

IN THE MATTER OF LICENSE NO. 375738 MERCHANT MARINER'S DOCUMENT NO.
Z-750184 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Myron J. CAMERON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1750

Myron J. CAMERON

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 13 February 1968, an Examiner of the United States Coast Guard at Long Beach, cal., after a hearing held in Seattle, Washington, revoked Appellant's license as master, authorized and directed issuance of a license as chief mate after one year, and suspended the new license for 12 months on 12 months' probation, upon finding him guilty of negligence. The specifications found proved allege that while serving as master of SS RICHWOOD under authority of the document and license above captioned, Appellant:

- (1) on or about 22,23 and 24 January 1968, at Seattle Washington, failed to have the vessel's life-saving and firefighting equipment properly maintained and ready for use, and
- (2) from on or about 24 August 1947 through 11 January 1968 failed to make required entries

concerning fire and boat drills in the official log book.

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

Because of the disposition to be made of this case at this time no recital of the procedure or findings of fact will be given.

At the end of the hearing, the Examiner entered an order as set forth above.

The entire decision was served on 15 February 1968. Appeal was timely filed on 14 March 1968, and perfected on 25 October 1968.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Consideration is given to only two matters raised on appeal. Appellant first contends that the hearing should be reopened for the taking of further evidence with a change of venue to New York, under a stipulation that the reopened hearing would not be a hearing *de novo* but should proceed with and from the record already compiled. Appellant also contends that the order is excessive.

APPEARANCE: (on appeal only) Pressman & Scribner, New York, N. Y., by Ned R. Phillips, Esq.

OPINION

I

Appellant has filed an affidavit that because of his physical condition at the time of hearing he was unable to make an informed decision to waive counsel and also to represent himself adequately, thus losing the benefit of favorable evidence which he might have

adduced.

Appellant's affidavit appears reasonable and persuasive, and under the circumstances it is believed that the evidence which he intends to proffer can be considered as "newly discovered evidence" such as to justify a reopening of the hearing.

Appellant invites attention to the order, terming it "excessive." I need not consider this point because no decision is made on the merits and, upon examination of the order I find the question irrelevant since the order is invalid.

Examiners have been delegated the power to make initial decision with orders of revocation, suspension with or without probation (or a combination thereof), or admonition. 46 CFR 137.20-170(b) and (e). When an order is based on a finding of negligence or professional incompetence, an examiner may, in appropriate cases direct his order only to specific licenses or ratings. 46 CFR 137.30-170(c). This permits, for example, considerations such as that a negligent act might be such only in the case of a licensed officer and not attributable as such to an unlicensed seaman.

In only one instance is an examiner authorized to "direct" the issuance of a new license or document. This is when he has found professional incompetence in a grade or rating not requiring a finding of professional incompetence in a lower grade or rating of the same nature. 46 CFR 137.20-170(d).

Under the cited subsection of 46 CFR it can be seen that a license is indivisible when negligence is found. Under subsection (c), an order may apply only to one license, but not to another license or to a certificate to serve in an unlicensed capacity. Thus, in the rather unusual case of a person who held a master's license, an engineer's license, and a certificate to serve in any unlicensed capacity in the deck or engine departments, a finding that the person had, while serving as a deck officer, been negligent in his handling of his ship would authorize an order that would properly affect only his deck officer license and not his engineer's license or his certification to serve in unlicensed capacities. Under this subsection, however, the deck officer's license is indivisible.

It is only when a finding is made that a person is professionally incompetent to serve as master but is competent to serve a chief mate that the division attempted by the Examiner here is permissible.

To avoid future misunderstanding, three notes may be added here.

The first is that the delegation given in 46 CFR 137.20-170(d) (entirely inapplicable in the instant case), does not permit an examiner to revoke an authorization to serve as master, direct issuance of a license in a lower deck grade, and then suspend, with or without probation, the new license in the lower grade.

The second is that this delegation is made to examiner so only when a revocation is involved. This, of course, is axiomatic. For professional incompetence no suspension for a period of time would be conceivable.

This must not be construed, however, to inhibit an order of an examiner when both professional incompetence and negligence or misconduct are charged and found proved. In such cases revocation of one authorization and suspension of another could be appropriate.

III

While the order entered in the instant case is unauthorized and invalid, there remains the bothersome question of whether an examiner hearing the case on a permitted reopening should be limited in any fashion as to the order he may enter if he should find negligence proved.

The theory could be adopted that an order such as that entered in the instant case is a nullity, and that the examiner who hears on reopening could enter any proper order that he is authorized to issue. To the present, however, I have always followed the policy that a person should not have his position worsened by a successful appeal. While a revocation of Appellant's license might have been found supportable if the merits of the case had been reached, the

Examiner's order did not amount to a complete revocation of the license, but only, and unwarrantedly, to a revocation of the authority to serve as master.

I feel constrained then to say that on reopening and after decision, if the future examiner finds the charge proved, he is limited in his order to that part of the original order which could have been affirmed if the reopening had not been permitted.

CONCLUSION

The reopening should be granted. Change of venue to New York, N. Y, is appropriate. Hearing *de novo* is not required or allowable. The record previously made stands. Appellant may proffer such evidence as he will. Rebuttal is, of course, allowable, just as if the hearing had never been interrupted.

The examiner who makes the initial decision may not, if he finds the charge proved, order revocation of the license involved. The maximum order he may enter is one of suspension of twelve months.

ORDER

The findings, conclusion, and order of the Examiner entered at Long Beach, Cal., on 13 February 1968 are SET ASIDE. It is DIRECTED that the case be REMANDED, with change of venue, to an examiner at New York, N. Y., for further proceedings consistent with the Opinion and Conclusion herein. Should Appellant fail to appear after due notice, or fail to proffer acceptable evidence, the examiner at New York shall make findings, and enter an order consistent herewith, based upon the record referred to him. The record submitted to the examiner on reopening will be the record before the Examiner at Seattle, without appellate documents other than this decision itself.

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

Signed at Washington, D. C., this 20th day of February 1969.

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