

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
NATIONAL APPEALS OFFICE

In re Application of)

[REDACTED])

Appellant)

) Appeal No. 10-0089

) DECISION

STATEMENT OF THE CASE

The National Appeals Office (NAO) is a division within the National Marine Fisheries Service (NMFS), Office of Management and Budget. NAO operates out of NOAA Headquarters in Silver Spring, Maryland, and maintains an office in NMFS Alaska Region. NAO is the successor to the Office of Administrative Appeals, Alaska Region (OAA), and is charged with deciding appeals that were filed with OAA. NAO decides these appeals pursuant to the procedure established in federal regulation 50 C.F.R. § 679.43.

On November 3, 2010, [REDACTED] (Appellant), dba [REDACTED] filed a timely appeal of an Initial Administrative Determination (IAD) issued by the Restricted Access Management (RAM) Program on September 25, 2010.¹ RAM is the unit within the NMFS Alaska Region that implements limited access programs. In the IAD, RAM evaluated Appellant's application for a charter halibut permit under the Charter Halibut Limited Access Program.² Appellant seeks a permit for International Pacific Halibut (IPHC) Regulatory Area 2C, which is roughly Southeast Alaska.³

With his application for a charter halibut permit, Appellant submitted evidence and argument regarding his lack of participation in 2004 and 2005.⁴ With respect to 2004, Appellant stated that he did not report bottomfish logbook fishing trips under his own Alaska Department of Fish and Game (ADF&G) Business Owner License because he reported his trips under the ADF&G Business Owner License of [REDACTED] (Business 1). With respect to 2005, Appellant states that he specifically intended to operate a charter halibut business in 2005, but his intent was thwarted by the delay in the completion of the construction of the [REDACTED] (VESSEL), the vessel he intended to use to operate his business.

¹ Letter from Appellant to OAA (dated Oct. 25, 2010, received Nov. 3, 2010).

² The Charter Halibut Limited Access Program is codified at 50 C.F.R. §§ 300.61, 300.66, 300.67. These regulations, and the appeal regulation at 50 C.F.R. § 679.43, are available on the NMFS Alaska Region website: <http://alaskafisheries.noaa.gov/regs/summary.htm>.

³ For precise coordinates of Area 2C, see 50 C.F.R. § 300.61.

⁴ Appellant's Application with attachments (received Apr. 1, 2010).

In the IAD, RAM determined that Appellant did not meet the minimum participation requirement in the qualifying period (2004, 2005) for a permit, because Appellant did not report five bottomfish logbook fishing trips in either year of the qualifying period.⁵ RAM treated Appellant's arguments regarding his lack of participation in 2004 and 2005 as a claim under the unavoidable circumstance regulation, 50 C.F.R. § 300.67(g). A claim under the unavoidable circumstance regulation must be decided by an appellate officer, not by RAM.⁶ Therefore, in the IAD, RAM did not determine whether Appellant met the requirements of the unavoidable circumstance regulation.

On appeal, Appellant renews his claims with respect to his lack of participation in 2004 and 2005. Appellant can file this appeal because the IAD directly and adversely affected his interests, as required by 50 C.F.R. § 679.43(b).

I reviewed the appeal and, pursuant to 50 C.F.R. § 300.67(g)(2)-(3), I concluded that the record was insufficient for me to decide Appellant's claim regarding the delay in VESSEL's construction in 2005. I concluded that an oral hearing was the best way to resolve whether Appellant meets the requirements for a charter halibut permit.⁷

I held a telephonic hearing on June 22 and June 23, 2011. Appellant testified, as did [REDACTED] (Buyer), who was financing construction of VESSEL; [REDACTED] Controller for Buyer's Corporations (Controller), who made the actual payments to the boat builder; and [REDACTED] an operator of [REDACTED] (Business 2) in Sitka, Alaska, who had hired Appellant as a captain in 2001 and 2002. I left the record open for Appellant to submit the documents identified at the hearing. Appellant submitted those documents: a current brochure describing Appellant's business as he was unable to locate the brochure he developed in 2004; the original, signed affidavit from Controller; Appellant's prior and current United States Coast Guard (USCG) licenses to operate uninspected passenger vessels and vessels 100 tons or less.⁸

I conclude that the record is now sufficient to decide this appeal, as required by 50 C.F.R. § 679.43(g)(2). Appellant meets the participation requirement in the recent period (2008) for a transferable permit, namely fifteen halibut logbook fishing trips reported with one vessel.⁹ Appellant has the burden to prove that he meets each requirement in the unavoidable circumstance regulation with respect to his lack of participation in the qualifying period (2004, 2005) and, if so, what type of permit he should receive and what angler endorsement should be on the permit.

⁵ IAD at 2 (Sep. 15, 2010).

⁶ 50 C.F.R. § 300.67(g) ("Unavoidable circumstances claims must be made pursuant to paragraph (h)(6) of this section . . ."); 50 C.F.R. § 300.67(h)(6) ("An applicant that receives an IAD may appeal to the Office of Administrative Appeals (OAA) pursuant to § 679.43 of this title."). See Final Rule, 75 Fed. Reg. 554, 597 (Jan. 5, 2010), Changes from the Proposed Rule no. 19.

⁷ Order Scheduling Hearing (May 27, 2011).

⁸ Documents (received June 27-28, 2011). Appellant's prior USCG license was issued April 27, 2001. Appellant's current license was issued July 21, 2006, and is valid until July 21, 2011.

⁹ 50 C.F.R. § 300.67(d)(1)(ii).

For the reasons that follow, I conclude that Appellant should receive a transferable charter halibut permit with an angler endorsement of six for use in IPHC Regulatory Area 2C.

ISSUES

1. Does Appellant satisfy the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), the unavoidable circumstance regulation for persons that did not meet the minimum participation requirement in the charter halibut fishery in the qualifying period (2004, 2005)?
2. If Appellant meets the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), should Appellant receive a transferable or non-transferable permit?
3. If Appellant meets the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), what is the proper angler endorsement on the permit?

FINDINGS OF FACT

1. In 2001, Appellant began participating in the charter halibut fishery in Alaska. He obtained his USCG license that allowed him to be an operator of uninspected vessels (OUIV license) and operate vessels of 100 tons or less.¹⁰
2. In 2001 and 2002, Appellant worked as a captain for Business 2, running charter vessels out of Sitka, Alaska.¹¹
3. In 2003, Appellant worked as a captain for [REDACTED] (Business 3) in Ketchikan, Alaska, taking cruise ship passengers on halibut and salmon charters.¹²
4. In 2003, Appellant took Buyer on a charter fishing trip. The two struck up a friendship and a business relationship. Buyer agreed to finance construction of a boat. Buyer would own the vessel and lease it to Appellant. Appellant would operate his own charter business but would take Buyer on trips.¹³
5. In 2004, Appellant located a vessel that he thought would be suitable for Buyer to purchase, but Buyer was not able to see the vessel in time and the vessel was sold.¹⁴

¹⁰ Testimony of Appellant (June 22, 2011); Appellant's USCG License (issued April 27, 2011); Testimony of Owner of Business 2 (June 23, 2011).

¹¹ Testimony of Owner of Business 2 (June 23, 2011).

¹² Testimony of Appellant (June 22, 2011).

¹³ Testimony of Appellant (June 22, 2011); Testimony of Buyer (June 22, 2011).

¹⁴ Testimony of Appellant (June 22, 2011).

6. In 2004, Appellant obtained his own ADF&G Business Owner License and Sport Fishing Guide License.¹⁵ Appellant leased a vessel that year from Business 1. Appellant believes that he took twenty trips with that vessel. On appeal, Appellant submitted a bill for the use of the vessel for twelve days of charter halibut fishing trips. Appellant advertised to attract his own clients. Appellant reported those trips on the logbook that was on the vessel, which was the logbook issued to Business 1. Appellant did not report those trips under his ADF&G Business Owner License.¹⁶
7. In early February 2005, Appellant and Buyer discussed the features they wished in a boat with [REDACTED] Owner of [REDACTED] a boat construction business (Builder). Appellant and Buyer had examined other boats by the same builder and liked them.¹⁷
8. On February 3, 2005, Appellant and Buyer received a document labeled a “construction contract,” from Builder that listed a total construction price of \$164,700. The document has a detailed list of features for the vessel’s hull and cabin, and it states “Completion 2 wk of June 05, sooner if possible.” Although labeled a “construction contract,” it is more in the nature of an offer or a bid to build the boat as specified, at that price, with those features, by that time, because it is not signed by Buyer.¹⁸
9. Buyer had the terms of the February 3, 2005 document drafted into a formal contract. On February 17, 2005, Buyer and Builder signed a “Boat Construction Agreement,” that specified that Builder would build a 32-foot coastal aluminum boat, in accord with the construction specifications at Exhibit A of the Agreement, for a total cost of \$164,600, payable in three installments: \$55,000 upon signing of the Agreement; \$60,000 within sixty days after Builder notifies Buyer that construction of the vessel has begun; and \$49,700 upon delivery of the boat to Buyer.¹⁹
10. Under “Non-performance Penalties,” the Boat Construction Agreement states, in part: “Builder shall pay Buyers the following penalties in the event Builder fails to completely construct and deliver the Boat to Buyers on or before June 15, 2005.” The penalties, though, do not actually start unless the boat was not delivered before September 15, 2005 (a penalty of \$10,000). If the boat’s delivery was further postponed, a \$5,000 penalty was to be assessed for each additional thirty-day period that the boat was delayed, the first such period ending on October 15, 2005.²⁰

¹⁵ Appellant’s ADF&G Sport Fishing Business License and Sport Fishing Guide License 2004 (submitted with Application). The ADF&G Sport Fishing Business License is an ADF&G Business Owner License within the meaning of the CHLAP regulation. 50 C.F.R. § 300.67(b)(3).

¹⁶ Statement submitted with Application; Application (at page 3 (twenty trip estimate); Bill from Business 1 for lease of vessel (June 6, 2004); Testimony of Appellant (June 22, 2011).

¹⁷ Testimony of Appellant (June 22, 2011).

¹⁸ Boat Construction Contract (Feb. 2, 2005).

¹⁹ Boat Construction Agreement (Feb. 17, 2005); Testimony of Controller (June 22, 2011).

²⁰ Boat Construction Agreement (Feb. 17, 2005).

11. Appellant and Buyer believed that Builder would finish VESSEL by approximately June 15, 2005, because they entered into the contract in February 2005, the contract specified June 15, 2005, as the completion date, and Builder had built similar vessels.²¹
12. Builder was located in Oregon. Appellant also lived in Oregon, about an hour and a half drive from Builder. Appellant checked on the progress of VESSEL during the spring of 2005. Appellant saw that Builder had obtained an engine. Buyer, who lives in Texas, checked on the progress of VESSEL during a visit to Oregon.²²
13. By June 2005, Appellant realized that VESSEL would not be ready for the 2005 season. Appellant contacted Business 2, for which he had worked as a captain in 2001 and 2002, and Business 1, from which he had leased a vessel in 2004. Neither business had a vessel that he could use for 2005. Appellant and Buyer took a charter halibut trip in Alaska in 2005 and chartered a boat that was the same, or very similar, to the boat Buyer had under contract.²³
14. VESSEL was completed in October 2005 and delivered in November 2005.²⁴
15. Buyer made the payments as required by the contract: \$55,000 on March 4, 2005, after signing of the contract; \$60,000 on May 13, 2005, after notification that construction of VESSEL had begun. Buyer gave Builder an extension to finish construction of VESSEL on September 2, 2005, and he paid \$49,700 to Builder on November 22, 2005, after notification that VESSEL was completed and delivered to Appellant.²⁵
16. If VESSEL had been ready as promised in 2005, Appellant had the following trips scheduled. Buyer had scheduled an inaugural trip in June with his wife and four grandchildren and trips in July and August, with each trip lasting about three to four days for a total of at least ten days of charter halibut fishing. Appellant's brother-in-law had scheduled a four-day trip for a four-person group in July. Appellant had a hunting acquaintance who had scheduled a four-day trip for a group in August.²⁶
17. If VESSEL had been ready as promised in 2005, Appellant would have likely gotten referrals for overflow trips from Business 2 for five to ten days of charter halibut fishing. This is because Appellant had a close working relationship with the Business 2, since he had worked as a captain for Business 2, and the Owner of

²¹ Testimony of Appellant (June 22, 2011).

²² Testimony of Appellant (June 22, 2011); Testimony of Buyer (June 22, 2011); Boat Construction Contract (Feb. 2, 2005) ("Boat To Be Built in the Coos Bay [Oregon] Area.").

²³ Testimony of Appellant (June 22, 2011); Testimony of Owner of Business 2 (June 23, 2011).

²⁴ Testimony of Appellant (June 22, 2011); Testimony of Controller (June 22, 2011).

²⁵ Affidavit of Controller (June 10, 2011); Testimony of Controller (June 22, 2011)..

²⁶ Client List submitted by Appellant with Application (received Apr. 1, 2010); Testimony of Appellant (June 22, 2011); Testimony of Buyer (June 22, 2011).

Business 2 had confidence that Appellant would give Owner's clients a similar charter experience that Owner's vessels would give client.²⁷

18. In 2006, Appellant took 23 halibut logbook fishing trips with VESSEL. The highest number of clients on any trip was six.²⁸
19. In 2007, Appellant took 35 halibut logbook fishing trips with VESSEL. The highest number of clients on any trip was six.²⁹
20. In 2008, Appellant took 37 halibut logbook fishing trips with VESSEL. The highest number of clients on any trip was six.³⁰
21. If VESSEL had been ready as promised in 2005, Appellant would likely have taken fifteen or more charter halibut fishing trips with VESSEL in 2005.
22. If VESSEL had been ready as promised in 2005, Appellant would likely have taken at least one bottomfish logbook fishing trips with six anglers in 2005.

ANALYSIS

1. Does Appellant satisfy the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), the unavoidable circumstance regulation for persons that did not meet the minimum participation requirement in the qualifying period (2004, 2005)?

An applicant that meets the participation requirement in the recent period (2008) may make a claim under the unavoidable circumstance regulation with respect to its lack of participation in the qualifying period (2004, 2005).³¹ Appellant took thirty-seven halibut logbook fishing trips in the recent period. Therefore, Appellant meets the participation requirement in the recent period for a transferable permit: fifteen trips with the same vessel.³²

Appellant has no bottomfish logbook fishing trips in either 2004 or 2005. Appellant acknowledges this but claims that he meets the unavoidable circumstance regulation with respect to his lack of participation in 2004 and 2005.

With respect to 2004, Appellant states that he operated a leased vessel and reported the trips under the vessel owner's ADF&G Business Owners License and in the logbook

²⁷ Testimony of Appellant (June 22, 2011); Testimony of Owner of Business 2 (June 23, 2011).

²⁸ Hearing Exhibits 1 and 2: Logbook pages from 2006 Logbook No. 62099, June 23 to August 7, 2006. Appellant had six anglers on the July 17 and July 28 trips. Ex. 1 at 8; Ex. 2 at 3.

²⁹ Email from NMFS Computer Specialist to Mary Alice McKeen (May 24, 2011); Exhibit 1 to Order Scheduling Hearing (May 27, 2011).

³⁰ Official Record Print Summary (Jan. 26, 2010); Email from NMFS Computer Specialist to Mary Alice McKeen (May 24, 2011).

³¹ 50 C.F.R. § 300.67(g)(2).

³² 50 C.F.R. § 300.67(d)(1)(ii).

that the vessel owner had gotten for that vessel from ADF&G.³³ I do not analyze Appellant's claim for 2004 because I conclude that Appellant meets the requirements of sections (i) through (iv) of the unavoidable circumstance regulation with respect to his lack of participation in 2005.

Section (i). Did Appellant have a specific intent to operate a charter halibut fishing business in 2005?

I conclude that Appellant had a specific intent to operate a charter halibut business in 2005. Since 2001, Appellant held the required USCG license that enabled him to operate a vessel carrying clients for hire. He had operated vessels for other business in 2001, 2002 and 2003 and taken clients on charter halibut fishing trips. He obtained his own ADF&G Business Owner License in 2004 and advertised to attract clients to his own business. He acted as captain of a vessel, but it was a vessel he had leased and he reported the trips under the vessel owner's ADF&G Business Owner License. This experience shows that he was able to attract clients and run a business, and in turn increases the credibility of his claim that he intended to advertise and operate his own charter halibut fishing business in 2005.

In 2005, Appellant took concrete steps to obtain a vessel. He had become friends and business associates with Buyer, who Appellant had met as a client while Appellant was chartering cruise ship passengers in Ketchikan in 2003. Buyer was willing to finance construction of a vessel. After the vessel was complete, the intent of Buyer and Appellant was that Buyer would own the vessel and lease it to Appellant. Appellant would take Buyer on charter halibut trips, and Appellant would use the vessel to operate his own charter halibut business and take other clients on trips. Appellant and Buyer tried to buy a boat in 2004, but the boat was sold before Buyer could see it.

In early 2005, Appellant and Buyer met with Builder, who had built vessels similar to the vessel that Appellant and Buyer wanted. Builder provided a written bid. Buyer had a formal contract drafted with terms proposed by Builder, which Builder and Buyer executed in February 2005. The Contract provided for a completion date of June 15, 2005. Buyer planned an inaugural trip with VESSEL with his wife and four grandchildren and two other trips in the summer of 2005. Buyer made payments totaling \$115,000 by June 2005, but Builder did not finish construction of VESSEL by the contract due date and sought an extension of time to finish VESSEL.

In addition to Buyer's three trips, Appellant had lined up other clients for the 2005 season: Appellant's brother-in-law had scheduled a trip of four days and a hunting acquaintance of Appellant's had scheduled a trip of four days. Appellant also had a close working relationship with Owner of Business 2 because he had worked as a captain for that business in 2001 and 2002. Owner of Business 2 would have likely referred overflow business to Appellant. And Appellant would have likely continued direct advertising of his business as he had done in 2004 and attracted some clients that way.

³³ Statement submitted with Application (Mar. 25, 2010).

Section (ii). Was Appellant's intent to operate a charter halibut fishing business thwarted by a circumstance that was unavoidable, unique, unforeseen, and reasonably unforeseeable?

Buyer and Appellant reasonably believed that Builder could complete construction of VESSEL by the 2005 charter halibut season. Buyer and Appellant were aware that Builder had built similar vessels. In February 2005, Buyer entered into a contract with Builder that listed June 2005 as the completion date for VESSEL. Appellant and Buyer checked on the progress of VESSEL's construction in the spring of 2005. Appellant saw that Builder had obtained an engine, an essential step toward completing VESSEL by the promised date. I conclude that the delay in completion of VESSEL was unavoidable, unique, unforeseen and reasonably unforeseeable. I also conclude that this delay thwarted Appellant's intent to operate a charter halibut fishing business in 2005 and that, but for this delay, Appellant would have operated a charter halibut business in 2005.

Section (iii). Did the circumstance that thwarted Appellant's intent to operate a charter halibut fishing business actually happen?

The delay in completing construction of VESSEL occurred. VESSEL was not completed until October 2005 and not delivered until November 2005.

Section (iv). Did Appellant take all reasonable steps to overcome the circumstance?

In June 2005, Appellant realized that Builder would not complete VESSEL in time for the 2005 season. This was mid-way through construction of VESSEL, after Builder had obtained the engine and after Buyer had made payments of \$115,000. Buyer could not reasonably switch builders. Buyer granted Builder an extension and Buyer made the final payment upon completion and delivery of VESSEL.

Appellant did not have another boat lined up for the 2005 season because he believed VESSEL would be complete. Appellant contacted Business 1 and Business 2, located in Sitka, Alaska, for whom he had worked as a captain in 2001, 2002 and 2004. Appellant and Buyer took a charter halibut trip with a vessel similar to the one they had under construction as a way to make sure that VESSEL had the features they desired. I conclude Appellant took all reasonable steps to overcome the circumstance.

Once an applicant meets the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), the next question is whether the applicant will receive a transferable or non-transferable permit and whether the angler endorsement will be four or some other number.

2. Should Appellant receive a transferable or non-transferable permit?

To receive a transferable permit, an applicant who has shown an unavoidable circumstance in one year of the qualifying period must meet two requirements. First, the applicant must meet the participation requirement in the recent period for a transferable permit: fifteen halibut logbook fishing trips with the same vessel in 2008.³⁴ Appellant meets that requirement with thirty-seven trips with VESSEL in 2008.

Second, the applicant must show that it would likely have taken fifteen or more charter halibut fishing trips in one year of the qualifying period but for the unavoidable circumstance. This is based on subsection (v) of 50 C.F.R. § 300.67(g)(2):

(v) If the applicant proves the foregoing (see paragraphs (g)(2)(i) through (iv) of this section), the applicant will receive either:

(A) One non-transferable permit with an angler endorsement of four (4); or

(B) The number of transferable and non-transferable permits, and the angler endorsement on those permits, that result from the logbook fishing trips that the applicant proves likely would have been taken by the applicant but for the circumstance that thwarted the applicant's specific intent to operate a charter halibut fishing business in one year of the qualifying period and the applicant did not participate during the other year of the qualifying period.

I have found that Appellant has shown that he would likely have taken fifteen or more bottomfish logbook fishing trips in 2005 if VESSEL had been completed as promised.³⁵ Appellant had three trips of three to four days scheduled with Buyer, one four-day trip with a family member, and one four-day trip with a hunting acquaintance. Appellant would also likely have received overflow trips from Business 2 of five to ten days. I also rely on the fact that since the unavoidable circumstance lifted and VESSEL was completed, Appellant has taken more than fifteen halibut logbook fishing trips with VESSEL in each year for which the record has evidence of Appellant's trips: 23 trips in 2006; 35 trips in 2007; and 37 trips in 2008.³⁶ I conclude that Appellant's permit should be transferable.

3. What is the proper angler endorsement on Appellant's permit?

Once an applicant meets the requirements in sections (i) through (iv) of 50 C.F.R. § 300.67(g)(2), section (v) states that the applicant's permit will have an angler endorsement of four unless the applicant shows that it would likely have taken a trip

³⁴ 50 C.F.R. § 300.67(d)(1)(ii).

³⁵ Finding of Fact 21.

³⁶ Findings of Fact 18, 19, 20.

with a higher number of anglers but for the circumstance that thwarted the applicant's participation.

I have found that, but for the circumstance of the delay in completion of VESSEL, Appellant would likely have taken six anglers on a charter halibut trip in 2005.³⁷ I base this on the fact that in 2005, Appellant had scheduled an inaugural trip for VESSEL with six persons: Buyer, his wife, and four grandchildren.³⁸ I also rely on the fact that VESSEL accommodated six anglers and Appellant took charter halibut trips with VESSEL with six passengers in 2006, 2007 and 2008.³⁹ Therefore, I conclude that Appellant's charter halibut permit should be endorsed for six anglers.

CONCLUSIONS OF LAW

1. Appellant meets the minimum participation requirement for a transferable charter halibut permit in the recent participation period: fifteen halibut logbook fishing trips with the same vessel in 2008.
2. Appellant satisfies the requirements in sections (i) through (iv) of the unavoidable circumstances regulation with respect to his lack of participation in one year in the qualifying period (2005).
3. Appellant had a specific intent to operate a charter halibut fishing business in 2005.
4. Appellant's intent was thwarted by a circumstance that was unavoidable, unique to him, unforeseen and reasonably unforeseeable, namely a delay in the completion of VESSEL.
5. The unavoidable circumstance actually occurred.
6. Appellant took all reasonable steps to overcome the circumstance.
7. Appellant meets the requirements in section (v) of 50 C.F.R. 300.67(g)(2) to receive a transferable permit with an angler endorsement of six.
8. Appellant qualifies for a transferable charter halibut permit, endorsed for six anglers, for use in IPHC Regulatory Area 2C.

³⁷ Finding of Fact 22.

³⁸ Finding of Fact 16.

³⁹ Findings of Fact 18, 19, 20.

ORDER

The IAD that is the subject of this appeal is VACATED. RAM is directed to issue a transferable charter halibut permit, endorsed for six anglers, for use in IPHC Regulatory Area 2C to Appellant. This Decision is effective on October 11, 2011, unless by that date the Regional Administrator reverses, remands, or modifies the Decision pursuant to 50 C.F.R. § 679.43(k), (o).

Appellant or RAM may submit a Motion for Reconsideration, but it must be received by this Office not later than 4:30 p.m., A.S.T., on September 19, 2011, the tenth day after this Decision. A Motion for Reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the administrative judge, and must be accompanied by a written statement in support of the motion.



Mary Alice McKeen
Administrative Judge

Date issued: September 9, 2011