

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 3, 2026

Lyle W. Cayce
Clerk

No. 25-30604

EDWARD C. MULLEN, III, *Captain*,

Plaintiff—Appellant,

versus

MARKWAYNE MULLIN, *Secretary, U.S. Department of Homeland Security*; KEVIN E. LUNDAY, *Admiral, in his official capacity as Commandant, United States Coast Guard*,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:25-CV-404

Before SMITH, HAYNES, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Plaintiff-Appellant Edward Mullen, III, proceeding *pro se*, appeals the district court's dismissal with prejudice of his complaint seeking declaratory and injunctive relief. We AFFIRM the district court's determination that it lacked subject matter jurisdiction over Mullen's claims concerning the Coast Guard's ongoing "suspension and revocation" proceedings. But we

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

No. 25-30604

REMAND relative to those claims so that the district court can modify its order and judgment to reflect dismissal *without* prejudice. Regarding Mullen’s claims protesting the Coast Guard’s denial of his “raise of grade” application, we disagree with the district court’s jurisdictional determination but, considering the merits, AFFIRM the district court’s dismissal of those claims *with* prejudice.

I.

Mullen is a vessel captain. He has held a Merchant Mariner Credential (“MMC”),¹ issued by the United States Coast Guard, since July 17, 2014.² MMCs are subject to renewal every five years.³ Mullen’s current MMC was issued on August 18, 2022, and is valid until August 18, 2027.

In December 2022, Congress, in response to ongoing concerns about sexual assaults in the merchant marine, enacted 46 U.S.C. § 7511, which states:

¹ “A Merchant Mariner Credential (MMC) is a credential combining the elements of the Merchant Mariner’s Document (MMD), Merchant Mariner’s License (License), and Certificate of Registry (COR)[,]” in addition to specified endorsements. *See* 46 C.F.R. § 10.201(a).

² The Coast Guard is charged with the licensing and documentation of merchant mariners. *See* 46 U.S.C. § 7101. Federal law provides for the issuance of licenses, certificates, and documents to merchant seamen, *see* 46 U.S.C. § 7101(c), establishes general requirements for issuance of those documents, *see id.* § 7101(d), and defines associated procedures, *see id.* §§ 7501–11.

³ A license “is valid for a 5-year period and may be renewed for additional 5-year periods.” *Id.* § 7106(a); *see also* 46 C.F.R. § 10.205(a) (“An [Merchant Mariner Credential] is valid for a term of 5 years from the date of issuance.”). The same general requirements apply for an “original, renewal, duplicate, raise of grade, or a new endorsement on a previously issued credential[.]” *See* 46 C.F.R. § 10.209(a).

No. 25-30604

§ 7511. Convicted sex offender as grounds for denial

(a) Sexual abuse.—A license, certificate of registry, or merchant mariner’s document authorized to be issued under this part shall be denied to an individual who has been convicted of a sexual offense prohibited under—

(1) chapter 109A of title 18, except for subsection (b) of section 2244 of title 18;

(2) section 920 or 920b of title 10 (article 120 and 120b of the Uniform Code of Military Justice); or

(3) a substantially similar offense under Federal, State, local, or Tribal law.

(b) Abusive sexual contact—A license, certificate of registry, or merchant mariner’s document authorized to be issued under this part may be denied to an individual who within 5 years before applying for the license, certificate, or document, has been convicted of a sexual offense prohibited under subsection (b) of section 2244 of title 18, or a substantially similar offense under State, local, or Tribal law.

See 46 U.S.C. § 7511.

Subsequently, in November 2023, Mullen filed an application for a raise of grade of his existing MMC. On February 7, 2024, the Coast Guard, citing 46 U.S.C. § 7511, denied the application because in 2006—seventeen years earlier—Mullen, based upon a plea agreement, was convicted of forcible rape, in violation of Louisiana Revised Statute 14:42.1. Mullen submitted a reconsideration request on June 6, 2024; the Coast Guard denied it on October 8, 2024. Mullen’s appeal to Coast Guard Headquarters was denied for the same reason. The February 21, 2025 letter denying his appeal stated that it “constitute[d] final agency action regarding [his] application for a raise of grade of [his] MMC.”

No. 25-30604

In the meantime, the Coast Guard filed a “Suspension and Revocation” (“S&R”) complaint against Mullen, on July 25, 2024, seeking revocation of his MMC pursuant to 46 U.S.C. § 7703(2), based on his 2006 forcible rape conviction, and pursuant to 46 U.S.C. § 7704a(b) and § 7704a(c)(1)(A), based upon the agency’s February 7, 2024 denial of Mullen’s application for a raise of grade to his MMC. Following the February 21, 2025 denial of Mullen’s appeal of the denial of his raise-of-grade application, a third basis for revocation, under 46 U.S.C. § 7704a(b) and § 7704a(c)(1)(B), was added. The Coast Guard’s S&R complaints against Mullen were set for a formal adjudicatory hearing to be held before an Administrative Law Judge (“ALJ”) on April 22, 2025. The S&R hearing was postponed, however, upon Mullen’s request, following his filing suit in federal district court, and moving for a preliminary injunction, on February 26, 2025.⁴

In the district court proceeding, the defendants, on May 27, 2025, filed a motion for partial dismissal (relative to Mullen’s claims “involving the S&R proceedings”), an answer, and an opposition to Mullen’s motion for preliminary injunction. On September 30, 2025, the district court, having determined that the pending S&R proceeding lacked “final agency action,” dismissed Mullen’s complaint and amended complaint, with prejudice, for lack of subject matter jurisdiction. The court

⁴ Mullen requested that the court, *inter alia*: declare the retroactive application of §§ 7511 and 7704a unconstitutional (under the Ex Post Facto Clause and the Bill of Attainder Clause); enjoin the Coast Guard from revoking his MMC; and compel the Coast Guard to grant his raise in grade and future renewals. His motion for a preliminary injunction asked the court to enjoin the defendants from revoking his MMC.

No. 25-30604

also denied the preliminary injunction motion as moot. This appeal followed.

II.

“Rule 12(b)(1) motions challenge the subject matter jurisdiction of the district court, with the burden of proof on the party asserting jurisdiction.” *McLin v. Twenty-First Jud. Dist.*, 79 F.4th 411, 415 (5th Cir. 2023). Our review of dismissals for lack of subject matter jurisdiction is de novo. *Id.*; *see also Williams v. Wynne*, 533 F.3d 360, 364–65 (5th Cir. 2008).

III.

Under Section 10(a) of the Administrative Procedure Act (APA), a person is entitled to judicial review if he “suffer[s] [a] legal wrong because of agency action, or [is] adversely affected or aggrieved by agency action within the meaning of a relevant statute.” 5 U.S.C. § 702. But federal courts may not review agency action unless it is “final.” 5 U.S.C. § 704; *id.* (“preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action”). Accordingly, “two conditions must be satisfied for agency action to be ‘final.’” *Bennett v. Spear*, 520 U.S. 154, 177 (1997). “First, the action must mark the ‘consummation’ of the agency’s decisionmaking process—it must not be of a merely tentative or interlocutory nature.” *Id.* at 177–78 (citation modified). “And second, the action must be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Id.* at 178 (citation omitted).

A. Mullen’s Suspension and Revocation (“S&R”) Proceedings

The Coast Guard’s statutory authority to conduct S&R actions against mariners’ licenses is found in 46 U.S.C. §§ 7702–7704a. Corresponding regulations—setting forth S&R procedures—are found in 46

No. 25-30604

C.F.R. 5.19; 33 C.F.R. § 20.101, et seq. Section 7701 explains: “The purpose of suspension and revocation proceedings is to promote safety at sea.” 46 U.S.C. § 7701(a). “Licenses, certificates of registry, and merchant mariners’ documents may be suspended or revoked for acts described in section [46 U.S.C. § 7703].” 46 U.S.C. § 7701. Section 7703 states, in pertinent part:

A license, certificate of registry, or merchant mariner’s document issued by the Secretary may be suspended or revoked if the holder . . . (2) is convicted of an offense that would prevent the issuance or renewal of a license, certificate of registry, or merchant mariner’s document.

See 46 U.S.C. § 7703(2).

In December 2022, Congress enacted 46 U.S.C. § 7704a, which addresses “sexual harassment and sexual assault” as grounds for suspension or revocation. Section § 7704a(b) states, relative to sexual assault:

(b) Sexual assault.—If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or merchant mariner’s document issued under this part, within 10 years before the beginning of the suspension and revocation proceedings, is the subject of an official finding of sexual assault, then the license, certificate of registry, or merchant mariner’s document shall be revoked.

46 U.S.C. § 7704a. The term “official finding” is defined in § 7704a(c).

Under 46 U.S.C. § 7702(a), certain provisions of the Administrative Procedure Act “apply to each hearing under this chapter about suspending or revoking a license, certificate of registry, or merchant mariner’s document.” *See* 46 U.S.C. § 7702(a) (referencing 5 U.S.C. §§ 551–559)) Thus, hearings in S&R proceedings are held on the record before an

No. 25-30604

Administrative Law Judge (“ALJ”).⁵ The ALJ will consider allegations of misconduct, negligence, or incompetence, determine whether the allegations are proven, and, if so, suspend or revoke a merchant mariner’s license, certificate of registry, or document issued by the Coast Guard. *See* 46 U.S.C. §§ 7702–7704a; 5 U.S.C. § 556(b), 558; 33 C.F.R. Part 20 (§§ 20.101–20.1311); 46 C.F.R. § 5.19(b).⁶

Section 7702 establishes a 30-day deadline for appealing suspensions and revocations of MMCs. *See id.* at § 7702(b). Per federal regulation, “[u]nless appealed . . . an ALJ’s decision becomes final action of the Coast Guard 30 days after the date of its issuance.” 33 C.F.R. § 20.1101(b)(1).

To appeal the ALJ’s decision, a party must notice an appeal with the Commandant of the Coast Guard. *See* 46 C.F.R. § 5.801; 33 C.F.R. § 20.1001. “If the Commandant issues a decision . . . , the decision constitutes final action of the Coast Guard on the date of its issuance.” 33 C.F.R. § 20.1101; 46 C.F.R. § 5.805(c) (“The Decision of the Commandant on Review, shall be the final agency action in the absence of a remand.”). The Commandant’s decision to affirm a license suspension or revocation is appealable only to the National Transportation Safety Board at the Department of Transportation (“NTSB”). *See* 49 U.S.C. § 1133(3); 49

⁵ *See* 46 C.F.R. § 5.19(a) (“An Administrative Law Judge shall mean any person designated by the Commandant pursuant to the Administrative Procedure Act (5 U.S.C. 556(b)) for the purpose of conducting hearings arising under 46 U.S.C. 7703 or 7704.”).

⁶ *See* 46 C.F.R. § 5.19(b) (“The Commandant has delegated to Administrative Law Judges the authority to admonish, suspend, with or without probation, or revoke a credential or endorsement issued to a person by the Coast Guard under any navigation or shipping law.”)

No. 25-30604

C.F.R. § 825.5. And finally, “[t]he appropriate court of appeals of the United States . . . may review a final order of the [NTSB][.]” *See* 49 U.S.C. § 1153(a).

On the record before us, and considering the foregoing statutory and regulatory scheme, we hold that the district court correctly concluded that it lacked subject matter jurisdiction over Mullen’s claims concerning the S&R proceeding. The Supreme Court has recognized, on a number of occasions, that “[a] special statutory review scheme . . . may preclude district courts from exercising jurisdiction over challenges to federal agency action.” *Axon Enter., Inc. v. Fed. Trade Comm’n*, 598 U.S. 175, 185 (2023) (citing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207 (1994)); *see also Bank of Louisiana v. Fed. Deposit Ins. Corp.*, 919 F.3d 916, 923 (5th Cir. 2019) (explaining such preclusion may be accomplished “explicitly or implicitly”). Congress may implicitly “preclude district courts from exercising jurisdiction over challenges to federal agency action . . . by specifying a different method to resolve claims about agency action.” *Axon Enter.*, 598 U.S. at 185. And “[t]he method Congress typically chooses is . . . review in a court of appeals following the agency’s own review process.” *Id.* In other words, “[t]he agency effectively fills in for the district court, with the court of appeals providing judicial review.” *Id.*

As revealed by our analysis in *Dresser*, the usual path from agency to judicial review applies to the Coast Guard’s S&R proceedings. *See Dresser v. Meba Med. & Benefits Plan*, 628 F.3d 705, 709–10 (5th Cir. 2010) (identifying an ALJ decision, an appeal to the Commandant, *and* an appeal to the NTSB as prerequisites to federal appellate court review of S&R decisions). Since the Coast Guard’s S&R complaints against Mullen have not yet been heard, much less decided, by the ALJ—the very first agency decisionmaker—there is no “final” agency action appropriate for judicial review under the APA. *Cf. Dresser v. Ingolia*, 307 F. App’x 834, 840 (5th Cir. 2009) (concluding there

No. 25-30604

was no final agency action because the merchant mariners' appeals were still pending before the Commandant).

Nor are we convinced that Mullen's particular claims are *not* the sort that Congress intended for disposition and review via this statutory scheme rather than by means of a request for relief to a federal district court. *See Axon Enter.*, 598 U.S. at 188–89. Mullen does not challenge “the structure or very existence of an agency,” the Coast Guard’s “power to proceed at all,” or allege that the Coast Guard “is wielding authority unconstitutionally in all or a broad swath of its work.” *Id.* at 189. Rather, Mullen’s claims regarding the S&R proceeding challenge the correctness of the Coast Guard’s interpretation of various industry-specific statutes governing commercial licenses and their application to a particular set of facts. Such challenges hardly are matters entirely outside the purview of administrative determination and review.

Furthermore, given the authorization of review by federal courts of appeals, *see* 49 U.S.C. § 1153(a), “the preclusion of district court jurisdiction hardly could ‘foreclose all meaningful judicial review.’” *Axon Enter.*, 598 U.S. at 190 (quoting *Thunder Basin*, 510 U.S. at 212–13). As the Supreme Court has emphasized, “adequate judicial review does not usually demand a district court’s involvement. Review of agency action in a court of appeals can alone ‘meaningfully address[]’ a party’s claims.” *Axon Enter.*, 598 U.S. at 190 (quoting *Thunder Basin*, 510 U.S. at 215, and then citing *Elgin v. Dep’t of Treasury*, 567 U.S. 1, 21 (2012)). In fact, our decision in *Dresser* confirmed that, in the context of S&R proceedings, “[r]eview by a [federal] court of appeals is ‘an adequate remedy’ within the meaning of the APA, and therefore the APA § 10(c)’s default rule of review in a federal district court is inapplicable[.]” *Id.* at 710–11 (citation omitted).

No. 25-30604

For these reasons, we agree with the district court's determination that it lacked subject matter jurisdiction over Mullen's claims concerning the S&R proceeding. But the court erred to the extent that it dismissed those claims with prejudice. It is well-settled that dismissals for lack of subject matter jurisdiction should be without prejudice. *See e.g., Mitchell v. Bailey*, 982 F.3d 937, 944 (5th Cir. 2020); *see* FED. R. CIV. P. 41(b). The government does not defend the court's action, but instead asserts that we "should affirm, but issue a remand for the limited purpose of clarifying that the jurisdictional dismissal is without prejudice." That we will do.

B. Mullen's Raise-of-Grade Application

In assessing its subject matter jurisdiction, the district court did not separately evaluate Mullen's claims regarding his raise-of-grade application, apparently because the court surmised that Mullen had not "asserted independent constitutional challenges to the denial of his raise of grade application." *See* September 30, 2025 "Order and Reasons" ("O&R") at 7 n.2 ("Even if Plaintiff asserted independent constitutional challenges to the denial of his raise of grade application and the Court had jurisdiction over these claims" (emphasis added)). Further to this point, the district court characterized Mullen's six causes of action as "all emanat[ing] from the interplay of §§ 7511 and 7704a[,] which could ultimately lead to the revocation of his MMC." *Id.* at 3.

Based on Mullen's written submissions, prepared *pro se*, this conclusion is not an unreasonable one. As the district court noted, Mullen's "*pro se* action challenges the application of § 7511 and § 7704a to his case," contending that "the Coast Guard cannot initiate S&R proceedings because his offense was over 10 years old and that § 7511 does not allow for a retroactive application to initiate S&R proceedings under § 7704a." *Id.*

No. 25-30604

Now, having the benefit of Mullen’s district court *and* appellate court submissions, and construing them liberally, given his *pro se* status, we are persuaded that Mullen did, in fact, assert independent claims regarding the Coast Guard’s denial of his raise-of-grade application. In his reply brief, Mullen asserts that his application yielded a separate agency decision, with independent legal consequences, and [is] logically antecedent to the S&R case.” And he asked to the court to “[c]ompel Defendants to grant his requested raise in grade and future renewals,” something “[t]he administrative appeal procedure outlined in the [relevant statutes and regulations] can[not] provide” *Id.*

Furthermore, we think the Coast Guard’s administrative disposition and review of these claims constituted the “final agency action” required by 5 U.S.C. § 704. Regarding agency review, the statutes governing raise-of-grade applications do not address agency appeals. *See* 46 U.S.C. §§ 7101–7512. A single regulation governs the process. Specifically, after the National Maritime Center denies a merchant mariner’s raise-of-grade application, he “may, after requesting reconsideration of the decision . . . , make a formal appeal of that decision or action, to the Director of Commercial Regulations and Standards” *See* 46 C.F.R. § 1.03–40. According to the same regulation: “The decision of the Director of Commercial Regulations and Standards . . . on such an appeal *will constitute final agency action.*” *Id.* (emphasis added).

The statutory and regulatory scheme at hand does not explicitly preclude district court review of the Director of Commercial Regulations and Standards’ decision. Nor does it implicitly do so by creating a process where “[t]he agency effectively fills in for the district court, with the court of appeals providing judicial review.” *Axon Enter.*, 598 U.S. at 185. Rather, the relevant statutes and regulations are silent concerning district court review.

No. 25-30604

In concluding that it lacked subject matter jurisdiction over the entirety of Mullen’s claims, the district court, citing 49 U.S.C. § 1153(a), reasoned, in part, that “[t]he Coast Guard’s statutory scheme authorizes ultimate review in a federal circuit court . . . and allows Plaintiff to raise his constitutional claims during the enforcement proceedings before an ALJ who can fully address such arguments.” Therefore, “[Mullen] still gets meaningful judicial review.”

But § 1153(a) governs S&R proceedings, not raise-of-grade application denials. And, whereas in S&R proceedings, ALJs possess “the authority to admonish, suspend, with or without probation, or revoke a credential or endorsement to a person by the Coast Guard under any navigation or shipping law,” *see* 46 C.F.R. § 5.19, we are not aware that ALJs are authorized to conduct hearings and/or provide relief relative to raise-of-grade applications. Thus, the district court erred insofar that it determined that it lacked subject matter jurisdiction over Mullen’s claims regarding his raise-of-grade application.

But, in reviewing dismissals, we are free to affirm on any ground supported by the record and presented to the district court for consideration, even though said ground(s) may not have formed the basis for the district court’s decision. *See, e.g., Ballew v. Cont’l Airlines, Inc.*, 668 F.3d 777, 781 (5th Cir. 2012)). Further to that point, the government argues, in the alternative, that the district court correctly dismissed Mullen’s raise-of-grade application claims on the merits, referencing the court’s discussion in its opinion’s second footnote. We agree.

In that footnote, the district court stated that it found “no constitutional issue or APA issue with § 7511’s application to [Mullen’s] raise of grade application.” *See* O&R at 7 n.2. In reaching that decision, the district court exclusively relied on *Reid v. Mayorkas*—a District of Columbia

No. 25-30604

District Court case—for its analysis. 759 F. Supp. 3d 15, 23–24 (D.D.C. 2024). We likewise are persuaded by the *Reid* court’s assessment. There, the plaintiffs, “three merchant mariners whose MMC renewal applications were denied due to prior sexual assault convictions . . . assert[ed] that § 7511 applies only to mariners’ original applications for MMCs, and not requests to renew those credentials.” *Id.* at 20–22.

The *Reid* court rejected this argument, concluding “that, under a natural reading of § 7511, renewed licenses are credentials ‘to be issued’ . . . [and] [t]he Coast Guard was therefore required to deny the renewed MMCs to Plaintiffs as a result of their convictions.” *Id.* at 23 (citation omitted). Moreover, the court reasoned that “[t]here is no indication that Congress intended the five-and[-]ten-year temporal limitations found in § 7704a to apply to § 7511, which is an entirely separate provision serving a distinct purpose.” *Id.* And “to the extent that this has some retroactive effect, the statute contains clear congressional intent favoring such a result.” *Id.*

Furthermore, despite Mullen’s arguments to the contrary, we are not convinced that Congress’s primary intent, in enacting § 7511, was to punish offenders rather than to protect other merchant mariners from sexual misconduct. Finally, Mullen also received a constitutionally sufficient proceeding because the Coast Guard (a) informed him of the reason for denial, (b) permitted written responses and reconsideration, and (c) allowed him to contest the application of § 7511 to his conviction. And Mullen does not contest the validity of the 2006 conviction or that the forcible rape offense of which he was convicted does not constitute a “substantially similar offense” under state law for purposes of § 7511(a).

No. 25-30604

For these reasons, we hold that the district court correctly dismissed Mullen's *independent* raise-of-grade application claims on their merits with prejudice.⁷

III.

For the reasons stated herein, we AFFIRM the district court's determination that it lacked subject matter jurisdiction over Mullen's claims concerning the Coast Guard's ongoing S&R proceedings. But we REMAND relative to those claims so that the district court can modify its order and judgment to dismiss *without* prejudice. Regarding Mullen's claims challenging the Coast Guard's denial of his raise-of-grade application, we disagree with the district court's determination of subject matter jurisdiction but, based on our review of the merits-based assessment, including the district court's footnote on that, AFFIRM the district court's dismissal of those claims *with* prejudice.

⁷ Whether Mullen can successfully challenge the Coast Guard's interpretation and application of § 7511 vis-à-vis the revocation proceedings authorized by § 7703 and/or § 7704a remains for the agency to decide in the first instance as part of the S&R proceeding.