

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island
Re: Stephen M. Saucier
License Denial
AAD No. 11-003/MSA
September 2011

DECISION AND ORDER

This matter came before the Department of Environmental Management Administrative Adjudication Division (“AAD”) pursuant to the request for hearing filed by Stephen M. Saucier regarding the denial of his Application for the issuance of quahog license endorsement. A Prehearing Conference was conducted on August 9, 2011 and the hearing commenced immediately thereafter.

The Office of Management Services of the Department of Environmental Management (the “Division”) was represented by Gary Powers, Esq. and Mr. Saucier represented himself. The proceedings were conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I.G.L. § 42-17.7-1 et seq.); the Administrative Procedures Act (R.I.G.L. § 42-35-1 et seq.); R.I.G.L. § 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.

HEARING SUMMARY

Stephen M. Saucier (the “Applicant”) testified on his own behalf in a narrative form. He said that he had fished for quahogs from the age of 18 to age 23 on a full time basis. He felt that he is more qualified than students or seniors who are allowed the endorsements. He did not supplement his Application with an affidavit regarding his fishing history. He said that he was not told that the affidavit was necessary.

On cross-examination he identified his application which was marked as Division's Exhibit # 1 Full. He also acknowledged receipt of the Letter of Denial dated April 12, 2011 which was marked as Division's Exhibit # 3 Full. He did not recognize a document entitled “New License/Endorsement Opportunities Available for 2010” which was later qualified by Division's witness and marked as Division's Exhibit # 4 Full. He testified that he never attended a Marine Fishers Council Meeting but that the regulations don't make sense to him. Upon the completion of his testimony the Applicant rested.

The Division presented Margaret McGrath as its only witness. She said that she has been employed by DEM since 1980 and currently holds the title of Director of Programming Services. Her duties include review of applications for the 2011 applications which included the one filed by Mr. Saucier. Mrs. McGrath testified regarding the results of the 2011 application process. She said that one hundred and forty three (143) applications were filed for twenty five (25) quahog endorsements available. The endorsements were issued on a priority basis as established in the regulations. She reviewed the specific criteria for priority as reflected in the Notice of Denial (Division Exhibit # 3 Full).

Mrs. McGrath identified a document as the Applicant's information in the Commercial License System which was entered as Division Exhibit # 2 Full. She testified that based on Division's Exhibit # 2 Full the Applicant did not qualify for any of the priorities established by the regulations. Mr. McGrath also identified a document entitled “New License/Endorsement Opportunities Available in 2010” which was entered as Division's Exhibit # 4 Full. She pointed

out that Division's Exhibit # 4 Full describes the application process including the priorities. It also contains a form of affidavit which could be used by Applicants. She testified that the Applicant did not file an affidavit and no one in her office discouraged him from doing so. Upon the completion of Mrs. McGrath's testimony the Division rested.

ANALYSIS

The authority of the Department of Environmental Management (“DEM”) and the AAD in matters relating to commercial fishing licensing is derived from R.I.G.L. § 20-2.1-1 et seq. The Rules and Regulations Governing the Management of Marine Fisheries (Regulations”) were adopted on December 29, 2010.

The Applicant has applied for one of the 2011 new license opportunities; a quahog endorsement. The regulations established that a total of twenty five (25) new quahog endorsements on Commercial Fishing Licenses would be issued. The department received one hundred and forty three (143) applications for this new endorsement. The regulations establish a method for determining which applicants should receive these endorsements by a certain priority basis. Section 6.7-6 (a) of the regulations holds that first priority in the issuance of new commercial fishing licenses (“CFLs”) with applicable endorsement(s) shall be given equally to the following three categories:

1. Licensed resident fishers holding a CFL, endorsed in the same fishery sector for which a new license/endorsement is being sought, who have been actively fishing that endorsement.
2. Licensed resident fishers holding a principal effort license (PEL) who have been actively fishing their license.
3. Resident crew members who have been actively participating in the same fishery sector for which a new license/endorsement is being sought.

Section 6.7 (b) of the regulations holds that second priority in the issuance of new CFLs with applicable endorsement(s) shall be given equally to the following two categories:

1. Licensed resident fishers holding a CFL, endorsed in any fishery sector, who have been actively fishing their license.
2. Resident crew members who have been actively participating in any fishery sector.

The Division advised the Applicant that he did not meet any of the criteria upon which a priority is received pursuant to Rule 6.7-6 of the Regulations. The Applicant filed a timely appeal. In his Notice of Appeal (Division Exhibit # 5) listed several reasons which included personal circumstances why he needed the endorsements. He did not allege that he was entitled to a priority under the Rule.

The Applicant, in his testimony at the Administrative Hearing, repeated his request for a license endorsement based on his previous experience. The Applicant did not argue that the Division erroneously overlooked his entitlement to a priority. He did not present any evidence that the department improperly interpreted his application. The Applicant alleged that he was not advised by an employee of the Division not to file an affidavit but did not indicate what additional information would have been provided in the document that would have entitled him to a priority. In his direct case the Applicant did not sustain his burden of proof by a preponderance of the evidence. The Division's case presented the documents upon which its determination was based. Mrs. McGrath pointed out that an affidavit form was provided to the Applicant as part of the application package (Division's Exhibit 4 Full). I am not persuaded by the Applicant that if he filed an affidavit it would have made a difference.

CONCLUSION

The Applicant has not met his burden of proof by a preponderance of the evidence that his application was improperly denied. While the Hearing Officer can sympathize with the Applicant

for his need to improve his ability to earn a living there is no discretion provided in the Regulations to go beyond its express provisions. The Applicant's appeal, therefore, must be denied.

FINDINGS OF FACT

1. The Administrative Adjudication Division has jurisdiction over this action and personal jurisdiction over this action and personal jurisdiction over the Applicant.
2. On February 10, 2011 Applicant filed an application for a quahog and soft shell clam endorsement to his CFL.
3. On April 12, 2011 the Office of Management Services issued a letter to Applicant advising him that his application had been denied.
4. On April 12, 2011 Applicant filed his Notice of Appeal.
5. The 2011 Regulations provided for the issuance of a limited number of endorsements: Twenty five (25) quahog.
6. Applicant was one of one hundred and forty three (143) applicants for the limited endorsements.
7. The Regulations provided for a priority basis for the issuance of their endorsements.
8. The Applicant did not meet the requirements of any of the priorities.
9. The Applicant was not entitled to the issuance of the endorsements sought.
10. The Division did not commit error in the denial of the Applicant's application.

CONCLUSIONS OF LAW

After due consideration of the documentary and testimonial evidence of record and based on the findings of fact as set forth herein, I conclude the following as a matter of law:

1. The Administrative Adjudication Division for Environmental Matters (“AAD”) has jurisdiction over the matter pursuant to R.I.G.L. § 42-17.7-2; Rule 3 of the Administrative Rules of Practice and Procedure for the AAD; R.I.G.L. § 20-2.1-12 (c); and Rule 6.7-10 (g) (vii) of the Rules and Regulations Governing Management of Marine Fisheries (“Regulations”).
2. Section 6-7-6 of the Regulations provide a priority basis for the awarding of endorsements to CLF's for quahog and soft shell crab licenses.
3. Applicant has failed to prove by a preponderance of the evidence that he is entitled to a priority under Section 6-7-6 of the Regulations.
4. The Applicant is not eligible for a priority under Section 6-7-6 of the Regulations.
5. The Division acted in compliance with the Regulations when it denied Applicant's application. Wherefore, based upon the Findings of Fact and Conclusions of Law, it is hereby

ORDERED

The Applicant's appeal is DENIED.

Entered as an Administrative Order this _____ day of September, 2011.

David Kerins

Chief Hearing Officer