groin. STINZIANO at 7-8, 11. As discussed in the Coast Guard’s companion Post-Remand Brief addressing the remanded issue, Respondent’s acts are sexual contact as defined in Chapter 109A of Title 18. Because the plain statutory language of 46 U.S.C. §7704a(b) explicitly allows for a

retroactive application, Respondent’s acts of sexual contact as defined by 18 U.S.C. §2246(3) are properly charged as sexual assault under 46 U.S.C. §7704a(b).

46 U.S.C. §7704a(b) is applicable “if a holder MMC issued under this part; within 10 years before the beginning of the suspension and revocation proceedings is the subject of an official finding of sexual assault”. The applicable definition of “official finding” in this matter is based on the Coast Guard investigation determining by a preponderance of the evidence that Respondent committed acts of sexual contact as defined by 18 U.S.C. §2246(3), “if the investigation affords appropriate due process rights to the subject of the investigation.”³ 46 U.S.C. §7704a(c)(1)(B). This official finding “shall be reviewed and affirmed by an administrative law judge within the same proceeding” resulting in the revocation of Respondent’s MMC under 46 U.S.C. §7704a(b). 46 U.S.C. § 7704a(c)(2)(A).

When considering the question of a statute’s retroactive effect, the proper analysis of a statute’s retroactivity begins with the language Congress enacted. See Landgraf 511 U.S. at 264 (“congressional enactments and administrative rules will not be construed to have retroactive effect, *unless their language requires this result.*”) citing Bradley v. School Bd. of Richmond, 416 U.S. 696, 711(1974) (emphasis added). Only absent the clear direction from Congress have Courts continued its analysis to consider if the statute’s application would “impair rights a party

³ Interestingly, this is the only time the phrase “appropriate due process rights to the subject of the investigation” is used in any statute or regulation. It is the Coast Guard’s position that the “due process rights” referenced in § 7704(a)(c)(1)(B) are afforded to the mariner via the S&R hearing and the ALJ review. Case law holds that the government has broad authority to conduct investigations without due process issues, barring any illegality or government actions that shock the conscience. See United States v. Jenrette, 744 F.2d 817 (D.C. Cir. 1984). (“[T]here is no constitutionally protected right to the manner in which a criminal investigation is conducted”).

possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.” Id. at 280; see also Fernandez-Vargas, 548 U.S. 30, 37 (2006).

The plain language of 46 U.S.C. §7704a makes clear that the Coast Guard can investigate instances of sexual assault and sexual harassment regardless of when they occurred, establishing a retroactive application of its provisions. Congress’s choice to base the time limitation for an S&R sexual assault or sexual harassment action under §7704a on the date of the “official finding” instead date of the incident provides the Coast Guard a powerful and much needed tool to address previously un-remediated acts of sexual misconduct in the maritime industry. The statute’s clear statement of retroactive intent “assures that Congress has affirmatively considered the potential unfairness of retroactive application and determined it is an acceptable price to pay for countervailing benefits.” Landgraf at 272-273. The Coast Guard can now initiate an S&R administrative action under the newly established bases codified at 46 U.S.C. Ch. 77 for sexual misconduct which, under the previous statutory regime, may have never been addressed.

1. THE OFFICIAL FINDING THAT RESPONDENT COMMITTED ACTS OF SEXUAL ASSAULT UNDER 46 U.S.C. §7704a ARE TIMELY CONSIDERED IN THIS REMAND

Application of 46 U.S.C. §7704a to the present case is well within what Congress envisioned for its provisions. By ensuring its retroactive effect, Congress is ensuring Respondent does not escape remediation simply because his acts of abusive sexual contact occurred prior to December 2023. Instead, the Coast Guard has 10 years from an official finding resulting from the Coast Guard’s “determination after an investigation” investigation that Respondent committed his acts of sexual assault under §7704a(b). 46 U.S.C. §7704a(c)(1)(B).

The official finding in this matter is the Coast Guard’s August 2020 Complaint, which was issued after the investigation conducted in accordance with the requirements and due process protections established under 46 C.F.R. Part 5 determined there was a preponderance of the evidence showing Respondent committed sexual contact as defined in 18 U.S.C. §2246(3). See Coast Guard v. McCANN, Docket No. 2023-0106, (April 19, 2023) Order Denying, In Part, Respondent’s Motion to Dismiss Complaint, at 3 (ALJ held the official finding was the issuance of the Complaint “after an investigation conducted in accordance with 46 C.F.R. Part 5” and 46 U.S.C. §7704a was properly applied retroactively to Respondent’s actions occurring prior to the statute’s enactment.) The Coast Guard Complaint documented the Coast Guard official finding determination when it charged Respondent committed acts of abusive sexual contact, in violation of 18 U.S.C. §2244(b). Accordingly, the Coast Guard’s August 2020 official finding that Respondent’s acts are a “form of contact or abuse as defined in Chapter 109A of Title 18” is a finding of “sexual assault” under 46 U.S.C. §7704a(b). 46 U.S.C. §2101(45).

Under the provisions of §7704a, an ALJ “shall” review and affirm the Coast Guard’s official finding determination that Respondent committed an act of sexual assault under §7704a(b), provided the review is made within the “same proceeding” that results in the revocation of respondent’s MMC under §7704a(b). 46 USC §7704a(c)(2)(A). When the Vice Commandant vacated the initial ALJ’s Order and remanded this case for new D&O, it placed any decision by this Court to apply §7704a within the same proceeding as its review of the Coast Guard’s August

2020 official finding.⁴ Therefore, this Court may properly review and affirm the Coast Guard's official finding the Respondent committed acts of sexual assault under §7704a(b).

IV. Conclusion

Based on the above, this Court is not limited to rendering a decision on the charges as initially filed in the August 2020 Complaint. This Court provided notice and an opportunity to litigate on the specific question of the applicability of 46 U.S.C. §7704a by directing the parties to submit briefs on that question. Furthermore, Respondent has always been on notice that he would have to be a holder of an MMC for the Coast Guard to have jurisdiction in this matter; the Coast Guard has alleged throughout the entirety of this matter that Respondent committed acts of sexual contact, defined at 18 U.S.C. §2246(3) and in violation of 18 U.S.C. §2244(b); and the Coast Guard has consistently sought the sanction of revocation of Respondent's MMC throughout these S&R proceedings. Finally, the plain language of 46 U.S.C. §7704a allows for its a retroactive application to the final decision issued by this Court in this administrative proceeding against Respondent's MMC.

⁴ Applying 46 U.S.C. §7704a to Respondent's acts of sexual contact in this same proceeding also satisfies the mandate on each party to conduct the S&R proceeding to "secure a just, speedy and inexpensive determination" as the time limitation for the Coast Guard to file a separate action against Respondent's MMC under §7704a(b) has not yet expired.

This Court should properly apply 46 U.S.C. §7704a(b) to any finding that Respondent committed acts of sexual contact as defined by 18 U.S.C. §2246(3). Therefore, Coast Guard respectfully requests this Court find PROVED Respondent committed acts of sexual assault under 46 U.S.C. §7704a(b) and issue the mandated Order of REVOCATION.

RESPECTFULLY SUBMITTED

For the U.S. Coast Guard,



Jennifer A. Mehaffey, Esq.
Counsel for the U.S. Coast Guard
DATE: November 13, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have electronically served Respondent's counsel, Mr. William Hewig III, Esq. the foregoing document at WHewig@k-plaw.com

I hereby certify that I have filed the foregoing document with the ALJ Docketing Center and ALJ's Office electronically.

Done this 13th Day of November, 2023.



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