

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-929905  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: J.T. DAVIS

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1808

J.T. 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 30 September 1964, an Examiner 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 a plumber/machinist on board SS FLYING CLOUD under authority of the document above captioned, on or about 11 September 1964, Appellant had marijuana in his possession, at San Francisco, California.

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

Because of the disposition to be made of this case, no discussion of evidentiary matters is needed.

At the end of the hearing, the Examiner rendered a written

decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was served on counsel on 5 October 1964. Appeal was timely filed on 27 October 1964 and perfected on 9 March 1965. Because of administrative error, Appellant's Merchant Marine Document was not picked up, and hence his appeal was not "processed" until 18 April 1969.

## OPINION

### I

Without comment upon the conduct of counsel in this case, and without inquiring into the good faith of Appellant, it is conceded that through administrative error this case was not brought up for review on appeal for four and one-half years after the hearing and that Appellant was not required to comply with the Examiner's order for almost the same time after it was served on his counsel.

### II

I take notice that Appellant was sailing under authority of his document even to the time compliance with the order was secured, and with no record of misconduct under R.S. 4450 (46 U.S.C. 239) or of conviction of violation of a narcotics law, or of use of narcotics, under 46 U.S.C. 239b.

On the merits, as I see case, revocation was appropriately ordered by the Examiner in 1964, but administrative convenience indicates that there is no good reason to decide on the merits.

If the decision had been timely made, the revocation affirmed, and the order complied with, Appellant would have been able to apply for a new document in 1968. I cannot overlook the fact that nothing in Appellant's conduct aboard ship during that time would have militated against granting him a new document. There seems no good reason to insist upon the revocation order at this time special application for a new document allowed. The unique consideration of this case, and changed conditions of

administrative review make a simple dismissal of the charges the best solution to this case.

### III

This decision must not be construed as tolerating a flouting of an examiner's order for any reason or under any pretext. If it reasonably appears that a person has violated the law by sailing on a suspended document or that an attorney has failed to honor his commitments, appropriate referrals will be made. This decision, and its resultant order, are precedent for nothing.

### CONCLUSION

It is concluded that under the unique conditions of this case, which cannot foreseeable occur again, the best interests of administrative procedure are served by outright dismissal of the charges.

### ORDER

The order of the Examiner dated at San Francisco, California, on 30 September 1964, is VACATED. The charges are DISMISSED.

P. E. TRIMBLE  
Vice Admiral, U. S. Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 20 day of April 1970.

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See final sentence in Commandant's decision.

\*\*\*\*\* END OF DECISION NO. 1808 \*\*\*\*\*

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