

IN THE MATTER OF LICENSE NO. 390564
AND MERCHANT MARINER'S DOCUMENT NO. Z-490485-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Clarence E. BECK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1949

Clarence E. BECK

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 8 May 1972, an Administrative Law Judge of the United States Coast Guard at Baltimore, Maryland suspended Appellant's license and seaman's documents for 18 months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as a Third Assistant Engineer on board SS AFRICAN METEOR under authority of the license above described, Appellant:

(1) did on 18 February 1972 wrongfully fail to perform assigned duties from 0400 to 0800 and from 1600 to 2000 while said vessel was at sea;

(2) did on 19 February 1972 wrongfully fail to perform assigned duties from 0400 to 0800 and from 1600 to 2000 while said vessel was at sea; and

(3) did on 19 April 1972 wrongfully fail to join said vessel upon departure from Baltimore, Maryland.

Appellant did not appear at the hearing and the hearing was held in absentia. A plea of not guilty to the charge and each specification was entered on behalf of Appellant.

The Investigating Officer introduced in evidence excerpts from the Shipping Articles and the Official Ship's Log, and Certificate of Discharge issued to Appellant.

No evidence was entered on behalf of Appellant.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and all specifications had been proved. The Administrative Law Judge then entered an order suspending the license and all documents, issued to Appellant, for a period of 6 months outright plus effecting a prior 12 month suspension for violation of probation.

The entire decision and order were served on 17 May 1972. Appeal was timely filed on 16 June 1972.

FINDINGS OF FACT

On 18-19 February and 19 April 1972, Appellant was serving as Third Assistant Engineer on board the SS AFRICAN METEOR and acting under authority of his license while the ship was at sea on 18-19 February and in the Port of Baltimore, Maryland on 19 April 1972.

On 18 and 19 February 1972 the Appellant failed to stand his prescribed watches between the hours of 0400 and 0800 and between 1600 and 2000 hours on each day. On 18 April 1972 the Appellant did not report for work and on 19 April 1972 he failed to join the vessel on its departure from Baltimore, Maryland.

Appellant was served with the original copy of the charge and given adequate notice of the time and place of the hearing, but failed to appear at the hearing. Appellant made no effort to notify the appropriate parties of his inability to attend and an in absentia hearing was held on 3 May 1972.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

(1) Appellant failed to attend the hearing due to a serious injury to his son which required his presence in Seattle, Washington on the date of the hearing. On this basis a rehearing is requested.

(2) The reason for Appellant's failure to stand watches on 18 and 19 February 1972 and failure to join his vessel on 19 April 1972 was due to illness caused by alcoholism and since alcoholism is a sickness, he should not be punished for misconduct for his failure to perform due to such sickness.

APPEARANCE: Appellant, pro se.

OPINION

I

Appellant was given proper notice of the time and place of his hearing and admits receiving this notice. He was also advised by the Investigating Officer that if he failed to appear, the hearing would be held in absentia and that if for any reason he could not attend he should contact the Administrative Law Judge. Appellant made no attempt to give notice of his inability to attend due to family problem. The requirements of due process have been met and Appellant cannot point to his own inaction as the basis of a purported failure to afford him an adequate hearing.

II

Appellant's contention that he is being punished for inability to perform his duties due to illness is likewise without merit. Whether or not alcoholism is an illness is not the issue, but rather the primary issue is the consideration of the safety of lives and property at sea. Appellant's past record indicates his inability to cope with his alcohol problem while performing his

duties as an officer and this inability marks him as a continual potential danger to his vessel and its crew.

III

One further issue meriting comment is the length of the suspension of Appellant's license. Since this offense came during the period of probation of a prior twelve month suspension, the Administrative Law Judge had no alternative other than to activate the twelve month suspension. That he also saw fit to impose an additional six month suspension for Appellant's latest instance of failure to perform and the offense of failure to join is not unreasonable in light of Appellant's past record.

ORDER

The order of the Administrative Law Judge dated at Baltimore, Maryland on 8 May 1972, is AFFIRMED.

T. R. Sargent
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 18th day of June 1973.

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