

In the Matter of License No. 15785
Issued to: ARCHIBALD C. GEER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ARCHIBALD C. GEER

This case comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations 137.11-1.

On 3 January, 1949, an Investigating Officer of the United States Coast Guard at Seattle, Washington, served Appellant with a document charging him with negligence based upon one specification which particularized the offense charged and set the hearing on the charge for 4 January, 1949. At the opening of the hearing, counsel for Appellant moved for a postponement in order that he might better acquaint himself with the details of the case and confer with at least one witness. This motion was denied because the Investigating Officer advised the Examiner an interval of a week or two would probably elapse before the witnesses whom he intended to call would be again available. Thereupon, the charge and specification were formally read to Appellant and after consultation with his counsel, a plea of "guilty" was entered. Appellant explained to the Examiner that the plea was made "under the circumstances."

The Investigating Officer then narrated the facts upon which the charge was based, and counsel for Appellant, in argument, emphasized several details which he contended entitled Appellant

"to the greatest leniency." At the conclusion of the hearing, the Examiner found the specification and charge proved by the plea and entered an order suspending Appellant's License No. 15785 and all other valid licenses, certificates of service and merchant marine documents held by Appellant, for a period of three months but directed that the suspension should not be effective provided no charge under R.S. 4450 as amended is proved against Appellant for acts committed within twelve months from 4 January, 1949.

This appeal was timely lodged and it is contended:

- (a) The refusal of the Examiner to grant counsel's motion to continue the hearing for the purpose of properly preparing a defense was error;
- (b) The penalty imposed is too severe and not justified even on the basis of facts admitted by the plea. Mitigating circumstances were not given sufficient weight by the Examiner, nor was the prior good record of this Appellant given proper consideration;
- (c) The failure of the Examiner to reopen the case upon oral motion of counsel for the Appellant constituted a denial of a substantial right.

OPINION

There is no doubt Appellant was entitled to confer with his counsel as well as with witnesses and prepare whatever defense he and his counsel may have considered appropriate. The record before me does not give assurance Appellant's rights were adequately protected and I, therefore, direct that the decision and order of the Examiner dated 4 January, 1949, be VACATED, SET ASIDE and REVERSED and the case be REMANDED for further proceedings not inconsistent herewith.

J.F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 23rd day of March, 1949.

***** END OF DECISION NO. 317 *****

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