IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-659500-D4 AND ALL OTHER SEAMAN DOCUMENTS
Issued to: Richard Gallegos

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1568

Richard Gallegos

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 22 September 1965 an Examiner of the United States Coast Guard at Houston, Texas suspended Appellant's seaman documents for 12 months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as Able Seaman on board the United States SS DEL VALLE under authority of the document above described, during the period from 1 July 1965 to 9 September 1965, Appellant wrongfully absented himself from his duties on or about 21 July 1965 and on or about 11 August 1965, while the vessel was in a foreign port; that on or about 22 july 1965 while the vessel was in a foreign port Appellant wrongfully failed to perform his duties by reason of intoxication; that on or about 8 august 1965, while the vessel was underway in a foreign harbor, Appellant wrongfully failed to perform duty as a watchstander on wheel and lookout watches.

At the hearing, Appellant did not appear and was not represented by counsel. A plea of not guilty to the charge and

each specification was entered.

The Investigating Officer introduced in evidence certified copies of log entries as to each offense charged.

No evidence was offered on behalf of the Appellant.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and three specifications had been proved. He made no finding concerning the fourth specification. The Examiner then entered an order suspending all documents issued to the Appellant for a period of 12 months outright, which order included a suspension of six months previously suspended on 18 months' probation.

The entire decision was served on 9 March 1966. Appeal was timely filed on 14 March 1966.

FINDINGS OF FACT

During the period from 1 July 1965 to 9 September 1965, Appellant was serving as an Able Seaman on board the United States SS DEL VALLE, and acting under the authority of his document. While the vessel was in a foreign port, the Appellant absented himself from his duties and the vessel on 21 July 1965 and on 11 August 1965. While the vessel was in a foreign port on 22 July 1965, the Appellant wrongfully failed to perform his duties by reason of being under the influence of intoxicants. On 8 August 1965 while the vessel was in a foreign harbor, the Appellant wrongfully failed to perform his duties as a watch stander on wheel and lookout watches.

BASES OF APPEAL

The Appellant contends that he was absent from the ship because he was ill and unable to perform his duties due to headaches and nerves, rather than to intoxication, and that he had left the ship to obtain medical assistance. He further alleges that the order is too severe for the offenses alleged.

OPINION

The Examiner accepted the log entries of 21 july 1965, 22 July 1965, 8 August 1965 and 11 August 1965 as made in accordance with the provisions of the applicable statute and as establishing a prima facie case as concerns the three specifications found proved. The Appellant's contention that his absence was for the purpose of obtaining medical treatment does not go to the gist of the offense, which is that the absence is an *unauthorized* absence, since the Appellant does not allege that he made any attempt to obtain permission to leave the ship on either of the dates in question.

The order is not considered too severe for the serious offenses found proved, particularly in view of the fact that it includes a previous suspension which was suspended on probation. Under these circumstances it is considered unnecessary to return the record for a finding as to whether or not the fourth specification was, or was not, proved.

ORDER

Specification 4 is dismissed.

The order of the Examiner dated at Houston, Texas on 22 September 1965, is AFFIRMED.

W. J. Smith
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 7th day of July 1966.

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