IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-484092-D2 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Charles M. SESNY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1983

Charles M. SESNY

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

By order dated 28 February 1973, an Administrative Law Judge of the United States Coast Guard at San Francisco, California revoked Appellant's seaman's documents upon finding him guilty of "conviction for a narcotic drug law violation." The specification found proved alleges that Appellant was convicted for violation of a narcotic drug law of the United States by the U.S. District Court for the Southern District of California.

At the hearing, Appellant elected to act as his own counsel and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence the record of conviction despite Appellant's plea of guilty.

In mitigation, Appellant offered a copy of a two-page Customs Report and made an informal statement.

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 by plea and evidence and entered an order revoking all documents, issued to Appellant.

The entire decision and order was served on 1 March 1973. Appeal was timely filed.

FINDING OF FACT

On 15 January 1973, Appellant pleaded guilty to violation of a narcotic drug law of the United States and was convicted.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that the order of revocation is too severe.

APPEARANCE: Appellant pro se.

OPINION

Appellant's arguments are primarily based on the premise that the order of revocation is too severe. However, under the applicable statutes and the regulations promulgated pursuant thereto the order of revocation is not only appropriate but mandatory.

Section 239b of Title 46, United States Code in a Federal or State court of record for violation of a narcotics drug law, and proof of such conviction is submitted at a Coast Guard hearing, the seaman's documents shall be revoked. Appellant erroneously assumes that an order less than revocation can be entered if there are mitigating or extenuating circumstances. The only discretion authorized under Section 239b is on the part of the Coast Guard who must decide, based upon an investigation and evaluation of the facts and supporting evidence, whether or not charges should be placed in the first instance. Once the charge of conviction for violation of a narcotics drug law has been brought and proof of the

conviction has been submitted at a hearing, there is no one who can exercise discretion and do less than revoke the document. This interpretation is borne out by the legislative history of 46 U. S. C. 239b, Denial or Revocation of Seaman's Document. See also Decisions of the Commandant Appeal Nos. 1959 (Hogan) and 1971 (Moore).

Appellant's concern over the intentions, motivations or wishes of a U.S. Attorney or a District Court Judge are irrelevant and can't be considered in light of the strict mandates of Section 239b. It should be noted that the Administrative Law Judge repeatedly made it clear that upon a finding of guilty the only order he could issue was one of revocation. He also indicated that revocation does not necessarily mean permanent revocation but the Appellant could apply for administrative clemency after three years. These procedures are found in Section 137.13 of Title 46, Code of Federal Regulations.

CONCLUSION

46 U.S.C. 239b mandates the revocation of a seaman's document by the Administrative Law Judge upon proof of conviction for violation of a narcotic drug law. The statute does not authorize any subsequent reviewing authority to change that revocation order once it is found that the record reflects proper proof of the conviction.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California on 28 February 1973, is AFFIRMED.

C. R. BENDER
Admiral. U.S. Coast Guard
Commandant

Signed at Washington, D. C., this 7th day of August 1973.

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