

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-334 416-D2
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Marion T. LEE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1783

Marion T. LEE

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 9 October 1968, an Examiner of the United States Coast Guard at Jacksonville, Florida revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as a deck maintenance AB on board USNS MISSION SANTA CRUZ under authority of the document above captioned, Appellant on or about 5 February and 16 March 1962, failed to perform duties because of intoxication; and, while serving as AB seaman on board SS WABASH under authority of the document, on 9 January 1963, wrongfully had marijuana in his possession.

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

The entire decision was served on 10 October 1968. Appeal was timely filed on 22 October 1968 and perfected on 18 August 1969.

FINDINGS OF FACT

On 5 February and 16 March 1962, Appellant was serving as a deck maintenance AB on board USNS MISSION SANTA CRUZ and acting under authority of his document.

On 9 January 1963, Appellant was serving as AB seaman aboard SS WABASH and acting under authority of his document.

Because of the disposition to be made of this case no further findings of fact are made.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Because of the disposition to be made of this case, the bases of appeal are not spelled out.

APPEARANCE: Fuller Hopkins Lawton & Taussig, New York, N. Y., by William E. Fuller, Esquire.

OPINION

I

The chronology of the proceedings here explains the disposition.

The period from the last act of the hearing, about mid-May 1964, to the issuance of the initial decision, 9 October 1968, was four years and about five months.

Appellant had possession of his document during this entire period. Of this period, the Examiner wrote in his initial decision of 9 October 1968 that Appellant, "to the best of my knowledge, has been sailing regularly since the commencement of the instant proceedings." D-7. Since the instant proceedings began in August 1963, this amounts to a period of over five years in which Appellant was free to sail.

Nothing in the initial decision, or in the record of hearing, indicates any unusual difficulty as to the facts or the law such as to have rendered the delay reasonable, and no excuse is proffered.

II

The general policy of the agency is well established: that narcotics offenders have no place in the American merchant marine and that revocation of the license or document of a narcotics offender (even in the absence of a statutory requirement for revocation such as appears in 46 U.S.C. 239b) is appropriate.

Remedial action should, however, be prompt. 5 U.S.C. 555(b) requires that in administrative proceedings "...within a reasonable time, each agency shall proceed to conclude a matter presented to it." This requirement has not been met in this case.

Since the proceedings are remedial and not penal, there is ample opportunity for a person who has demonstrated his undesirability as a seaman, leading to revocation of his license of document, to demonstrate also at an appropriate time later that he is worthy of renewed trust such as to authorize restoration of his status as an American seaman. 46 CFR 137.13.

Action taken too late to apply the remedy can also be so late as to become penal rather than remedial. It is entirely inconsistent to permit a seaman to sail for five years, by delaying decision in his case, and then to announce that his misconduct was of such nature as to require revocation of his seaman's document.

The safety functions of the Coast Guard are not promoted by actions which consciously permit persons whose licenses or documents should be revoked to serve in capacities in which licenses or documents are required.

If a proper order of revocation had been timely entered in the instant case, Appellant might already qualified for reissuance of his document.

CONCLUSION

The ultimate purposes of the Administrative Procedure Laws and of agency policy may have been frustrated here, and an underserving Appellant may have escaped unscathed for a serious offense, but it is better that this Appellant receive the accidental benefits of this case and that clearer statement of duties and functions of enforcement personnel and of examiners be spelled out as guidelines for the future.

The regulations at 46 CFR 137 are not intended to encourage delay in serving of charges and nothing in 46 CFR 137 is intended to do other than to encourage examiners to make decisions on the record, in open hearing, as quickly as consonant with the actual complexities of the case, without delay or reservation as to matters not of record or cognizable on the record.

ORDER

The order of the Examiner dated at Jacksonville, Florida, on 9 October 1968, is VACATED. The Findings, except as supported herein, are SET ASIDE. The charges are DISMISSED.

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

Signed at Washington, D. C., this 12th day of February 1970.

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