

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-1079593-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Glyn H. STEPHENS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2053

Glyn H. STEPHENS

This appeal has been taken *in* accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 10 October 1975, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, revoked Appellant's seaman documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as able bodied seaman on board the M/V PRESQUE ISLE under authority of the document above captioned, on or about 26 June 1975, Appellant was wrongfully absent from his vessel and duties, assaulted and battered the master on two separate occasions, and disobeyed a lawful order of the master on two separate occasions.

As the hearing was held in *absentia*, the Administrative Law Judge entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the oral testimony of two witnesses, and affidavit of service, and pertinent extracts form the vessel's logbook and articles of agreement.

Subsequent to the hearing, the Judge rendered a written decision in which he concluded that the charge and five specifications had been proved. He then served a written order on Appellant revoking all documents issued to Appellant.

The entire decision and order was served on 23 October 1975. Appeal was timely filed on 6 November 1975.

FINDINGS OF FACT

In 26 June 1975, Appellant was serving as able bodied seaman on board the M/M PRESQUE ISLE and acting under authority of his document while the ship was in the port of Two Harbors, Minnesota. On that date, Appellant was on leave from the vessel, but scheduled to stand watch from 8:00 p.m. to 12:00 p.m. Appellant arrived at the dock approximately 8:05 p.m., but was unable to board the M/V PRESQUE ISLE because it was shifting to another dock. Appellant called out to another crewmember, Mr. Dubaski, on board, who agreed to stand by for Appellant until the vessel arrived at the next dock approximately 45 minutes later. Despite the fact that it was only a ten minute walk from one dock to the other, Appellant did not return to the vessel or relieve Mr. Dubaski until 10:30 p.m.

At approximately 11:00 p.m., Captain Jeffrey, master of the M/V PRESQUE ISLE, returned to the vessel from a short stay ashore. Although it was Appellant's duty, he was not present at the winches or ladder at that time. The master observed Appellant accompanied by two strangers emerging from another part of the vessel. After the master ordered Appellant to find out the identity of the strangers, Appellant stated they were from U. S. Steel and refused to inquire further. Appellant became belligerent and started to curse; the master ordered him off the vessel. Ordering Mr. Dubaski to assume Appellant's duties, the master proceeded down a ladder. Appellant pursued him, kicking him while descending the ladder and later attacking him once they were on the dock by grabbing the master and tearing his jacket. Appellant left, but returned to the vessel, and was again ordered to depart. Appellant returned once again in an attempt to persuade the crew to abandon the vessel.

BASES OF APPEAL

This appeal has been taken from the order imposed by the

Administrative Law Judge. Appellant alleges certain facts which contradict the fact findings of the Judge.

APPEARANCE: None

OPINION

As the record discloses, the administrative hearing proceeded in *absentia*. Appellant was given ample notice of the date of hearing, but chose not to appear. His notice of hearing is further supported by the appearance of his brother, Mike Stephens, who appeared as spectator to apprise Appellant of what was going on in the hearing.(R.42)

To now make assertions of fact that are contrary to those found by the Judge, is, in effect, a request for *de novo* consideration of the case, rather than appellate review. As was stated in Appeal Decision No. [1928 \(VIRDEN\)](#):

...[I]t is simply not the function of an administrative reviewing authority to act as a trier of fact and substitute its judgement for that of the Administrative Law Judge. Appellant review is properly confined to the correction of errors of law. The Judge's findings of fact will be altered only if determined to have been arbitrary and capricious as a matter of law.

Based on the evidence before the Judge, his fact findings were not arbitrary and capricious.

The proper test on review is whether there was substantial evidence of a reliable and probative character to warrant the conclusions of the Judge (46 CFR 5.20-95(b)). In this case, I find no reason to disturb those findings.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana, on 10 October 1975, is AFFIRMED.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 21st day of April 1976.

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