

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-712427  
AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: James R. Wilby

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1708

James R. Wilby

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 1 December 1967, an Examiner of the United States Coast Guard at Long Beach, California, suspended Appellant's seaman's documents for two months outright plus six months on eighteen months' probation upon finding him guilty of misconduct. The specification found proved alleges that while acting under the authority of the document above described, on or about 30 November 1967, Appellant wrongfully created a disturbance in the Certification Section of the Marine Inspection Office, Terminal Island, California.

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

The Investigating Officer introduced in evidence the testimony of a clerk and a yeoman who had been present in the Marine Inspection Office at the time of the alleged offense, and an

application form which Appellant had filed.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Examiner rendered an oral decision in which he concluded that the charge and specification had been proved. The Examiner then served a written order on Appellant suspending all documents issued to him, for a period of two months outright plus six months on eighteen months' probation.

The entire decision was served on 12 December 1967. Appeal was timely filed on 20 December 1967.

#### *FINDINGS OF FACT*

On 30 November 1967, Appellant was acting under authority of his document while at the Marine Inspection Office, Terminal Island, California.

On the morning in question, Appellant entered the office named and demanded to be given an examination for an endorsement as AB seaman. Appellant did not present evidence of sufficient service to qualify. When told that he did not show sufficient seetime, and also that: (1) he did not have the photograph required by regulation, and (2) AB examinations were not given every day at that office; Appellant waved his arms, shouted belligerently and profanely for some time, and demanded special attention.

During the course of his visit, Appellant managed to fill out an application form which, as completed, was illegible and incoherent.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. It is urged that "what was heard" on 30 November 1967, and "what is typed" are "two different questions." It is also urged that an order of suspension on probation entered on 13 December 1967 should be set aside as "faulty."

#### *OPINION*

## I

Appellant's first point is difficult to recognize. It could mean that there are fatal discrepancies between the transcript of the proceedings of 1 December 1967 ("what is typed") and what was actually said at those proceedings ("what was heard").

Since the notice of appeal which contained Appellant's grounds for appeal was filed on 20 December 1967, and the transcript was not furnished to him until 2 January 1968, it is doubtful that this is the meaning. If, somehow, it is, the contention must be rejected on the grounds that no specific allegation of error is made.

It is possible that what Appellant meant was that what the Examiner heard on 1 December 1967 was not a true recounting of what happened on 30 November. If this is what is meant, it can only be said that a hearing examiner is the initial trier of facts, and his findings ordinarily will not be disturbed, especially in view of the fact that no specific "error" of the Examiner is asserted.

## II

Although the Examiner does not refer to the matter in his order, the transcript shows that he recognized the offense in the instant case as violative of a twelve month period of probation, for two months' suspension, ordered on 13 December 1966. All that the Examiner did in this case was make effective the two months previously ordered; he added no immediately effective suspension on his own.

The suspension suffered by Appellant is entirely one ordered for a previous offense. If Appellant further difficulty he can escape with no suspension for the instant offense. This is a lenient order.

## CONCLUSION

The grounds for appeal offer no sound reason to disturb the Examiner's findings. As extremely lenient, the Examiner's order is not to be disturbed.

*ORDER*

The order of the Examiner dated at Long Beach, California, on 1 December 1967, is AFFIRMED.

W. J. SMITH  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 22nd day of May 1968.

INDEX

Examiner's findings

not disturbed when based on substantial evidence

not subject to collateral attack when final

Examiner's order

lenient when invoking only a previously ordered suspension

Grounds for appeal

discrepancies in record, not shown

findings in error, not shown

\*\*\*\*\* END OF DECISION NO. 1708 \*\*\*\*\*

---

[Top](#)