IN THE MATTER OF LICENSE NO. 409094 MERCHANT MARINER'S DOCUMENT NO. Z-519764 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Wilbur R. DAVIS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1978

Wilbur R. DAVIS

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 3 October 1972, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's license and seaman's documents for three months outright upon finding him guilty of negligence. The specification found proved alleges that while serving as a Night Mate on board the SS FORT WORTH under authority of the license above described, on or about 30 September 1972, Appellant wrongfully failed to properly supervise the cargo loading operation on said vessel thereby allowing gasoline to overflow and pollute the navigable waters of the United States at Norco, Louisiana.

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

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved by plea. The Administrative Law

Judge then entered an order suspending all documents issued to Appellant for a period of three months outright.

The entire decision was served on 16 October 1979. Appeal was timely filed on 12 October 1972

FINDINGS OF FACT

On 30 September 1972, Appellant was serving as a Night Mate on board the SS FORT WORTH and acting under authority of his license while the ship was in the port of Norco, Louisiana.

On that date while Appellant supervising the loading of gasoline a tank overflowed polluting the navigable waters.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

(1) Appellant not being represented by counsel inadequately represented his own interest, and also was not provided with adequate assistance by the Administrative Law Judge;

(2) Appellant's guilty plea was improvidently entered and should have been withdrawn by the Administrative Law Judge; and

(3) the order of three months suspension was excessive in view of the lack of evidence of specific negligence on the part of Appellant, the small amount of spillage and pollution, and the previous record of good conduct by Appellant.

OPINION

Appellant in his brief appears to be advocating that where one who is charged elects to represent himself, the Administrative Law Judge must in effect act on behalf of the one charged as a "quasi-counsel." This contention is completely unfounded. Any person charged and brought to a hearing by the Coast Guard has a

right to counsel of his own choice; however, there is no requirement for the Coast Guard to furnish appointed counsel. While it is the Judge's duty to see that the hearing is fairly conducted, he cannot be both decider of fact and advocate for the person charged. Appellant here was told on at least three occasions that he had a right to be represented by counsel. There is no evidence on the record which would indicate that his choice to represent himself was not freely made and he cannot now be heard to complain after the hearing that he did not adequately represent himself. the hearing that he did not adequately represent himself.

II

There is no evidence on the record to support Appellant's contention that his guilty plea was improvidently entered. Appellant now contends for the first time on appeal, that the personnel at the shore installation were in fact the negligent parties in pumping too much fuel into the ship. This may be the case, however, that evidence can not be properly raised on appeal. Had such evidence been put before the Administrative Law Judge, it would have been his duty to withdraw Appellant's guilty plea and require the Investigating Officer to provide substantial evidence of a reliable and probative nature. However, contrary to Appellant's contention, the thrust of his testimony in the record was directed to the amount of gas spilled and other matters in mitigation. At several points he stated that his sole argument to the amount of gas. This was a fact in mitigation and in no way gave notice of a possible defense to the charge. While there is mention of the shore installation at page 16 of the record, it appears at a point when Appellant was presenting evidence as to the amount of spillage and certainly does not indicate an argument by Appellant that the shore facility personnel were negligent. Based on these considerations, it cannot be said that the Administrative Law Judge was in error in allowing Appellant's guilty plea to stand.

III

Had newly discovered evidence tending to disprove Appellant's negligence come to light following the hearing, it would be appropriate to reopen the hearing to consider such evidence. However, this is not a case of newly discovered evidence. Everything known and available to Appellant was available to him at

the time of the hearing. The added skill of an attorney on appeal does not enable him to convert evidence available at the hearing to "newly discovered evidence" merely because this attorney might have made a different use of the evidence available.

IV

Appellant complains that the record is devoid of any evidence of specific acts of negligence to support a three month suspension order. There is no such evidence because Appellant pleaded guilty, thus dispensing with any requirement for proof of negligence. Appellant is a licensed officer and charged with a high degree of responsibility in discharging his duties. Here Appellant failed to carry out that responsibility and must accept the consequences.

V

Congress has mandated that it is the national goal to eliminate the discharge of pollutants into the navigable waters of the United States. In furtherance of this goal the policy has been established to issue meaningful orders and penalties in pollution incidents. In the instant case Appellant was in a position of high responsibility with a duty to insure that the vessel's tanks did not overflow. In view of the above stated goal and implementing policy and Appellant's failure to properly preform his duty, the order in this case cannot be said to be excessive.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana on 11 October 1972, is AFFIRMED.

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

Signed at Washington, D. C., this 12th day of July 1973.

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