

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

RE: ELLINWOOD, RAYMOND  
LICENSE DENIAL

AAD NO. 14-009/MSA

**DECISION AND ORDER**

This matter was heard by Hearing Officer David M. Spinella on October 21, 2014. The Rhode Island Department of Environmental Management (“RIDEM”), Office of Boat Registration and Licensing, (“The Division”) was represented by Gary Powers, Esquire. The Applicant represented himself.

**Jurisdiction**

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (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 for Environmental Matter* (AAD Rules).

**Burden of Proof**

The Applicant bears the burden of proof in this matter and must prove, by a preponderance of the evidence, that the denial of his License/ Endorsement renewal was not in accordance with the Rules and Regulation Governing the Management of Marine Fisheries. Proof by a preponderance of the evidence requires that the facts be shown to more likely than not support the proponent’s conclusion Perry v. Alessi, 890 A.2d 463, 469 (R.I. 2006).

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Facts and Travel

The Applicant and the Division stipulated to the following facts:

- (1) The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
- (2) The Applicant applied to the Division for the renewal of his Principal Effort commercial fishing license with quahaug and non-quahaug endorsements, i.e. PEL #001553, on July 7, 2014.
- (3) The last time that the Applicant possessed a Principal Effort License with quahaug and non-quahaug endorsements, i.e., PEL # 001553, was on December 31, 2012 when it expired.
- (4) The Division's Preliminary Denial letter dated July 14, 2014 advised Applicant of the Division's determination denying Applicant's Application for renewal of his Principal Effort commercial fishing license with quahaug and non-quahaug endorsements, i.e., PEL #001553 and further advised Applicant of his opportunity to request a hearing before the Administrative Adjudication Division within thirty (30) days of receipt of the July 14, 2014 Preliminary Denial letter.
- (5) The Applicant submitted a timely letter to the Administrative Adjudication Division requesting a hearing concerning the Division's July 14, 2014 determination denying Applicant's July 7, 2014 Application for renewal of his Principal Effort commercial fishing license with quahaug and non-quahaug endorsement. i.e., PEL #001553.

The Applicant did not offer any of his own proposed stipulations of facts.

At the Hearing the Applicant also stipulated to the admission of all the Division's exhibits as Full Exhibits as follows:

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Division's A. Letter dated July 7, 2014 from Applicant to the Office of Boat Registration requesting a Hearing.

Division's B. (5 pages) Computer printout from the Office of Boat Registration concerning Applicant's commercial license history.

Division's C. Letter dated July 14, 2014 from the Office of Boat Registration and Licensing to the Applicant.

Division's D. Copy of check No. 1088 dated January 4, 2013 drawn on Coastway Credit Union from Desiree O'Rourke Ellinwood payable to RIDEM for \$150.00 with a letter to Mr. Ellinwood dated February 7, 2013 from Ms. Margaret McGrath advising that the check was returned due to non-sufficient funds "account closed".

Division's E. Letter from Raymond Ellinwood to "whom it may concern" received by the RIDEM office of Legal Services dated July 28, 2014.

Division's F. Timeline of events

**Witnesses**

The Applicant testified that he had no excuse for not properly renewing/ paying for his Principal Effort License in 2012. He has experienced various family problems as well as personal issues involving substance abuse and criminal matters.

Fishing is his only occupation and he asked for his license to be renewed now. The Applicant then rested.

The Division then presented a Motion to Dismiss the case based on Rule 6.7 of the Rhode Island Department of Environmental Management's Commercial and Recreational Saltwater Fishing License Regulations. The Division argued that the Applicant did not present a medical

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excuse for his failure to timely renew his Principal Effort License and did not present documented medical evidence that would excuse the late renewal request pursuant to RIGL 20-2.1-4 (g) (6).

A ruling on the Motion to Dismiss was reserved. The Division then rested its case after cross examining the Applicant and argument on the Motion to Dismiss.

**Discussion**

The Applicant admitted that he failed to renew his Principal Effort License in a timely fashion and failed to present any medical evidence in accordance with RIGL 20-2.1-4 (g) (6) to excuse his delay based on documented medical hardship.

This section reads as follows:

(6) there shall be no right to request reconsideration by the commercial fishing license review board or appeal to the Department of Environmental Management's Administrative Adjudication Division (AAD) for the rejection of a new license application submitted after February 28 or any license renewal application submitted after the sixty (60) day grace period, except in the case of a documented medical hardship as defined herein.

Rule 6.7-10 (a) of the Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations is a verbatim adoption of the statutory restriction set forth in R.I.G.L. § 20-2.1-4 (g) (6).

The language in this paragraph is mandatory. Additionally, the Applicant admitted that he did not file an application to renew his Principal Effort License in 2012. His appeal and request for a Hearing in 2014 was therefore clearly out of time and not excused by documented medical evidence. His appeal must be dismissed as a matter of law.

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**Findings of Fact**

- (1) The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant. The Applicant stipulated to this fact.
- (2) The Applicant applied to the Division for the renewal of his Principal Effort commercial fishing license with quahaug and non-quahaug endorsements, i.e. PEL #001553, on July 7, 2014. The Applicant stipulated to this fact.
- (3) The last time that the Applicant possessed a Principal Effort commercial fishing license with quahaug and non-quahaug endorsements, i.e., PEL # 001553, was on December 31, 2012 when it expired. The Applicant stipulated to this fact.
- (4) The Division's Preliminary Denial letter dated July 14, 2014 advised Applicant of the Division's determination denying Applicant's Application for renewal of his Principal Effort commercial fishing license with quahaug and non-quahaug endorsements, i.e., PEL #001553 and further advised Applicant of his opportunity to request a hearing before the Administrative Adjudication Division within thirty (30) days of receipt of the July 14, 2014 Preliminary Denial letter. The Applicant stipulated to this fact.
- (5) The Applicant submitted a timely letter to the Administrative Adjudication Division requesting a hearing concerning the Division's July 14, 2014 determination denying Applicant's July 7, 2014 Application for renewal of his Principal Effort commercial fishing license with quahaug and non-quahaug endorsement. i.e., PEL #001553. The Applicant stipulated to this fact.
- (6) The Applicant did not provide a documented medical hardship for failing to timely renew his Principal Effort commercial fishing license which expired on December 31, 2012 other than his testimony concerning substance abuse and personal problems.

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Conclusions of Law

1. The Administrative Adjudication Division has subject matter jurisdiction over this matter and personal jurisdiction over the Applicant.
2. The Applicant's letter to the Division dated July 7, 2014 requesting a renewal of his PEL # 001553 was subsequent to the deadline proscribed by R.I.G.L. 20-2.1-4 (g) (6) and Rule 6.7-10 (a).
3. The Applicant's failure to present documented medical hardship as proscribed by R.I.G.L. 20-2.1-4 (g) (6) and Rule 6.7-10 (a) precluded him from requesting reconsideration of the Division's denial of his request to renew his Principal Effort License out of time.
4. The Applicant failed to sustain his burden of proof, by a preponderance of the evidence, that the Division's determination dated July 14, 2014 denying his application for the renewal of his Principal Effort commercial fishing license # 01553 was not in accordance with the Rules and Regulations governing the Management of Marine Fisheries.
5. The Applicant's appeal to this Tribunal should be **Denied** and **Dismissed**.
6. The Division's denial of the Applicant's renewal of his Principal Effort commercial fishing license # 01553 dated July 14, 2014 should be **Sustained**.

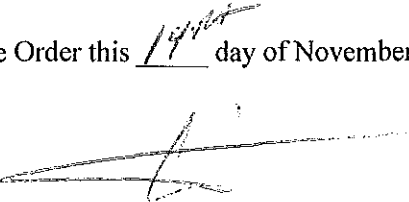
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Based on the foregoing Findings of Facts and Conclusions of Law it is hereby

**ORDERED** that:

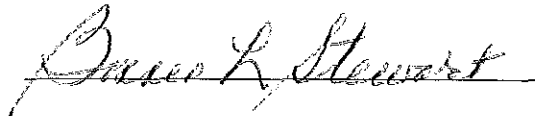
1. The Applicant's Appeal to this Tribunal is **Denied** and **Dismissed**.
2. The Division's denial of the Applicants renewal of his Principal Effort commercial fishing license # 01553 dated July 14, 2014 is **Sustained** and **Upheld** .

Entered as an Administrative Order this 14<sup>th</sup> day of November, 2014.

  
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David M. Spinella  
Hearing Officer  
Administrative Adjudication Division  
One Capitol Hill, 2<sup>nd</sup> Floor  
Providence, RI 02908  
(401) 574-8600

**CERTIFICATION**

I hereby certify that I caused a true copy of the within Status Conference Order to be forwarded, via regular mail, postage prepaid to: Raymond Ellinwood, c/o/ Susan DeCristofaro, 303 Greenwich Avenue, A219, Warwick, RI 02886 and via interoffice mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 14<sup>th</sup> day of November, 2014.

  
\_\_\_\_\_  
Bruce L. Stewart

**NOTICE OF APPELLATE RIGHTS**

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI General Laws § 42-35-12. Pursuant to R.I. Gen. Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.