IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1289667
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Robert BROWN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1987

Robert BROWN

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 4 August 1972, 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 misconduct.The specification found proved alleges that while serving as an Able Seaman on board United States SS HALCYON PANTHER under authority of the document above captioned, on or about 10 September 1971, while the vessel was in the port of Subic Bay, Republic of the Philippines, Appellant was wrongfully in possession of marijuana.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of several witnesses, shipping documents of the SS HALCYON PANTHER,

a bag of marijuana, and a laboratory report.

In defense, Appellant offered in evidence the testimony of a co-respondent and certain documents.

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 then served a written order on Appellant revoking all documents issued to him.

The entire decision was served on 9 August 1972. Appeal was timely filed on 8 September 1972. A brief in support of appeal was received on 9 July 1973.

FINDINGS OF FACT

On 10 September 1971, Appellant was serving as an Able Seaman of United States SS HALCYON PANTHER and acting under authority of his document while the ship was in the port of Subic Bay, Republic of the Philippines. At 1440 on that date, the Appellant together with two other men, all of whom were members of the crew of the SS HALCYON PANTHER, were returning to their vessel by taxi from shore leave at Subic Bay. The vessel was situated at a U.S. Navy pier,accessible only by entering one of the guarded gates and crossing the Navy base. The area was well posted with notices that all persons entering or leaving the area were subject to search. As the taxi entered the gate and stopped for clearance the Appellant and the others with him were detained for a routine search. The search produced from the person of the Appellant a plastic bag containing a leafy substance which later proved to be 11.6 grams of marijuana.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. The basic grounds for appeal as stated in Appellant's brief are as follows:

(1) Appellant has been denied substantive due process of law;

(2) There is evidence and authority on which to base a defense of isolated experimental use of marijuana; and

(3) The Commandant has authority to modify the order of revocation entered by the Administrative Law Judge.

APPEARANCE: San Francisco Neighborhood Legal Assistance Foundation, San Francisco, California, by Pamela M. Dostal, Esq.

OPINION

I

The hearings on this matter were held in joinder with those of co-respondent, Walter T. Moen, Z-1202907, with the express consent of the Appellant. No issue has been raised regarding the propriety of the proceedings or the adequacy of representation provided Appellant by the joint counsel and I specifically hold the proceedings were properly conducted in all respects. Neither, has there been a contention by Appellant concerning any factual matters which were decided by the Administrative Law Judge, save his contention that there is evidence to raise a "defense" of experimental use. I conclude that the findings of the Judge regarding the possession by Appellant of the 11.6 grams of marijuana and the jurisdiction of the Coast Guard over the Appellant have been proved by reliable and probative evidence and are affirmed.

II

Appellant's involved argument asserting a denial of due process of law because his seaman's documents were ordered revoked by the Administrative Law Judge is without merit. His claim that the regulations requiring revocation (46 CFR 137.03-3 and 137.03-4) do not further the purposes of the statute reveals a confusion on his part between the statute under which he was charged, 46 USC 239, and that of 46 USC 239b. The distinction between these statutes has been recently discussed at length in Decision on Appeal No. 1955 and will not be reiterated herein. Suffice it to say, that 46 USC 239 was enacted to provide the Commandant with wide discretion to define misconduct and to take appropriate action to suspend or revoke the documents of those found guilty of such acts. As defined by 46 CFR 137.05-20, the possession of marijuana is misconduct. Experience has demonstrated the dangers associated with persons on board merchant vessels who are users, possessers, or traffickers in drugs or marijuana. Revocation of the documents is appropriate when the charge and specification have been proved to insure that overall discipline and the safe operation of ships at sea is preserved.

Appellant hints that he was not serving any useful purpose of his vessel since he was not actually on board at the time of the commission of the offense and cites as proof of this the fact he was never logged for the incident. There is ample authority holding that a person is in fact in the service of his vessel and serving under the authority of his documents while on shore leave. See Decision on Appeal No. 1894 and *Aguilar v. Standard Oil Co.,* 318 U.S. 724. In this instance, Appellant was actually in the process of returning to the ship, clearly his conduct at this juncture has a direct relationship to the vessel. Whether or not Appellant was logged for the offense is irrelevant to a finding of guilty where, as here, it is supported by other substantial evidence. Decision on Appeal No. 1908.

III

Appellant next argues that there is evidence upon which a "defense" of experimental use could be based. It should first be noted by Appellant that there is no such "defense". The provision to which he refers, 46 CFR 137.03-4, provides that the Administrative Law Judge may enter an order less than revocation

after the specification and charge have been found proved where the person submits satisfactory evidence that the possession was the result of experimentation and will not recur. This provision is in the nature of mitigation, but does not provide a "defense" to the charge.

I found no evidence of experimentation in the record. It may be noted that 11.6 grams of marijuana will produce approximately 40 useful cigarettes which is an amount well in excess of any tending to show mere experimentation. See *Leary v. United States*, 395 U.S. 6 (1969). Appellant had the opportunity to submit satisfactory evidence at the hearing, but failed to do so. The finding that the use or possession was the result of experimentation is a factual one to be made by the Administrative Law Judge. Decision on Appeal *1896*.

The final point raised by Appellant is that there is authority for the Commandant to modify the revocation order. The cases cited by Appellant for this proposition arose under 46 USC 239b and are not in point in a proceeding which arises under 46 USC 239. Regardless of whatever authority may be supposed to exist to modify the order as entered by the Administrative Law Judge, no substantial reason has been advanced for so doing. The finding and conclusions of the Judge are supported by substantial evidence of a reliable and probative character and the order of revocation is appropriate.

ORDER

The order of the Examiner dated at San Francisco, California on 4 August 1972, is AFFIRMED.

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

Signed at Washington, D. C., this 22nd day of August 1973.

INDEX

Revocation and Suspension

For marihuana possession, not a denial of due process

Due process

No denial when document revoked for marihuana possession

Misconduct

Marihuana possession

Defined, elements of

Shoreside

On Shore

Logging not vital

Marihuana

Experimentation defense may not be raised initially on appeal

Experimentation only considered in mitigation

Narcotics

Possession of while ashore

Experimentation

Revocation mandatory

Revocation not reviewable by Commandant under 46 USC 239.

***** END OF DECISION NO. 1987 *****

Top