

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO.Z949023-D2  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: Robert L. TOMPKINS

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1994

Robert L. TOMPKINS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 23 December 1972, an Administrative Law Judge of the United States Coast Guard at Houston, Texas suspended Appellant's seaman's documents for 4 months outright plus 2 months on 6 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an oiler on board the United States SS IBERVILLE under authority of the document above captioned, on or about 8,9,10, and 11 November, 1972, Appellant did wrongfully absent himself from the vessel without permission and did wrongfully fail to perform his assigned duties.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification. The Investigating Officer introduced in evidence certified copies of the Official Logbook entries and an extract of the Shipping Articles of the SS IBERVILLE.

In defense, Appellant testified in his own behalf.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. The Administrative Law Judge entered an order suspending all documents issued to Appellant for a period of 4 months outright plus 2 months on 6 months' probation.

The entire decision and order was served on 24 April 1973. Appeal was timely filed.

#### *FINDINGS OF FACT*

On 8,9,10, and 11 November 1972, Appellant was serving as an oiler on board the United States SS IBERVILLE and acting under authority of his document while the ship was in the port of Manila, P.I.

On the above dates Appellant did absent himself from the vessel without permission and thereby failed to stand his assigned engine-room watches.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends on appeal that the Official Log entry admitted into evidence was misleading in that the material under his signature was added subsequent to signing. Appellant further contends that his absence from the vessel was due to illness and difficulty in communicating with the vessel's agent. Finally, Appellant complains of the severity of the sanction, citing hardship to his family.

APPEARANCE: Appellant pro se.

#### *OPINION*

I

Appellant's contention that he was "not aware" of the

documents he signed is contradicted by his own sworn testimony. It was not alleged by the Investigating Officer that the matter below Appellant's signature was inscribed prior to his signing. An official entry made in substantial compliance with the requirements of 46 U.S.C 702 is prima facie evidence of the facts recited therein, and such evidence is clearly admissible, 46 CFR 137.20-107. Statements attached to and made an official part of official log entries are likewise admissible as exceptions to the hearsay rule and are competent evidence to be considered along with other evidence received at the hearing. The Administrative Law Judge, as the finder of fact, determines the credibility of and weight to be accorded to evidence. His findings will be upheld when, as here, there is substantial evidence of a reliable and probative character to support them.

## II

Appellant's contentions concerning an inability to communicate with the vessel, even if accepted, as they were by the Judge, do not mitigate the basic fact of the unauthorized absence and failure to perform. The factual circumstances surrounding Appellant's departure from the vessel were examined by the Judge and his findings will be upheld when there is substantial evidence. The circumstances that Appellant returned to his vessel less than 2 hours before sailing tends to negate the validity of his communication difficulties. Further, this contention fails to recognize the serious breach of duty and responsibility evidenced by the desertion of watch standing duties on 8 November 1972. There is nothing in the record to indicate an abuse of discretion by the Administrative Law Judge and his findings must therefore be affirmed.

## III

The degree of severity of an order is a matter peculiarly within the discretion of the Judge. This being so, an order will be modified on appeal only upon a clear showing of arbitrary or capricious action on the Judge's part. Looking to the prior record of Appellant presented to the Administrative Law Judge, the order of suspension is clearly justified, if not somewhat lenient. His

prior record dates back to 1959 with misconduct in the nature of failures to perform and failure s to join on occasions too numerous to list. For these breaches of duty he has been granted various suspension and probationary periods; however, his misconduct continues unabated.

The fact that Appellant's family will suffer due to Appellant's suspension is unfortunate, but is something that he should have considered prior to his recent acts of misconduct.

In light of Appellant's prior record this circumstance hardly presents a compelling basis for granting a reduction of the Judge's order.

*ORDER*

The order of the Examiner dated at Houston, Texas on 23 December 1972, is AFFIRMED.

T.R. SARGENT  
Vice Admiral, U.S. Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 4th day of February 1974.

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