UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Charles D. PUGH 199638

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2494

Charles D. PUGH

This appeal has been taken in accordance with 46 U.S.C. SS7702 and 46 CFR SS5.701.

By his order dated 14 October 1988, an Administrative law Judge of the United States Coast Guard at Port Arthur, Texas, revoked Appellant's Merchant Mariner's License upon finding proved the charge and specification of misconduct for possession of marijuana.

The specification alleges that Appellant, while serving under the authority of his license as operator of the M/V C PROWLER, on 22 March 1988, was in possession of marijuana in violation of a narcotic drug law.

The hearing was held at Port Arthur, Texas on 30 August 1988. Appellant appeared at the hearing together with his wife and, after being advised of his right to professional counsel by the Administrative Law Judge, chose to be represented *pro se*.

The Investigating Officer called five witnesses who testified under oath and presented six exhibits which were admitted into evidence. Appellant called one witness who testified under oath, in addition, testified on his own behalf under oath. Upon finding proved

the charge and specification of misconduct, the Administrative law Judge revoked Appellant's license.

The complete Decision and Order was served on Appellant on 18 October 1988. Appellant filed a Notice of Appeal on 18 November 1988 and the appeal brief was timely field on 19 December 1988. Accordingly, this matter is properly before the Commandant for disposition.

FINDINGS OF FACT

At all times relevant, Appellant was serving as operator of the M/V C PROWLER, a merchant vessel of the United States. Appellant, at all relevant times, was the holder of license number 199638 which was issued by the U.S. Coast Guard on 13 September 1985 and authorized him to serve as operator of small passenger vessels of not more than 100 gross tons, upon the Gulf of Mexico, not more than 100 miles offshore between St. Marks Light, Florida and Brownsville, Texas.

On 22 March 1988, the M/V C PROWLER was docked at Cameron, Louisiana after several days service in the Gulf of Mexico. Appellant told a deckhand, John Simpson, to purchase some "rolling papers." Enroute to a store to make the purchase, the deckhand was stopped by local authorities who conducted a search of his car. The search resulted in the seizure of a small amount of marijuana. The police officers returned with the deckhand to the M/V C PROWLER and received permission from Appellant to search the vessel. During the course of the search, they discovered loose green leafy material and hand rolled cigarettes concealed in a bowl in the ship's galley. The material tested positive as marijuana.

A portion of the marijuana found was the property of Appellant. The remainder was the property of the deckhand John Simpson. After the incident, Appellant admitted to the Personnel Manager of the operating company of the M/V C PROWLER that he had smoked marijuana and was afraid that he could not pass a company urinalysis test.

Appearance *pro se*: Mr. Charles D. Pugh, P.O. Box 555, Cameron, LA 70631

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge. Appellant asserts in a pro se appeal that:

a. The testimony of some witnesses was not credible;
b. Appellant was denied his right to counsel;
c. Appellant was denied the opportunity to subpoena a witness.

OPINION

I

Determination regarding credibility are within the sole purview of the Administrative Law Judge. Unless a finding is inherently incredible, an Administrative Law Judge's determinations of credibility will not be disturbed. Appeal Decision 2390 (PURSER); Appeal Decision 2356 (FOSTER); Appeal Decision 2344 (KOHAJDA); Appeal Decision 2340 (JAFFE); Appeal Decision 2333 (AYALA); Appeal Decision 2302 (FRAPPIER); Appeal Decision 2427 (JEFFRIES); Appeal Decision 2490 (PALMER).

In the case herein, the testimony of the deckhand, John Simpson, (Tr. pp. 83-111) was credible and consonant with the testimony of the police officers who conducted the search of the M/V C PROWLER (Tr. pp. 119-150, 156-171, 177-186) and the Personnel Manager of the operating company of the M/V C PROWLER (Tr. pp. 34-72). Mr. Simpson testified that some of the marijuana found on the vessel was the property of Appellant and that he and Appellant had smoked marijuana on board the vessel while not underway. (Tr. pp. 92-96). That testimony was corroborated by the testimony of the Personnel Manager of the M/V C PROWLER's operating company who stated that Appellant had told him that he used marijuana and could not pass a company urinalysis test. (Tr. pp. 43-47). There is nothing to support Appellant's assertions in his brief other than his own self serving statements.

Consequently, the testimony of the witnesses, including that of the deckhand, Mr. Simpson, was not inherently incredible. Accordingly, the findings based on that testimony will not be disturbed.

II

Appellant asserts that he desired an attorney at the Suspension

and Revocation proceeding but was unable to afford professional legal counsel.

While Appellant is entitled to be represented by professional counsel pursuant to 46 C.F.R. 5.519(a)(1), he must provide such counsel at his own expense. The government is not obligated to provide counsel. *Grover v. United States*, 200 Ct. Cl. 337 (Ct. Cl. 1973). The sole responsibility of the government is to fully advise charged individuals of the right to professional legal counsel. Appeal Decision 2458 (GERMAN); Appeal Decision 2008 (GOODWIN); Appeal Decision 2089 (STEWART); Appeal Decision 2119 (SMITH); Appeal Decision 2222 (FIOCCA); Appeal Decision 2207 (CLARK).

In the case herein, Appellant was clearly advised of his right to counsel and given a reasonable opportunity to secure such professional representation. (Tr. pp. 8-9). Appellant chose to proceed without professional counsel. Moreover, Appellant at no time during the proceeding raised an objection that he was not fully advised of his right to counsel. Consequently, Appellant's assertion is without merit.

III

Appellant asserts that he desired an unidentified female witness who testified at his criminal trial to testify at the Suspension and Revocation proceeding. He implies that he had been prohibited from doing so.

I do not agree with Appellant. A detailed review of the record fails to reveal any request or motion from Appellant that any witness be subpoenaed on his behalf. Nor is there any evidence of an objection by Appellant that he was denied the opportunity to subpoena a witness. It is a well established rule that, absent clear error, in order to preserve such an issue on appeal there must have been a valid motion or objection made at the hearing. See, 46 C.F.R. 5.701(b)(1); Appeal Decision 2458 (GERMAN); Appeal Decision 2376 (FRANK); Appeal Decision 2400 (WIDMAN); Appeal Decision 2463 (DAVIS). Absent any indication that Appellant requested that a particular witness be subpoenaed or an objection on the record that he was improperly denied the opportunity to subpoena a witness, I find Appellant's assertion is without merit.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The decision and order of the Administrative Law Judge dated at Houston, Texas on 11 October 1988 is AFFIRMED.

CLYDE T. LUSK, JR.
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 16th day of January, 1990.

***** END OF DECISION NO. 2494 *****

Top