

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT (REDACTED)  
ISSUED TO: Robert DeWayne YOUNG

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2417

Robert DeWayne YOUNG

This appeal has been taken in accordance with Title 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 24 January 1984, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, revoked Appellant's merchant mariner's document upon finding him guilty of misconduct and upon finding him incompetent to serve on board merchant vessels of the United States.

The misconduct charge is supported by six specifications which allege that Appellant, while serving as Able-Bodied Seaman aboard the TT BAY RIDGE under the authority of his document, on or about 1 January 1984, did wrongfully:

(1) fail to perform his prescribed duties as lookout while the TT BAY RIDGE was underway in the Pacific Ocean;

(2) fail to obey a lawful order of the Third Officer who was on the bridge and ordering [sic] him in the capacity of the Bridge Watch Officer to return to his lookout duty;

(3) fail to obey the orders of the Master when told to accompany him to his office for logging at 2100 hours:

(4) create a disturbance on the bridge of the TT BAY RIDGE by verbally confronting the Bosun while he was performing the duties of Helmsman on the 2000 to 2400 bridge watch;

(5) create a disturbance by verbally confronting the Chief Mate of the TT BAY RIDGE by making threatening communications toward him and the vessel; and

(6) create a disturbance by verbally confronting the Master and making threatening communications toward his person and the vessel in his charge.

The incompetence charge is supported by a single specification which alleges that Appellant, while serving as an Able-Bodied Seaman aboard the TT BAY RIDGE was on or about 1 January 1984, while said vessel was at sea, and presently is suffering from a psychiatric disorder that renders him unfit to perform on board merchant vessels of the United States.

The hearing, on 9 January 1984 at Long Beach, California, was conducted in absentia due to Appellant's nonappearance. The Administrative Law Judge entered pleas of not guilty to both charges and their supporting specifications on behalf of Appellant.

The evidence introduced by the Investigating Officer was entirely documentary, consisting of a certified extract from the Shipping Articles of the TT BAY RIDGE, certified copies of the vessel's log entries, a hospital report concerning Appellant's in-patient treatment at the Fulton State Hospital from 13 to 23 January 1977 and a fit for duty report prepared by the U.S. Public Health Service dated 18 May 1979. As a consequence of Appellant's nonappearance, there was no defense.

At the conclusion of the hearing, the Administrative Law Judge found the misconduct charge and its supporting specifications proved; he reserved his findings respecting the incompetence charge. The order was reserved in light of Appellant's absence from the hearing.

Subsequently, the Administrative Law Judge rendered a written decision wherein he found that both charges, together with their supporting specifications had been proved. The decision included a written order revoking Appellant's document.

The entire decision was served on 2 February 1984. Notice of appeal, which included a statement of the grounds therefore, was timely filed on 21 February 1984.

#### *FINDINGS OF FACT*

On 1 January 1984, Appellant, Robert DeWayne Young, was

serving as Able Seaman on board the TT BAY RIDGE, a merchant vessels of the United States, under the authority of his merchant mariner's document. At approximately 2010, while the TT BAY RIDGE was at sea, Appellant reported to the bridge ten minutes late for his scheduled watch as lookout.

While on the bridge, Appellant failed to perform his duties as lookout due to apparent intoxication. In addition, Appellant attempted to provoke a fight with the helmsman and he refused to obey the Third Mate's orders to proceed to his lookout station.

At approximately 2030, the ship's Master, Captain Robert Peacock, was called to the bridge and was informed that Appellant was intoxicated and that he had created a disturbance on the bridge. Captain Peacock observed that Appellant's eyes were dilated and ordered Appellant to proceed to the Master's office for the purpose of formally logging the incident.

Appellant accompanied the Master for a short distance, and then stopped exclaiming, "I am the Captain and I am taking over this vessel. My father is the owner of this vessel and you will regret this. This is the last voyage that this vessel will make and this is the last voyage I will ever be making." Subsequently, Appellant shouted obscenities at the Master and other crewmembers.

Shortly thereafter, the Master and the Chief Mate escorted Appellant to his room for a room search. During the search, Appellant verbally abused both the Master and the Chief Mate, and again declared that he was the Captain and that he was taking over the vessel. In addition, Appellant demanded a discharge as Master and also demanded a discharge for a rating above able seaman. Further, Appellant stated that he had the Master's license and that he would "tear it up at the hearing."

At approximately 2100, the Master again ordered Appellant to proceed to the Master's office. Appellant disobeyed that order, whereupon the ship's Chief Engineer and the Steward were called as witnesses to Appellant's conduct. Following their arrival, Appellant stated that he was going to be the "Commandant of the Coast Guard, the Captain's Captain", and again threatening to take over the vessel. At approximately 2130, Appellant was taken to the ship's hospital, where, as a result of his actions, he was restrained in leg irons and handcuffs.

#### *BASES OF APPEAL*

Appellant raises several matters for the first time on appeal. He contends that:

- (2) he was denied sufficient time to procure representation and witnesses for his defense;
- (2) he did not make the statements alleged in the misconduct specifications;
- (3) there were circumstances mitigating the offense charged,
- (4) the Administrative Law Judge lacked legal authority to determine whether Appellant committed an act of incompetency;
- (5) the Fulton State Hospital report was inadmissible and in any event insufficient standing alone to support the Administrative Law Judge's finding of incompetence; and
- (6) the sanction imposed was excessive.

APPEARANCE: Appellant, pro se.

#### OPINION

##### I

Appellant's assertion that he was denied sufficient time to procure representation and witnesses for his defense is untimely asserted on appeal. The record shows that on 6 January 1984, Appellant was properly served with the charges and specifications at issue in these proceedings, at which time he was advised of the date, time and location of the hearing and further advised of his right to be represented by counsel and to present the testimony of witnesses in his defense. On 9 January 1984, at the time the hearing was scheduled to begin, Appellant telephoned the Administrative Law Judge's office and requested a continuance until 9 February 1984. However, Appellant offered no valid reason for his request. Further, Appellant refused to provide a telephone number or an address at which he could be reached. Moreover, Appellant failed to appear at the hearing, at which time he could have requested additional time for purposes of preparing his defense.

Appellant had ample opportunities prior to the instant appeal to demonstrate his need for additional time. By choosing to forego those opportunities, Appellant cannot be heard to complain of insufficient time at this level of the proceedings. See Appeal Decision [1704 \(BRYANT\)](#).

II

Appellant's denial of the statements alleged in the misconduct specifications and his claim that there were circumstances mitigating the offenses charged likewise avail nothing on appeal since those matters were not raised at the hearing. By failing to appear at the hearing, Appellant waived his right to assert defenses and to present evidence in mitigation of the charges. See Appeal Decisions [2140 \(FOMICH\)](#), [1963 \(POTTS\)](#) and [1957 \(DIAZ\)](#).

III

As for the Administrative Law Judge's findings that the misconduct charge and its specifications were proved, there is substantial evidence in the record of a reliable and probative character to support those findings. The certified copies of the vessel's log entries are in substantial compliance with the requirements of 46 U.S.C. 11502. Therefore, those entries respecting Appellant's disobedience constitute prima facie evidence of misconduct as alleged in the second and third misconduct specifications. See 46 CFR 5.20-107: Appeal Decisions [2289 \(ROGERS\)](#) and [2170 \(FELDMAN\)](#).

The log entries supporting the remaining misconduct specifications concern offenses not enumerated in 46 U.S.C. 11501. Hence, those entries do not constitute prima facie evidence. Nevertheless, they are admissible under 46 CFR 5.20-107(a) as business entries. Appeal Decision [2289 \(ROGERS\)](#). While the evidentiary weight accorded such entries is determined separately in each case, they may constitute substantial evidence sufficient to support the Administrative Law Judge's findings. Appeal Decisions [2289 \(ROGERS\)](#), [2133 \(SANDLIN\)](#) and [2117 \(AGUILAR\)](#).

Upon review of the record, I am convinced that the log entries supporting the remaining misconduct specifications are sufficient to support the Administrative Law Judge's finding that those specifications had been proved. The entries plainly establish that on 1 January 1984, while the TT BAY RIDGE was at sea, Appellant failed to perform his prescribed duties as the 2000 to 2400 lookout. They further establish that on the same date, Appellant created a disturbance on the bridge of the vessel by verbally confronting the helmsman during the 2000 to 2400 watch and that he created additional disturbances aboard the vessel by threatening both the Master and the Chief Mate and by threatening to take over the vessel.

Since the record fully supports the Administrative Law Judge's

findings that the misconduct charge and specifications were proved, those findings will not be disturbed on appeal.

#### IV

Turning to Appellant's challenge to the Administrative Law Judge's finding of incompetence, Appellant contests "the right and legal authority of the Administrative Law Judge to determine mental competence." Appellant's point lacks merit since it is well settled that the Administrative Law Judge has the authority to determine whether an act of incompetence has been committed based on the evidence available. Appeal Decision [2280](#) (ARNOLD).

Appellant's objection to the admissibility of the Fulton State Hospital report is also without merit. There is no reason to doubt the authenticity of the report. Reports such as this are admissible in administrative proceedings at the discretion of the presiding officer. Appeal Decision [2181](#) (BURKE), modified sub nom. *Commandant v. Burke*, NTSB No. EM-83 (1980).

On the other hand, there is merit to Appellant's claim that the evidence is insufficient to support the finding of incompetence. "Incompetence" is the inability on the part of a person to perform required duties, whether due to professional deficiencies, physical disability, mental incapacity, or any combination of same. 46 CFR 5.05-20(a)(3). The basis for a charge of incompetence is an "act of incompetence." 46 USC 7703(2). A finding of incompetence due to mental incapacity must rest upon substantial evidence of a reliable and probative character showing that the person charged suffers from a mental impairment of sufficient disabling character to support a finding that he is not competent to perform safely his duties aboard a merchant vessel. See 46 CFR 5.31 and *BURKE, supra*.

The strongest evidence of incompetence in the record is the Fulton State Hospital report, dated 23 January 1977, in which Appellant's established clinical diagnosis was "Manic-Depressive Illness, Manic Type (296.1)." However, the record also discloses that Appellant was declared "fit for duty" following a psychiatric examination by the U.S. Public Health Service in April 1979. I.O. Exhibit No. 4A. The exhibit also recites that there are "(n)o current psychiatric diagnoses."

"Ordinarily, any allegation of incompetence must be based on sufficient evidence *subsequent* to any fit for duty declaration by the USPHS or it should be found not proved." (Citations

omitted.) Appeal Decision [2280](#) (ARNOLD). (Emphasis added.)

The record contains no evidence of any psychiatric examination of Appellant since May 1979, and there is no evidence of a current psychiatric diagnosis of Appellant's present mental condition. Appellant's behavior aboard the TT BAY RIDGE does not constitute sufficient evidence of mental incompetence, particularly in light of the fact that Appellant was apparently intoxicated on the date and time in question. Accordingly, I must conclude that the finding of incompetence is not supported by the evidence.

However, on the totality of this record, outright dismissal of the incompetence charge is not in order. No one who is suffering from a psychiatric disability should be permitted "to serve aboard any vessel ... in a capacity in which he could cause serious harm to himself, to others, or to the vessel itself." *BURKE*, *supra*. Appellant's behavior aboard the TT BAY RIDGE places his mental condition in controversy. Resolution of this controversy requires remand of the case to the Administrative Law Judge for a psychiatric examination of Appellant in accordance with 46 CFR 5.20-27.

#### CONCLUSION

The findings of the Administrative Law Judge as to the charge of misconduct are supported by substantial evidence of a reliable and probative character. The finding as to the charge of incompetence is not supported by substantial evidence of a reliable and probative character.

#### ORDER

The decision and order of the Administrative Law Judge dated 24 January 1984 at Long Beach, California, is modified as follows: The findings of the Administrative Law Judge as to the charge of misconduct are AFFIRMED. The finding of the Administrative Law Judge as to the charge of incompetence is set aside. The order revoking Appellant's merchant mariner's document is VACATED. The case is remanded to the Administrative Law Judge for further proceedings consistent with this decision.

J.S. GRACEY  
Admiral, U.S. Coast Guard  
COMMANDANT

Signed at Washington, D.C. this 3rd day of January, 1985.

\*\*\*\*\* END OF DECISION NO. 2417 \*\*\*\*\*

---

[Top](#)