

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

RE: DANIEL MOWRY
LICENSE MULA 2809

AAD NO. 06-001/MSA

DECISION AND ORDER

This matter came before the Department of Environmental Management Administrative Adjudication Division for Environmental Matters (AAD) pursuant to the request for hearing filed by Daniel Mowry (Applicant) regarding the denial of a renewal of his commercial multi-purpose fishing license by the Office of Boat Registration and Licensing (Division or OBRL). A prehearing conference was conducted on September 26, 2006 and the hearing commenced immediately thereafter.

The OBRL was represented by Gary Powers, Esq. Mr. Mowry represented himself.

The proceedings were conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. GEN. LAWS §§ 42-17.7-1 et seq.); the Administrative Procedures Act (R.I. GEN. LAWS §§ 42-35-1 et seq.); R.I. GEN. LAWS § 20-2.1-5 et seq.; the Rules and Regulations Governing the Management of Marine Fisheries (Fisheries Regulations) and the Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters (AAD Rules).

PREHEARING CONFERENCE

At the prehearing conference, the parties agreed to the following stipulations of fact:

(1) that the Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant;

(2) that on February 24, 2006, the Applicant submitted to the Division a request for the reissuance of Multi-Purpose Commercial Fishing License No.2809 (MULA 2809); and

(3) that MULA 2809 had previously been issued to Applicant but had expired on, and has lied dormant since, June 30, 2001.

Applicant submitted the following as an issue to be considered by the Hearing Officer at the hearing:

Whether physical limitations impeded the ability of his renewal and also that it is Applicants belief that he was misinformed of procedures that may have allowed renewal in a much more timely fashion.

The OBRL submitted the following as an issue to be considered by the Hearing Officer at the hearing:

Whether the subject application meets the criteria for the reissuance of a commercial multipurpose fishing license as set for the in R.I. Gen. Laws § 20-2.1-5 and the Rules and Regulations Governing the Management of Marine Fisheries.

A list of the exhibits, marked as they were admitted at the hearing, is attached to this Decision as Appendix A.

At the hearing, the Applicant, Daniel Mowry, testified on his own behalf. It was Mr. Mowry's testimony that he was involved in a car accident on December 30, 2000, in which he sustained serious injuries, resulting in approximately eighteen (18) months of physical therapy. He stated that the expiration date of his commercial fishing license was approximately six (6) months after said accident. He further testified that he was unable "to get to" his permit for approximately eighteen (18) months because of the serious injuries he sustained in the December 30, 2000 accident. The Applicant introduced Applicant's Exhibits 1 through 5, and rested his case.

OBRL moved for a directed verdict. The motion for a directed verdict was not ruled on at the hearing and is being addressed in the Recommended Decision herein. OBRL then proceeded with the presentation of its case.

OBRL called the Applicant, Daniel Mowry, for further questioning. It was elicited from Mr. Mowry that he returned to work as a "Union Carpenter" following the accident of December 30, 2000. He stated that at the time of the accident, his mailing address was Foster, Rhode Island but that he is currently residing in Pascoag, Rhode Island.

Margaret McGrath, Programming Services Officer at OBRL was the next witness called by OBRL. She testified that she is also the record keeper for her Division. One of her many functions is to consider license applications and the re-issuance of licenses. Ms. McGrath testified that following the receipt of

Applicant's letter (DIVISION'S A FULL) requesting renewal of his license, she followed the requisite procedure; and since Applicant did not possess the license for the previous year (in 2005), she issued the preliminary denial of said request (DIVISION'S B FULL).

The witness explained the procedures concerning applicant's rights to request reconsideration of said denial at the Commercial Fishing License Review Board; and depending upon the outcome of the Review Board's recommendation back to OBRL, the Applicant's right to appeal to the AAD.

Ms. McGrath testified that following the initial denial by OBRL, the Applicant requested a determination before the Review Board. The Review Board had thirty (30) days to convene. When the Review Board did not convene within the thirty days, OBRL then notified Applicant that OBRL's decision was final, and the Applicant was advised of his right to appeal to the AAD.

Ms. McGrath stated that a notice to commercial fishers who had yet to renew licenses was mailed to Applicant at the last address that OBRL had on file for the Applicant (355 Old Plainfield Pk, Foster, R.I 02825). She stated that it is Applicant's responsibility to keep OBRL current with his mailing address.

CONCLUSION

Mr. Mowry argues that physical limitations impeded his ability to timely renew his multi-purpose commercial fishing license (multi-purpose license). He claims that he was misinformed of procedures that may have allowed renewal in

a much more timely fashion. The witness did not provide any specifics for the alleged misinformation.

It is OBRL's contention that the Applicant has failed to meet his burden of proving that the application submitted to the Division on February 24, 2006 which sought renewal of the multi-purpose license that had expired on June 30, 2001, satisfies the criteria for the renewal of a multi-purpose license.

OBRL argues that a review of the record amply demonstrates that the Applicant has not satisfied the requirements for the renewal of a multi-purpose license as set forth in R.I. GEN. LAWS § 20-2.1-5 (1) (iii) and Section 6.7-4 (c) of the Fisheries Regulations.

Although the Review Board did not convene within thirty (30) days of Applicant's request for a determination by the Board, I am satisfied that this matter is properly before the AAD. This conclusion is based upon my review of R.I. GEN. LAWS § 20-2.1-12, that established the Review Board, as well as of Section 6.7-10 (f) and (i) of the Fisheries Regulations.

Section 6.7-10 of the Fisheries Regulations provides that when an applicant is denied a commercial fishing license, that person may file a request for reconsideration with the Review Board. Under subsections (f) and (i), if a written recommendation is not rendered within thirty (30) working days, then the preliminary denial by the OBRL becomes final and is ripe for appeal to the AAD.

In the instant matter, Mr. Mowry's request for re-issuance of a commercial multi-purpose fishing license was denied by OBRL; he requested reconsideration;

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no written recommendation was issued by the Review Board within the set period; the OBRL decision became final; and Applicant timely appealed the decision to the AAD.

R.I. GEN. LAWS § 20-2.1-5 (1) (iii) provides as follows:

Multi-purpose license. All multi-purpose license holders as of December 31 of the immediately preceding year, shall be eligible to obtain a multi-purpose license, which shall allow the holder to engage in commercial fishing in all fisheries sectors at the full harvest and gear levels. At the time of application for a multi-purpose license and each annual renewal of it, the applicant shall make a non-binding declaration of which fishing sectors the applicant intends to place significant fishing effort during the period covered by the license. The annual fee for multi-purpose license shall be three hundred dollars (\$300).

Section 6.7-4 (c) of the Fisheries Regulations provides as follows:

Applicants who possessed a valid Multi-Purpose License as of the immediately preceding year may obtain a Multi-Purpose License for the immediately following year.

Both R.I. GEN. LAWS § 20-2.1-12 and Section 6.7-10 of the Fisheries Regulations provide that Applicant bears the burden to prove to the Review Board compliance with the criteria for issuance of the license. This burden of proof applies equally to proceedings before the AAD. Re: Brian Thibeault, AAD No. 03-006/MSA.

The issue to be considered is whether the issuance of the license would be consistent with the provisions of R.I. GEN. LAWS Title 20 Chapter 2.1 and with the Fisheries Regulations. Undoubtedly, the Applicant sustained serious injuries in the December 30, 2000 accident. The Applicant testified that said

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serious injuries resulted in approximately eighteen months of physical therapy, and that he was unable "to get to" his permit for approximately eighteen months following said accident. More extensive details concerning the accident, the injuries sustained as a result thereof, the treatment therefor, and the disabilities that resulted are contained in the Exhibits submitted by Applicant (Applicant's Exhibits 1 thru 5, all FULL).

Further details regarding Applicant's disabilities and the events that transpired or pertaining to Applicant's interest in the re-issuance of his Multi-Purpose Commercial Fishing License are contained in Applicant's letter to the Review Board (Division's Exhibit C FULL). Applicant stated therein that he was unable to work, or even live a normal life until eighteen months after his December 30, 2000 auto accident (around June 2002). He further stated that in the fall of 2002 when he was first denied his renewal, at that time he was under the impression that if he was denied, then he had no recourse. He further stated that the medical release from his doctor to return to work was obtained in late 2002.

It is indeed unfortunate that the Applicant did not submit the instant request for re-issuance of his license to the OBRL until February 24, 2006 (Division's Exhibit A FULL). However, no satisfactory explanation was offered by Applicant to explain why the subject request for re-issuance of his license was filed four and one-half years after his license had expired. During a considerable part of this time (following the accident), Applicant was gainfully employed as a

Carpenter, and thus not incapacitated during much of the four and one-half year period.

A review of the record demonstrates that Applicant did not present any credible evidence to meet his obligation to satisfy any exception to Section 6.7-4-(c) of the Fisheries Regulations.

The Applicant failed to meet his burden of proving that the Application submitted by him to the Division on February 24, 2006 seeking renewal of the multi-purpose license which had expired on June 30, 2001 satisfied the criteria for the renewal of a commercial multi-purpose fishing license as set forth in R.I. GEN. LAWS § 20-2.1-5 (1) (iii) and Section 6.7-4 (c) of the Fisheries Regulations.

Wherefore, after considering the stipulations of the parties and the testimonial and documentary evidence of record, I make the following:

FINDINGS OF FACT

- (1) The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
- (2) On February 24, 2006, the Applicant Daniel Mowry, submitted to the Office of Boat Registration and Licensing a request for the re-issuance of Multi-Purpose Commercial Fishing License No. 2809 (MULA 2809).
- (3) MULA 2809 had previously been issued to Applicant but had expired on June 30, 2001.

(4) On February 24, 2006, the Applicant was not a multi-purpose license holder as of December 31 of the immediately preceding year (i.e. December 31, 2005).

(5) The OBRL issued a Preliminary Denial of Applicant's request for renewal on or about March 2, 2006.

(6) On or about March 9, 2006, Applicant requested that the Commercial Fishing License Review Board review the Division's Preliminary Denial.

(7) The OBRL sent a letter to Applicant dated April 24, 2006 advising Applicant that the License Review Board had elected not to present a written recommendation to the Division relative to Division's March 2, 2006 Preliminary Denial of Applicant's request for re-issuance of MULA 2809, and thus, the Preliminary Denial was final and subject to appeal to the Administrative Adjudication Division.

(8) On or about May 24, 2006 the Applicant filed a request for hearing at the Administrative Adjudication Division.

CONCLUSIONS OF LAW

After due consideration of the above findings of fact and the legal argument of the parties, I conclude the following as a matter of law:

1. The Administrative Adjudication for Environmental Matters (AAD) has jurisdiction over this matter pursuant to R.I. GEN. LAWS § 42-17.7-2; R.I. GEN. LAWS § 20-2.1-12; and Rule 6.7-10(i) of the Fisheries Regulations.

2. Pursuant to R.I. GEN. LAWS § 20-2.1-5 (1) (iii) and Section 6.7-4 (c) of the Fisheries Regulations, an applicant is eligible to obtain a Multi-Purpose License if the applicant possessed a valid Multi-Purpose License as of December 31 of the immediately preceding year.
3. Applicant has failed to prove by a preponderance of the evidence that he possessed a valid Multi-Purpose License on December 31, 2005.
4. The OBRL acted in accordance with Rule 6.7-4 (c) in denying Applicant's request for re-issuance of a Multi-Purpose Commercial Fishing License.
5. Pursuant to R.I. GEN. LAWS § 20-2.1-12 and Section 6.7-10 of the Fisheries Regulations, Applicant must prove by a preponderance of the evidence that he has complied with the criteria for re-issuance of a Multi-Purpose Commercial Fishing License.
6. Applicant has failed to prove by a preponderance of the evidence that issuance of a Multi-Purpose Commercial Fishing License would be consistent with the provisions and purposes of R.I. GEN. LAWS § 20-2.1-1 *et seq.* or with the provisions and purposes of the Fisheries Regulations.
7. The Applicant is not eligible for the re-issuance of Multi-Purpose Commercial Fishing License No. 2809 (MULA 2809) pursuant to R.I. GEN. LAWS § 20-2.1-5 (1) (iii) and Section 6.7-4 (c) of the Fisheries Regulations.

--Wherefore, based upon the above Findings of Fact and Conclusions of Law, it is hereby

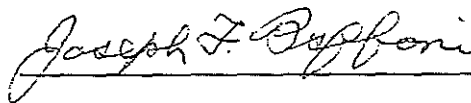
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ORDERED

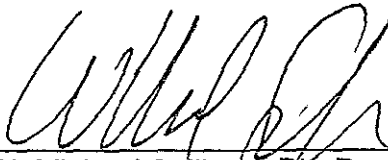
Applicant's request for re-issuance of a Multi-Purpose Commercial Fishing License is DENIED.

Entered as an Administrative Order and herewith recommended to the Director for issuance as a Final Agency Decision and Order this 6th day of December, 2006.



Joseph F. Baffoni
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
235 Promenade Street, Third Floor
Providence, Rhode Island 02908
401-222-1357

Entered as a Final Agency Decision and Order this 7th day of December, 2006.



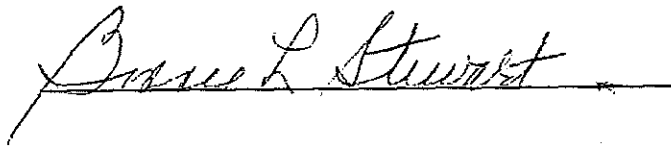
W. Michael Sullivan, Ph. D.
Director
Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, RI 02908

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CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to Daniel Mowry, 144 Grove Street, Pascoag, RI 02859; and via inter-office mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 7th day of December, 2006.

A handwritten signature in cursive script, reading "Bruce L. Stewart", is written over a horizontal line.

APPENDIX A

APPLICANT'S EXHIBITS:

- APPLICANT'S 1** Gloucester Police Department Accident Report Dated
FULL 12-30-2000 6 pages
- APPLICANT'S 2** Northeast Orthopedics & Prosthetics
FULL Bill for "Air Cast" or removable cast
- APPLICANT'S 3** Rhode Island Hospital page 2 of Patient instructions
FULL on allowable activities
- APPLICANT'S 4** R. I. Hospital/Lifespan Dept. of Diagnostic Imaging –
FULL description of Ankle X-Ray
- APPLICANT'S 5** Physical Therapy Discharge Summary R. I. Hospital
FULL Trauma Ward.

DIVISION'S EXHIBITS:

- DIVISION'S A** A copy of the Applicant's undated letter to the
FULL Division with envelope posted February 23, 2006
and date stamped as received by the Office of Boat
Registration and Licensing on February 24, 2006,
requesting re-issuance of Multi-Purpose Commercial
Fishing License No. 2809 (MULA 2809) which had
previously been issued to him but which had expired
on June 30, 2001. 3 Pages (copy).
- DIVISION'S B** A copy of the letter to the Applicant dated March 2,
FULL 2006, from the Office of Boat Registration and
Licensing advising Applicant of the Division's
preliminary denial of the Applicant's request for
renewal of Multi-Purpose Commercial Fishing
License No. 2809 (MULA 2809) which had
previously been issued to him but which had expired
on June 30, 2001. 2 Pages (copy).

DIVISION'S C
FULL

A copy of the Applicant's undated letter to the Commercial Fishing License Review Board with envelope posted March 8, 2006 and date stamped as received by the Office of Boat Registration and Licensing on March 9, 2006, requesting that the Board review the Division's Preliminary Denial of Applicant's request for the re-issuance of Multi-Purpose Commercial Fishing License No. 2809 (MULA 2809) which had previously been issued to him but which had expired on June 30, 2001. 3 Pages (copy).

DIVISION'S D
FULL

A copy of the letter to the Applicant dated April 24, 2006 from the Office of Boat Registration and Licensing advising Applicant that the Commercial Fishing License Review Board had elected not to present a written recommendation to the Division relative to the Division's March 2, 2006 Preliminary Denial of Applicant's request for re-issuance of MULA 2809 and, thus, pursuant to R.I. Gen. Laws § 20-2.2-12 (c), the Preliminary Denial was final and subject to appeal to the AAD. 2 Pages (copy).

DIVISION'S E
FULL

A copy of the Applicant's letter to the AAD requesting a formal hearing. 1 Page (copy).

DIVISION'S F
FULL

A copy of the Applicant's commercial fishing License Summary. 2 Pages (copy)

DIVISION'S G
FULL

A copy of Notice by DEM to commercial fishers whose licenses expired on 6-30-01 or 6-30-02 with copy of U. S. Certified Mail Domestic Return Receipt addressed to Daniel V. Mowry, 355 Old Plainfield Pk., Foster, R.I., and signed for on December 10, 2002.