

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island
RE: CAVACO, RICHARD A.
Denial Renewal License MPURP 066
AAD No. 11-001/MSA
May 2011

DECISION AND ORDER

This matter came before the Department of Environmental Management Administrative Adjudication Division (“AAD”) on March 24, 2011 for Administrative Hearing. The Applicant requested a hearing on the denial of his application for renewal of his Multipurpose Fishing License (MPURP 000066). The license expired on December 31, 2005. The license renewal request was filed with the Office of Boat Registration and Licensing (“OBRL”) on January 29, 2011. Applicant Richard Cavaco appeared on his own behalf. The OBRL was represented by Gary Powers, Esq.

The hearing was conducted on March 24, 2011. A stenographer was present. The within proceeding was conducted in accordance with the statutes and Rules governing The Administrative Adjudication Division (R.I. General Laws § 42-17.7-1 et seq.); The Administrative Procedures Act (R.I. General Laws § 42-35-1 et seq.); The Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division (AAD Rules); and the Commercial Fishing License regulations (December 29, 2010).

PREHEARING CONFERENCE

A prehearing conference was held on March 24, 2011 prior to the hearing. The parties stipulated to the following:

- (1) The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
- (2) For some years prior to 2005, the applicant possessed a Multi- Purpose Commercial Fishing License, i.e., MPURP # 066.
- (3) On December 31, 2005, MPURP # 066 expired.
- (4) On February 26, 2010, the Applicant applied for and was issued a commercial fishing license CFL001053 (CNFIN, CNLOBS, CSFOTH).
- (5) On January 1, 2006, the Applicant did not seek the issuance/renewal of MPURP # 066.
- (6) The Division denied the Applicant's January 29, 2011 Application for renewal of his Multi-Purpose Commercial Fishing License i.e., MPURP # 066 in a letter dated January 31, 2011.

The OBRL submitted the following issue to be addressed:

1. Whether the denial of Applicant's application for renewal of MPURP # 066 was consistent with the Section 6.7-4(c) of **Commercial Fishing Licensing Regulations** that permits renewal of multi-purpose commercial fishing license only upon proof that an applicant possessed a valid multi-purpose as of the immediately preceding year.

HEARING SUMMARY

Mr. Cavaco held a valid multipurpose license for many years prior to 2005. He stipulated that his Multipurpose Fishing License (# 066) expired on December 31, 2005. He further stipulated that he did not renew his license by the deadline of January 1, 2006. Mr. Cavaco argued that due to a severe back injury in 2006, he was unable to renew his multipurpose license. Mr. Cavaco did ask

that his multipurpose fishing license (# 066) be renewed in an e-mail dated January 29, 2011 to Ms. Margaret McGrath who is the programming services officer at OBRL.

He offered his e-mail to Ms. McGrath dated January 29, 2011 (Applicant Exhibit 3- Full) and correspondence from Dr. Philip R. Lucas dated February 17, 2011 (Applicant Exhibit 1- Full) as evidence of his attempt to renew his license based on his medical disability.

On January 31, 2011, Ms. McGrath responded to Mr. Cavaco and explained that his multipurpose license expired in 2005 and since he failed to renew it in a timely fashion, he could not renew the license in 2011. (Division Exhibit 2-Full)

The OBRL relies on Section 6.7-4 (c) of the Commercial Fishing Licensing Regulations as authority in this instance. Section 6.7- 4 (c) reads as follows: (6.7-4) License Renewals, Transitions and upgrades

“(c) Applicants who possessed a valid Multi-Purpose License (resident only) as of the immediately preceding year may obtain a Multi-Purpose License for the immediately following year; alternatively, applicants who possessed a valid Multi-Purpose (resident only) as of the immediately prior year may obtain a Principal Effort License with Quahaug (resident only), Soft-Shell Clam (resident only), Other Shellfish (resident only), Lobster (resident only), Non-Lobster Crustacean (resident only), Restricted Finfish, and/or Non-Restricted Finfish endorsements for the immediately following year”.

In contrast, the Applicant cited Rule 5.64 of the Commercial Fishing Licensing Regulations in support of his license renewal application made in 2011:

“1. Rule 5.64 “Unreasonable Hardship.” Substantial economic loss which is unique to an individual, including but not limited to adverse medical or personal circumstances, and which has not been caused or exacerbated by prior actions. Applicant also cited rule 6.7-9 of the Commercial Fishing License Regulations. Issuance of new licenses and operator permits under hardship conditions”.

Mr. Cavaco also relied on the decision of In Re: Chapman Raymond F. AAD NO. 01- 040/MSA decided June 13, 2001 for the proposition that his multipurpose license should be renewed.

Mr. Cavaco stated that he suffered from severe back pain starting when he was in his forties. His doctor confirmed that he was suffering from spinal stenosis is of his lumbar spine. He could not tolerate the pain any longer such that in 2005, he could not operate his boat nor could he fish. He was under financial stress and had to give up his fishing license. (Transcript pages 4 and 5) He underwent a Lumbar decompression in April 2008 (Applicant Exhibit 1- Full). He relied on the aforementioned regulations, which he admitted he did not review until the prehearing conference. He determined these regulations applied to his situation but admitted he did not review them until the Prehearing Conference on March 24, 2011. (Transcript page 13).

It should be noted that in 2007, Mr. Cavaco spoke with someone at DEM and was told that it was more than one year since his license expired and there was no option to get his license back on a hardship basis. (Transcript page 16). Mr. Cavaco argued that the DEM should have sent him the rules regarding his options when he failed to renew his license in 2006 so he would have known what his options were. (Transcript page 17). Mr. Cavaco stated that he spoke with other fishermen at the docks about the hardship rules regarding licenses. (Transcript pages 18).

It should be noted that beginning on January 7, 2007, Mr. Cavaco applied for and was granted three additional licenses, namely a Commercial Fishing License, valid through December 31, 2011 with fishery endorsements, non-restricted fin fish, non lobster crustacean, shellfish, other dockside endorsement, recreational lobster pot license as well as vessel declaration license for his commercial vessel. (Transcript page 65).

Ms. Margaret McGrath testified that while she was sympathetic to Mr. Cavaco's back symptoms, she had no discretion to renew his multipurpose license in 2011 as Rule 6.7-4 permits renewal of Multipurpose Commercial Fishing License only upon proof that an applicant possessed a valid multipurpose license as of the immediately proceeding year.

If this condition is not satisfied, an Applicant cannot apply for the issuance of a new license under hardship conditions pursuant to Rule 6.7-9. (Transcript page 44-46).

Mr. Cavaco also relied on the case of *In Re: Chapman, Raymond F.* (AAD NO. 01-040/MSA) to support his contention that his license should be renewed due to hardship conditions. Chapman is distinguishable from Mr. Cavaco's case as the hearing officer in Chapman found that the Applicant/fisherman did possess a valid Rhode Island Fishing License prior to July 1, 2000. The Hearing Officer found that a Rhode Island General Law in effect at that time (RIGL 20-2-1.1 Commercial Fishing License Moratorium) was a hardship on the Applicant and the failure of the Applicant to submit a license application prior to August 15, 2000 was due to circumstances beyond the Applicants control. Lastly, the statute creating the license moratorium was repealed by the General Assembly in 2004.

In contrast Mr. Cavaco did not possess a valid Commercial Multipurpose Fishing License at the time he submitted his request for renewal in 2011 and there was no statute imposing a moratorium on the issuance of licenses.

Mr. Cavaco stated to the DEM in his correspondence of January 11, 2007 and at the hearing that he did not renew his Multipurpose Commercial Fishing License because of financial hardship. (Transcript page 18 and Applicant Exhibit 8-Full).

This tribunal has previously ruled that an attempt to renew a multipurpose and principal effort license that was not valid in the immediately proceeding must be denied. See *Manns, Donald F.* AAD No. 07-001/MSA (2007); *Field, Russell S.* AAD NO. 08-003/MSA (2008).

While Mr. Cavaco's situation is disheartening to say the least, Rule 6.7-9 requires a licensee to have a valid license in the immediately preceding year prior to renewal. Thus, the Rule does not allow the OBRL to consider a renewal whether based on hardship or not, some five years after the Applicants license has expired.

Findings of Fact

- (1) The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
- (2) For some years prior to 2005, the applicant possessed a Multi-Purpose Commercial Fishing License, i.e., MPURP # 066.
- (3) On December 31, 2005, MPURP # 066 expired.
- (4) On February 26, 2010, the Applicant applied for and was issued a commercial fishing license CFL001053 (CNFIN, CNLOBS, CSFOTH).
- (5) On January 1, 2006, the Applicant did not seek the issuance/renewal of MPURP # 066.
- (6) The Division denied the Applicant's January 29, 2011 Application for renewal of his multi-purpose commercial fishing license i.e., MPURP # 066 in a letter dated January 31, 2011.
- (7) Mr. Cavaco was under a doctor's care for back pain due to severe spinal stenosis of his lumbar spine.
- (8) He underwent a lumbar decompression in April, 2008.
- (9) Mr. Cavaco obtained other licenses namely a commercial fishing license with fishery endorsements; non-restricted fin fish, non lobster crustacean, shellfish; other dockside endorsements, recreational lobster pot license as well as vessel declaration.
- (10) OBRL properly denied Mr. Cavaco's request for renewal of his Multipurpose License (MPURP 000066) on January 31, 2011.

Conclusion of Law

- (1) Rule 6.7-9 of the Commercial Fishing License Regulations governs this matter.
- (2) On December 31, 2005, Mr. Cavaco's Multipurpose License 000066 expired.

(3) Mr. Cavaco's attempt to renew his Multipurpose License (MPRUP 000066) on or about January 29, 2011 did not comply with Rule 6.7-9 and therefore was invalid.

Wherefore it is hereby ordered that:

1. The Denial of Mr. Cavaco's Multipurpose License (000066) by OBRL on January 31, 2011 is upheld and sustained.

2. The appeal of Mr. Cavaco is hereby Denied and Dismissed.

Entered as an Administrative Order this ... day of May, 2011.

David M. Spinella

Hearing Officer