

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

RE: SWANBECK, MARK

AAD No. 01-026/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 Mark Swanbeck ("Applicant") regarding the denial of a renewal of his commercial fishing license by the Office of Management Services ("OMS"). A prehearing conference was conducted on June 7, 2001 and the hearing commenced immediately thereafter.

Applicant appeared pro se and the Office of Management Services was represented by Deborah George, Esq.

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 § 20-2-1.1; 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. Mark Swanbeck held a multi-purpose license in 1987,
2. Mark Swanbeck is currently unemployed and has been since April 2001.

3. The Department published a public notice announcing the license renewal window within seven (7) days following enactment of the moratorium.
The parties also identified the following as issues to be considered by the

Hearing Officer at the hearing:

1. Whether the failure to apply was due to circumstances beyond Applicant's control; and
2. Whether Applicant would have qualified because of residency to obtain a license even if he had applied for a renewal prior to August 15, 2000.

HEARING SUMMARY

At the hearing, Applicant testified on his own behalf. The Office of Management Services presented one (1) witness, Margaret McGrath, the Supervisor of the Office of Boat Registration and Licensing.

Mr. Swanbeck testified that he had worked as diver/quahogger and partial fisherman in 1987 but moved to Massachusetts in 1988 because of his wife's employment. Although he has owned a house in Pawtucket since 1986 and has lived in Pawtucket on the weekends for more than half of the year, he also stated that he lived and worked in Massachusetts until his move back to Rhode Island on December 4, 2000. While he currently resides in Rhode Island, the Applicant conceded that he was not a Rhode Island resident on August 15, 2000.

The witness stated that he has been unemployed since April 2001 and, because of the specialized area in which he works, he has not been able to find suitable employment. He has always wanted to return to commercial fishing.

He also testified that he had been unaware of the limited license renewal window because he was out-of-state and had not been following the Rhode Island newspapers.

Margaret McGrath testified that in order for an individual to obtain a multipurpose license, that individual must have been a Rhode Island resident for six (6) months prior to obtaining the license. The Department, according to this witness, would not issue a license to someone who has not been a Rhode Island resident for the past six (6) months.

CONCLUSION

R.I. GEN. LAWS §20-2-1.1 provides in pertinent part:

20-2-1.1. Commercial fishing license moratorium – (a) The commercial marine fishing licenses as provided for in . . . 20-2-28.1(a) shall be issued for renewal only. No new licenses applicable to these sections shall be issued between July 1, 2000, and June 30, 2001. In order to obtain a license applicable to these sections between July 1, 2000 and June 30, 2001, an individual must provide proof that he or she possessed a valid Rhode Island commercial fishing license prior to July 1, 2000, and submit a license application to the department of environmental management prior to August 15, 2000. . . .

By way of the Public Notice issued by the Department of Environmental Management, individuals who were not able to meet the August 15, 2000 deadline for license renewal were afforded the opportunity to obtain the commercial fishing license if they could prove the following:

1. The one year moratorium is a hardship;
2. The Applicant possessed a valid Rhode Island commercial fishing license prior to July 1, 2000; and
3. The failure to apply by the deadline was due to circumstances beyond Applicant's control.

In the present case, Applicant has proved that, due to his present unemployment, the one year moratorium is a hardship. Applicant has also proven that he possessed a valid Rhode Island commercial fishing license prior to July 1, 2000.

Applicant's testimony that he was out-of-state and unaware of the impending moratorium sufficiently proves that his failure to apply by the deadline for the § 20-2-28.1(a) multi-purpose commercial marine license was due to circumstances beyond his control.

The OMS argues, however, that Mr. Swanbeck would not have qualified for the § 20-2-28.1(a) multipurpose commercial marine license even if he had applied prior to the moratorium deadline because he was not a Rhode Island resident on August 15, 2000.

§ 20-2-28.1(a) provides as follows:

20-2-28.1. Multi-purpose license --- Fees. --- (a) Each **resident** (emphasis added) of this state is eligible to obtain a multi-purpose commercial marine license to participate in all commercial marine fisheries licensed subject to this chapter upon payment of an annual fee of three hundred dollars (\$300).

Pursuant to the Definitions section of title 20, the term "Resident" has the following meaning, unless the context indicates a different meaning:

"Resident" means an individual who has had his or her actual place of residence and has lived in the state of Rhode Island for a continuous period of not less than six (6) months. §20-1-3(a)(8).

The Applicant has not presented any argument that this definition is inapplicable to his situation. Further, the clear testimonial evidence establishes that he was not a Rhode Island resident on August 15, 2000. He therefore would not have been eligible to obtain the renewal of his multipurpose commercial marine license even had he applied prior to the license renewal deadline.

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

FINDINGS OF FACT

1. Applicant possessed a Rhode Island multi-purpose commercial fishing license in 1987.
2. Applicant was not living in the State of Rhode Island on August 15, 2000.
3. Applicant applied for renewal of his multi-purpose commercial marine fishing license after August 15, 2000.
4. Applicant is currently unemployed and has been since April 2001.
5. Applicant was unaware of the license renewal window and the impending deadline of August 15, 2000.

CONCLUSIONS OF LAW

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

1. Applicant was not a Rhode Island resident as defined in § 20-1-3(a)(8) on August 15, 2000.
2. Applicant was not eligible to obtain a multi-purpose commercial marine fishing license as provided in § 20-2-28.1(a) on August 15, 2000.
3. Applicant has proved by a preponderance of the evidence that the one-year moratorium is a hardship.
4. Applicant has proved by a preponderance of the evidence that he possessed a valid Rhode Island commercial fishing license prior to July 1, 2000.
5. Applicant has proved by a preponderance of the evidence that the failure to apply by the deadline was due to circumstances beyond Applicant's control.

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

ORDERED

The application of Mark Swanbeck for renewal of his multi-purpose commercial marine fishing license is herewith **DENIED**.

Entered as an Administrative Order this 14th day of June, 2001 and herewith recommended to the Director for issuance as a Final Agency Order.

Mary F. McMahon
Hearing Officer
Administration Adjudication Division
235 Promenade Street, Third Floor
Providence, RI 02908
(401) 222-1357

Entered as a Final Agency Order this 15th day of June 2001.

Jan H. Reitsma
Director
Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to Mark Swanbeck, 87 Central Avenue Apt. 3R, Pawtucket, RI 02860; and via interoffice mail to: Deborah George, Esquire, DEM Office of Legal Services, 235 Promenade St., 4th Fl., Providence, RI 02908; on this _____ day of June, 2001.
