UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. (REDACTED)
Issued to: Walter KOKINS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2092

Walter KOKINS

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 1 July 1976, an Administrative Law Judge of the United States Coast Guard at Honolulu, Hawaii, revoked Appellant's seaman's document upon finding him guilty of misconduct. The specifications found proved allege that while serving as an Able Seaman on board the SS OGDEN CHALLENGER under authority of the document above captioned, on or about 13-18 August 1975, Appellant did wrongful use foul and disrespectful language and gestures to the Chief Officer, did wrongfully disobey a lawful order of the Chief Officer, did on three occasions wrongfully fail to perform regularly assigned duties, and did wrongfully fail to join his vessel upon her departure from Alexandria, Egypt, on 18 August 1975.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence a certified extract from the Shipping Articles of the SS OGDEN CHALLENGER, excerpts of the Official Log Book and the Mate's Log Book, the depositions of the Master and Chief Mate of the vessel, and a copy of a message from the American Embassy of Cairo, Egypt.

In defense, Appellant offered in evidence his own sworn

testimony, a copy of his passport, and the deposition of Marshall Cooper.

At the end of the hearing, the Judge rendered an oral decision in which he concluded that the charge and all 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 1 July 1976. Appeal was timely filed on 28 July 1976.

FINDINGS OF FACT

From 13-18 August 1975, Appellant was serving as an Able Seaman on board the SS OGDEN CHALLENGER and acting under authority of his document while the ship was in the port of Alexandria, United Arab Republic (Egypt). Appellant accepted employment and boarded the vessel at New Orleans, Louisiana, on 28 June 1975. The vessel arrived at the port of Alexandria, Egypt, on or about 21 July 1975, and remained there until it departed that port on 18 August 1975.

On or about 21 July 1975, Appellant went ashore in Alexandria, Egypt, became intoxicated, and ended up in a hospital after a fight with some British seamen. After his release from the hospital, Appellant continued to drink off and on for the next several weeks, until the vessel left port on 18 August 1975.

In August most of the crew had contacted dysentery. On 13 August 1975, Appellant confronted the Chief Mate, pulled down his pants, and pretended he was going to defecate on the floor. The Chief Mate ordered Appellant to leave the room, which he did.

On 13, 14, and 15 August 1975, Appellant failed to report for work while the vessel was in the port of Alexandria, and thus failed to perform his regularly assigned duties. On 18 August 1975, Appellant failed to join the vessel upon her departure from Alexandria, and the vessel left port without Appellant.

BASES OF APPEAL

Appellant contends that specifications one through five should have been dismissed since the log book entries were not made in accordance with 46 U.S.C. 702; that there is insufficient evidence to support a finding or gestures; that it was error for the Administrative Law Judge to advise Appellant it would not be useful to serve interrogatories on the Vice Consul Maestrione in Alexandria, Egypt; that it was error to allow the admission of Appellant's prior Coast Guard disciplinary record prior to a finding of proved of the specifications; that there is insufficient evidence to support the finding that specification six was proved; and that with respect to specification six it was error for the Master to change the original log entry of desertion to failure to join. Appellant also argues, in the alternative, that the sanction imposed is too harsh.

APPEARANCE: Pro se.

OPINION

I

It is not reversible error to admit in evidence log entries not made in accordance with 46 U.S.C. 702. In such a case the log entries may be used as corroborative evidence, but they do not make out a prima facie case. Appeal Decision No. 2028 (CARTER). In the instant case the Master's log entries were made from one to six days after the alleged offenses. Therefore, the log entries alone did not make out a prima facie case against Appellant. However, the entries could be considered by the Administrative Law Judge as evidence in the case.

II

There is substantial evidence of a reliable and probative nature to support the finding that Appellant wrongfully used foul and disrespectful language and gestures towards the Chief Mate. The Chief Mate's entries in the deck log entered into evidence substantiates the specification. His deposition does not repudiate the entries. Appellant's testimony corroborates the fact that he pulled his pants down in the Chief Mate's room. (R 62, 73) The finding that specification one was proved will not be disturbed.

I note, however, that there is not substantial evidence

proving specification two, disobeying a lawful order for Appellant to go to his room and remain clear of the officers' quarters. The entry in the deck log does not clearly show that an order to stay clear of the officer's quarters was given. The Chief Mate's deposition does not establish the alleged offense either. Therefore, specification two must be dismissed.

III

Appellant's assertion that the Administrative Law Judge advised Appellant that no useful purpose would be served by serving interrogatories on the Vice Consul Maestrione in Alexandria, Egypt, is not supported by the record. However, the interrogatories were returned because Maestrione was not in Alexandria anymore. The record reveals that the Judge afforded Appellant every opportunity to obtain the deposition of the new Consul, who the Embassy advised had knowledge of the case. Instead, Appellant chose to proceed with the case. (R 31-33, 46-47, 227) Therefore, no error has been demonstrated.

IV

Appellant's assertion that his prior Coast Guard disciplinary record was considered by the Administrative Law Judge prior to finding the specifications proved is also not supported by the record. The record demonstrates the reverse -- that the Judge first found proved the specifications, then considered the prior record in determining the remedial action to be taken. (R 105)

V

With respect to specification six, the Chief Mate's deck log entry, the depositions of the Chief Mate and the Master, and the Defendant's own testimony all show that Appellant failed to join his vessel when she departed the port of Alexandria, Egypt, on 18 August 1975. Appellant offered as justification his testimony that he was sick and in the hospital. There is no other evidence of this. The Judge was free to accept or reject the contention. All the other evidence is substantial evidence of a reliable and probative nature justifying a finding that the specification of wrongful failure to join was proved.

Appellant further alleges error in that the Master changed the

entry of desertion in the official log book to failure to join, several days after the original entry was made. The Master, in his deposition, stated he did this because if the entry of desertion were left in, the Master would have to appear at the hearing. Whatever the reason for the change, it is clear that failure to join is a lesser charge of desertion. Commandant's Appeal Decision No. 1691 (GLOTZER). Therefore, Appellant could not have been prejudiced by the change. Further, Appellant was charged with failure to join, not desertion. In any event, consideration of this entry is not necessary since the Mate's deck log entry, and the testimony of the witnesses all establish the failure to join.

For the sake of completeness, I find that the Chief Mate's deck log, the official log, and the testimony of the witnesses, is substantial evidence of a reliable and probative nature supporting the findings that the three specifications of wrongful failure to perform were proved.

Appellant argues that if the charge proved is affirmed, the sanction imposed is too harsh. I disagree. Three instances of failure to perform and a failure to join, coupled with six previous failures to join, fifteen previous failures to perform, and one previous incident of disobedience, resulting in numerous suspensions and a revocation of Appellant's Merchant Mariner's Document, fully justify the sanction imposed. Additionally, he was granted administrative clemency of a prior revocation which apparently had little or no effect on his performance as a merchant seaman.

CONCLUSION

There is substantial evidence of a reliable and probative nature to support the finding of the Administrative Law Judge that Appellant was guilty of misconduct for the five specifications found proved. Specification two is not found proved. The sanction imposed is not excessive.

ORDER

The order of the Administrative Law Judge dated at Honolulu, Hawaii, on 1 July 1976, revoking Appellant's Merchant Mariner's Document, is AFFIRMED

E. L. PERRY
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 28th day of Jan. 1977.

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***** END OF DECISION NO. 2092 *****

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