

IN THE MATTER OF LICENSE NO. 332142 MERCHANT MARINER'S DOCUMENT
BK-095124 AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Fred Miles FELTON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1729

Fred Miles FELTON

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 25 March 1968, an Examiner of the United States Coast Guard at Seattle, Washington, suspended Appellant's seaman's documents for four months plus six months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as third mate on board SS BREEN MOUNTAIN STATE under authority of the document and license above captioned, Appellant:

(1) on or about 2, 3, 8, and 9 February 1968, wrongfully failed to perform duties by reason of intoxication while the vessel was at sea;

(2) on or about 5 and 6 February 1968, wrongfully failed to perform duties by reason of intoxication while the vessel was at Pusan, Korea;

(3) on or about 23 and 24 February 1968, wrongfully failed to

perform duties by reason of intoxication while the vessel was at Saigon, South Vietnam.

At the hearing held on Portland, Ore., Appellant did not appear. The Examiner entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of GREEN MOUNTAIN STATE and the testimony of the chiefmate of the vessel.

In defense, Appellant wrote a letter explaining why he had not appeared for hearing and urging reasons why the second and third specification should not be found proved. The Examiner made this letter an exhibit in evidence.

In rebuttal to some of the contents of this letter, the Investigating Officer placed in evidence certain voyage records of SS WILLAMETTE VICTORY and SS BARRE VICTORY.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and all specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of four months plus six months on twelve months' probation.

The entire decision was served on 5 July 1968. Appeal was timely filed on 9 July 1968. Although Appellant asked for and received a transcript of proceedings, thereby giving him until 16 September 1968 to add to his grounds for appeal, he has not done so.

FINDINGS OF FACT

On all dates in question, Appellant was serving as third mate on board SS GREEN MOUNTAIN STATE and acting under authority of his license and document.

On 2, 3, 8, and 9 February 1968, Appellant failed to perform his duties by reason of intoxication while the vessel was at sea.

On 5 and 6 February 1968, while the vessel was at Pusan,

Korea, and on 23 and 24 February 1968, while the vessel was at Saigon, Republic of Vietnam, Appellant failed to perform his duties by reason of intoxication.

BASES OF APPEAL

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

(1) Appellant, subsequent to the hearing, made a voyage to the Southwest Pacific on a vessel carrying ammunition (SS LAREDO VICTORY), and his service was satisfactory to the master of that vessel, as evidenced by a letter submitted on appeal;

(2) The offenses aboard GREEN MOUNTAIN STATE were "paid for in full" by the "loggings" which called for loss of wages and area bonus;

(3) It is improper to suspend both Appellant's license and his Merchant Mariner's Document and thus deny him the privilege of serving as AB seaman or quartermaster.

APPEARANCE: Appellant, pro se.

OPINION

I

The fact that Appellant has, subsequent to hearing in this case, successfully made a voyage aboard another vessel without incident may be taken as evidence that the remedial intent of proceedings under R.S.4450 may have been partially effectuated. However, any inclination toward clemency in modifying the Examiner's order is stifled by the fact that while Appellant's letter, admitted into the record of hearing by the Examiner, asserted that he had never before "had any loggings." The claim was rebutted by the records of WILLAMETTE VICTORY and BARRE VICTORY, which showed that Appellant had been recorded in the Official Log Books of both vessels as having been unable to perform duties as a deck officer because of excessive use of alcohol.

II

While statutory penalties are provided for certain acts of misconduct by merchant seamen, these penalties are entirely separate and apart from the suspension or revocation of a license or document under R.S. 4450. Insofar as other statutes impose penalties, such as R.S.4596 (46 U.S.C. 701), such penalties are paid in full by the authorized sanctions as imposable by the master, but the detailed amendment of R.S. 4450 (46 U.S.C. 239) by Act May 27, 1936, ch. 463, 4, 49 Stat. 1930 (46 U.S.C. 672), is applicable for remedial purposes irrespective of whether or not statutory penalty has been assessed.

III

46 CFR 137.20-170(c) says that an "order shall be directed against all licenses, certificates, and/or documents. . ." This case does not come within exceptions provided for in this subsection. The rationale of this provision of the regulations is easily justifiable. The misconduct of Appellant found proved in this case would have been misconduct no matter what the capacity in which he was serving aboard a ship.

If a person cannot perform duties aboard a vessel because of excessive use of alcohol while serving as a licensed officer, it is extremely likely that under the lesser responsibility of service in an unlicensed capacity he would be more inclined to such acts of misconduct. The appropriateness of the cited subsection of the CFR is evident.

CONCLUSION

No good reason has been shown to disturb the order of the Examiner.

ORDER

The order of the Examiner dated at Seattle, Washington on 25 March 1968, is AFFIRMED.

P. E. TRIMBLE

Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 16th day of October 1968.

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