

§ 20.1001

33 CFR Ch. I (7–1–10 Edition)

registry, credential, or endorsement document if—

(i) The order rests on a conviction—

(A) For violation of a dangerous-drug law;

(B) Of an offense that would prevent the issuance or renewal of the license, certificate, credential, or endorsement document; or

(C) Of an offense described in subparagraph 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (23 U.S.C. 401, note); and

(ii) The respondent submits a specific order of court to the effect that the conviction has been unconditionally set aside for all purposes.

(2) The ALJ, however, may not rescind his or her order on account of any law that provides for a subsequent conditional setting-aside, modification, or expunging of the order of court, by way of granting clemency or other relief after the conviction has become final, without regard to whether punishment was imposed.

(f) Three years or less after an S&R proceeding has resulted in revocation of a credential, endorsement, license, certificate, or document, the respondent may file a motion for reopening of the proceeding to modify the order of revocation with the ALJ Docketing Center.

(1) Any motion to reopen the record must clearly state why the basis for the order of revocation is no longer valid and how the issuance of a new merchant mariner credential with appropriate endorsement is compatible with the requirement of good discipline and safety at sea.

(2) Any party who does not respond to any petition to reopen the record waives any objection to the motion.

[CGD 98–3472, 64 FR 28062, May 24, 1999, as amended at, USCG–2006–24371, 74 FR 11211, Mar. 16, 2009]

Subpart J—Appeals

§ 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.

§ 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.

§ 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.

§ 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.

Subpart K—Finality, Petitions for Hearing, and Availability of Orders

§ 20.1101 Finality.

(a) *Civil penalty proceedings.* (1) Unless appealed pursuant to subpart J of this part, an ALJ's decision becomes an order assessing or denying a class II civil penalty 30 days after the date of its issuance.

(2) If the Commandant issues a decision under Subpart J of this part, the

decision constitutes an order of the Commandant assessing or denying a class II civil penalty on the date of issuance of the Commandant's decisions.

(b) *S&R Proceedings.* (1) Unless appealed pursuant to subpart J of this part, an ALJ's decision becomes final action of the Coast Guard 30 days after the date of its issuance.

(2) If the Commandant issues a decision under Subpart J of this part, the decision constitutes final action of the Coast Guard on the date of its issuance.

§ 20.1102 Petitions to set aside decisions and provide hearings for civil penalty proceedings.

(a) If no hearing takes place on a complaint for a class II civil penalty, any interested person may file a petition, 30 days or less after the issuance of an order assessing or denying a civil penalty, asking the Commandant to set aside the order and to provide a hearing.

(b) If the Commandant decides that evidence presented by an interested person in support of a petition under paragraph (a) of this section is material and that the ALJ did not consider the evidence in the issuance of the decision, the Commandant shall set aside the decision and direct that a hearing take place in accordance with the requirements of this part.

(c) If the Commandant denies a hearing sought under this section, he or she shall provide to the interested person, and publish in the FEDERAL REGISTER, notice of and the reasons for the denial.

§ 20.1103 Availability of decisions.

(a)(1) Copies and indexes of decisions on appeal are available for inspection and copying at—

(i) The document inspection facility at the office of any Coast Guard District, Activity, or Sector Office;

(ii) The public reading room at Coast Guard Headquarters; and

(iii) The public reading room of the Coast Guard ALJ Docketing Center; Baltimore, Maryland.

(2) Appellate decisions in S&R proceedings, and both appellate and ALJs' decisions on class II civil penalties, are