IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-949023 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Robert L. TOMPKINS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1749

Robert L. TOMPKINS

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 26 October 1966, an Examiner of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for five months upon finding him guilty of misconduct. The specifications found proved allege that while serving as an oiler on board SS YELLOWSTONE under authority of the document above captioned, Appellant wrongfully failed to perform duties on 4, 5, 6, 7, 8 and 9 September 1966, at Split, Yugoslavia.

At the appointed time and place for hearing, Appellant did not appear. The Examiner entered pleas of not guilty to the charge and all specifications. The Investigating Officer introduced into evidence voyage records of YELLOWSTONE.

Since Appellant had by telephone asked the Investigating Officer for a change of venue from Corpus Christi to Houston, Texas, the Examiner granted a change and stay. Three days later, at Houston, the hearing continued. Appellant was still not in

appearance but his previously named professional counsel was. No defense was offered but matters in mitigating were asserted. No reason was offered, or inquired about, for Appellant's failure to appear for hearing.

After the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of five months. Two months of this period were ascribed to invocation of an earlier order, with violation of probation.

The entire decision was served on 24 April 1968. Notice of appeal was timely filed on 2 May 1968. Statement of grounds for appeal was required by 14 October 1968, but none was filed.

FINDINGS OF FACT

In view of the disposition of this case, no findings of fact, beyond those made by the Examiner on the merits, are required.

BASES OF APPEAL

Appeal has been taken from the order imposed by the Examiner, but no grounds have been stated. Normally this case would be disposed of by notice under 46 CFR 137.30-3(b) because Appellant's failure to have filed a statement of at least one ground for appeal would have made the Examiner's order the final agency action in this case. The matter is followed by the Commandant to the decisional point because of a special and novel "policy consideration" found under item (2) of 46 CFR 137.30-3(b). This is elaborated upon in the Opinion that follows.

APPEARANCE: Appellant, *pro se*.

OPINION

I

The "novel" policy consideration found here, to call for a

review of a decision of an examiner, was foreseen in Decision on Appeal No. 1723. In that decision I affirmed an order of an examiner which ordered a suspension of the present Appellant's documents for a period of time to follow the outcome of final decision on this instant case. The Examiner in No. 1723 (*q.v.*) made clear that his order of suspension was not to be concurrent with the suspension order already in existence, although not yet effective, in the instant case. Since the case decided in No. 1723 reached me before the instant case was ready for final action on appeal, in order to effectuate the intent of the Examiner in that proceeding, I affirmed his order and made it effective immediately, since the case had reached the point of final disposition.

However, final decision on the instant case still remained to be made.

II

A letter which merely closed the instant case by a statement that Appellant's failure to give at least one ground for appeal had made the Examiner's order final agency action in the case could have served only to frustrate not only this Examiner's order, which intentionally included a period of two months' suspension necessarily imposed because Appellant was on probation, but also the later order of the Examiner in No. 1723 which had already been modified so as to permit consecutive rather than concurrent suspensions.

CONCLUSION

The order of the Examiner in this case must be modified to provide that the suspension of five months which he ordered, including the two months invoked from a violated probation, will be added to, and not be effective concurrently with, the suspension made effective in No. 1723, supra.

ORDER

The order of the Examiner dated at Corpus Christi, Texas on 26 October 1966, is MODIFIED, to provide that the period of five

months' suspension order is to end at the expiration of five months from the end of the suspension affirmed in Decision on Appeal No. 1723.

As MODIFIED, the order of the Examiner is AFFIRMED.

W. J. Smith
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 24th day of January 1969.

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