

LOVE, John P. Jr.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

UNITED STATES OF AMERICA; *
UNITED STATES COAST GUARD *
vs. *
Merchant Mariner's Document No.: *
[REDACTED] *
Issued to: *
JOHN P. LOVE, JR. *
Respondent *

DOCKET NO. CG S&R 99-0187

Case No. PA 99001173

DECISION AND ORDER

H. J. GARDNER
United States Administrative Law Judge

FOR THE GOVERNMENT
E. F. MICAL, CWO, USCG
Portland, Maine

FOR THE RESPONDENT
LAWRENCE I. KIERN, ESQ.
Counsel for the Respondent
Washington, D.C.

LOVE, John P. Jr.

On 09 September 1999, the Investigating Officer assigned to the Marine Safety Office, Portland, Maine served a complaint on the Respondent for an alleged USE OF A DANGEROUS DRUG under 46 CFR 7704 (c). Counsel for the Respondent filed a Motion to Dismiss or in the alternative Motion for Summary Decision and Motion for an Expedited Hearing. The Investigating Officer filed a reply to the Respondent's motions and a Motion for Pre-Hearing Telephonic Conference.

In view of the disposition made of this case, only the first motion by the Respondent will be considered.

On the early morning of 28 April 1999, the Maine Maritime Academy in Castine, Maine authorized the search of the Respondent's room for the use of "bottle rockets" fireworks that were being made at the Academy. Security Officers at the Academy searched the Respondent's room ordered by the Executive Director of Student Services. Contrary to Academy policy, the search was conducted with the Respondent having been ordered out of the room. During the search, the Academy official found no evidence of any fireworks or "bottle rockets", but found an eyeglass case and heirloom tobacco pipe and a reagent field test was done of the eyeglass case. The Academy originally contended that the field test was positive for marijuana. A second search was performed and a tobacco pipe was found and brought to the Security Office for testing. A field test was performed on the residue in the pipe and the contents tested positive for marijuana. The Academy official ordered the Respondent to submit to a "reasonable cause" chemical test for dangerous drugs pursuant to 46 CFR, Section 16.250 which allegedly tested positive for marijuana metabolites. The Academy's original search authorization was for "fireworks/bottle rockets".

LOVE, John P. Jr.

Based solely on the results of the improperly documented field tests the Academy officials then ordered the Respondent to submit to a urine sample for a "reasonable cause" chemical test. The Respondent refused to provide a sample. A security guard then escorted the Respondent to the Academy's Commandant of Cadets who told the Respondent that illegal drugs had been found in his room and that if he did not submit to a chemical drug test he would be summarily dismissed. The test was positive for marijuana and the Respondent was dismissed from the Academy. Following his dismissal from the Academy the Respondent appealed the action to the Academy's President, Leonard Tyler. As part of that appeal, the Respondent asked the Academy to test the eyeglass case and tobacco pipe found in his room at an independent laboratory. The Academy submitted the evidence to the Maine State Police Laboratory for testing and "no evidence of drugs at all was found." On 10 June 1999, based on the results of the Maine State Police Laboratory findings that indicated they were unable to find any traces of THC in either the pipe or glasses case, the Respondent's appeal was granted and he was reinstated as a student at the Academy. At that point the President of the Maine Maritime Academy wrote a letter to the Coast Guard in Portland, Maine describing the incident that led to them conducting the urinalysis and indicated that a re-test of the items by the Maine State Crime Lab did not confirm the earlier test results. The President reassured the Coast Guard that the request for urinalysis did not result from any observation by Academy personnel that the Respondent was impaired in any way and he was not suspected of use of dangerous drugs.

The search of the Respondent's room was not based on any suspicion or probable cause that he was using dangerous drugs, nor should the search of the Respondent's room have been conducted with the Respondent's absence. No evidence of any use of drugs was found during the search. There was no reasonable basis to believe that there were drugs in the Respondent's room. In any event, any event derived from an unreasonable search

evidence

LOVE, John P. Jr.

of the Respondent's dormitory room cannot be used as a basis for a "reasonable cause" test.

The Academy apparently recognized the unreasonable search of the Respondent's room and tried to amend the situation in the President's letter to the Respondent on June 10, 1999 and so notified the United States Coast Guard.

The only appropriate order to be issued is that of DISMISSAL.

Based on the foregoing, the complaint issued on the Respondent on September 9, 1999, should be and is hereby DISMISSED

Dated this 27th day of OCTOBER 1999, at Long Beach, California.


H. J. GARDNER
Administrative Law Judge