

U.S. Supreme Court Decision Will Impact Maritime ALJs

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On June 21, 2018, the U.S. Supreme Court announced a decision in the case of *Lucia v. Securities and Exchange Commission* that could have a significant impact on all federal administrative law judges, including the Coast Guard and Federal Maritime Commission ALJs. The case was brought by Raymond Lucia, infamous for the marketing of his “Buckets of Money” retirement savings plan, who challenged punishment awarded by an SEC ALJ. Lucia argued that the SEC ALJ was an “officer of the United States,” and therefore subject to the Constitution’s “Appointment Clause,” which requires that officers be appointed by the President, “Courts of Law,” or a “Head of Department.” Since the ALJ in his case had been hired by subordinate staff in the SEC, Lucia argued that the ALJ did not have jurisdiction to decide his case. The Supreme Court agreed, holding that ALJs are “officers” of the United States subject to the Appointments Clause.

That decision could impact approximately 1,930 current ALJs throughout the federal government, who are estimated to have well over one million pending cases. That includes the six Coast Guard ALJs, who adjudicate proceedings brought by the Coast Guard for the suspension or revocation of U.S. merchant mariner credentials.

The Court’s opinion in the *Lucia* case did not address some of the practical issues that flow from its decision. For example, what happens to the cases that are currently pending before Coast Guard ALJs in various stages of the proceedings? Perhaps of even greater concern is what happens to the employment protections for ALJs that are built into the Administrative Procedures Act. Under the APA, an ALJ can only be removed “for good cause” as determined by the federal Merit Systems Protection Board, on the record, after an opportunity for a hearing before the Board. That statutory provision was intended to protect ALJs from improper agency influence, and to preserve their independence from political pressure, so that persons with cases before the ALJ can have a fair and impartial hearing.

However, under an earlier Supreme Court decision, statutory removal protections for “officers of the United States” could in some cases intrude on the Constitutional provisions that vest the executive power in the President, and thus be unconstitutional. The Court in *Lucia* declined to decide that issue in the context of ALJs. That raises questions that could be significant for Coast Guard ALJs, and persons with cases pending before them. Will Coast Guard ALJs need to be “ratified” by the Secretary of Homeland Security? Could she decline to ratify an ALJ on political grounds, or based on disagreements with the ALJ’s prior decisions? How independent and fair will suspension and revocation hearings be in the future if ALJs become subject to removal at will by the Secretary?

We expect that the affected agencies and Commissions have been aware of the potential decision long before now, and hope they will issue guidance to address the foregoing concerns before too long. However, any significant delays could have a very disruptive effect on the many administrative adjudications awaiting determinations.

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