

IN THE MATTER OF LICENSE NO. 310217 MERCHANT MARINER'S DOCUMENT NO.
Z-381865-D AND ALL OTHER DEAMAN'S DOCUMENTS

Issued to: Joseph E. H. Johnson

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1597

Joseph E. H. Johnson

In this case there are two appeals involved. Both are taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.30-1. Two different orders of Examiners are appealed from, one entered at San Francisco, California, on 30 September 1965, the other entered at Baltimore, Maryland, on 27 April 1966. In both cases, Appellant was found guilty of misconduct.

In San Francisco case the specifications found proved alleged that Appellant, while serving as second mate aboard the United States SS C. R. MUSSER under authority of the captioned license and document, on or about 29 June 1965, at Madras, India, was wrongfully asleep while on watch, and on or about 1 July 1965 at Madras, India, wrongfully failed to perform duties by reason of intoxication.

At the hearing, held on 26 August 1965, Appellant elected to act as his own counsel and entered a pleas of guilty to the charge and each specification.

At the end of the hearing the Examiner reserved decision.

On 30 September 1965, the Examiner entered a written decision in which he concluded that the charge and specifications had been proved by plea. He also entered a written order suspending all documents issued to Appellant for a period of four months on twelve months' probation.

The Examiner attempted to serve this decision and order upon Appellant by registered mail. He was unsuccessful.

In the Baltimore case, the fourteen specifications found proved alleged that Appellant, while serving as third mate aboard the United States SS GARDEN STATE, between 14 February and 11 March 1966, in various ports or at sea, wrongfully failed to perform duties because of intoxication, was wrongfully absent from the vessel, or wrongfully possessed or drank intoxicating liquor aboard the vessel.

Appellant did not appear at the hearing held on 26 April 1966. The Examiner entered a plea of "not guilty" to the charge an all specifications. The Investigating Officer introduced into evidence appropriate voyage records of GARDEN STATE.

At the end of the hearing the Examiner reserved decision. However, in this case, held *in absentia*, the Examiner entered a written decision on the next day. He found the charge and all specifications proved and entered an order suspending all documents issued to Appellant for a period of nine months, plus nine months on eighteen months' probation.

Both the San Francisco and the Baltimore decisions and order were served upon Appellant on 5 May 1966. Appeal was timely filed on 19 May 1966. Since no brief has been received, review is made on the existing records.

FINDINGS OF FACT

On all dates as alleged in the charges and specifications Appellant was serving as alleged, and committed each act alleged in the specifications.

BASES OF APPEAL

These appeals have been taken from the two orders of the Examiners. In his appeals Appellant admits the truth of all the allegations of misconduct in both cases, but urges that there are extenuating circumstances. He says that domestic tragedies, the loss of his sister and youngest brother in separate automobile accidents, and the loss of his mother while he was in Saigon, adversely affected his performance of duty, in contradistinction to his past performance.

He mentions also that he could not get his car started the morning of the hearing in Baltimore and notified the Baltimore office of this fact, but the hearing was held in his absence.

Family responsibilities require that he hold employment.

Appearance: Appellant, *pro se*.

OPINION

Appellant does not argue the factual determinations of the Examiners. The only possible ground for reversal has to do with his absence from the Baltimore hearing. For this reason, I will discuss the Baltimore case only.

The record leaves *in* some doubt the question of Appellant's being unable to start a car on the morning of his Baltimore hearing.

The Investigating Officer testified:

"At about nine o'clock he called me to say he had borrowed a car, his car wouldn't start. He said he called a mechanic to assist him." (R.5.)

This leaves it unclear whether Appellant had borrowed a car which would not start, or had found that his own car would not start but had borrowed another's.

The appeal document simply states, "I could not get my car started."

The doubt raised is of no importance. The record shows that Appellant's home of record at the time of hearing was in Baltimore City. It shows also that when he announced his car difficulties he was in the town of Middle River, Maryland, some ten miles from Baltimore. (The address furnished on appeal, while different from the one previously given, is still within Baltimore City.) But Middle River, as the Examiner took note, is served by Baltimore public transportation, and Appellant was so advised by the Investigating Officer.

When Appellant called at 0900 to tell of his car troubles and was told there were other methods of transportation available, he was advised that the hearing would be held up to allow him time to appear. By noon he had not appeared nor been heard from further. The Examiner then waited until 1300. Since Appellant had not been heard from further, the Examiner proceeded in *absentia*.

This was justified.

ORDER

The findings of the Examiner entered at San Francisco on 30 September 1965 are AFFIRMED. The order entered at that time and place is SET ASIDE.

The findings of the Examiner entered at Baltimore on 27 April 1966 are AFFIRMED. The order of the Examiner entered at that time and place is AFFIRMED.

It is further ORDERED that the findings of the Examiners affirmed herein be, whenever the matter may be of significance, considered as two distinct items of prior record.

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

Signed at Washington, D. C., this 29th day of December, 1966.

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In Absentia Proceedings

Excuse for absence, inadequate.

***** END OF DECISION NO. 1597 *****

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