

## § 5.707

(b) Whether each conclusion of law accords with applicable law, precedent, and public policy.

(c) Whether the ALJ committed any abuses of discretion.

(d) The ALJ's denial of a motion for his or her disqualification.

[USCG-1998-3472, 64 FR 28075, May 24, 1999]

### **§ 5.707 Stay of effect of decision and order of Administrative Law Judge on appeal to the Commandant; temporary credential or endorsement.**

(a) A person who has appealed from a decision suspending outright or revoking a credential or endorsement, except for revocation resulting from an offense enumerated in § 5.59, may file a written request for a temporary credential or endorsement. This request must be submitted to the Administrative Law Judge who presided over the case, or to any Officer in Charge, Marine Inspection for forwarding to the Administrative Law Judge.

(b) Action on the request is taken by the ALJ unless the hearing transcript has been forwarded to the Commandant, in which case, the Commandant will make the final action.

(c) A determination as to the request will take into consideration whether the service of the individual is compatible with the requirements for safety at sea and consistent with applicable laws. If one of the offenses enumerated in § 5.61(a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant. A temporary credential or endorsement may be denied for that reason alone.

(d) All temporary credentials or endorsements will provide that they expire not more than six months after issuance or upon service of the Commandant's decision on appeal, whichever occurs first. If a temporary credential or endorsement expires before the Commandant's decision is rendered, it may be renewed, if authorized by the Commandant.

(e) If the request for a temporary credential or endorsement is denied by the Administrative Law Judge, the individual may appeal the denial, in writing, to the Commandant within 30 days after notification of such denial. Any

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decision by the Commandant to deny is the final agency action.

(f) Copies of the temporary credential issued become a part of the record on appeal.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2004-18884, 69 FR 58342, Sept. 30, 2004; USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

### **§ 5.713 Appeals to the National Transportation Safety Board.**

(a) The rules of procedure for appeals to the National Transportation Safety Board from decisions of the Commandant, U.S. Coast Guard, affirming orders of suspension or revocation of credentials or endorsements are in 49 CFR part 825. These rules give the party adversely affected by the Commandant's decision 10 days after service upon him or his attorney of the Commandant's decision to file a notice of appeal with the Board.

(b) In all cases under this part which are appealed to the National Transportation Safety Board under 49 CFR part 825, the Chief Counsel of the Coast Guard is designated as the representative of the Commandant for service of notices and appearances. Communications should be addressed to Commandant (CG-094), U.S. Coast Guard, 2100 2nd St. SW., Stop 7121, Washington, DC 20593-7121.

(c) In cases before the National Transportation Safety Board the Chief Counsel of the Coast Guard may be represented by others designated of *counsel*.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2006-24371, 74 FR 11215, Mar. 16, 2009; USCG-2009-0702, 74 FR 49224, Sept. 25, 2009]

### **§ 5.715 Stay of effect of Decision of the Commandant on Appeal: Temporary credential and/or endorsement pending appeal to National Transportation Safety Board.**

(a) A Decision of the Commandant on Appeal affirming an order of revocation, except a revocation resulting from an offense enumerated under § 5.59 or suspension that is not placed entirely on probation, which is appealed to the National Transportation Safety Board, may be stayed if, in the Commandant's opinion, the service of the