

IN THE MATTER OF LICENSE NO. 405740
MERCHANT MARINER'S DOCUMENT NO. Z-520775
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: John THOMAS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1970

John THOMAS

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 9 September 1970, an Administrative Law Judge of the United States Coast Guard at San Francisco, California revoked Appellant's seaman's documents upon finding him professionally incompetent and mentally incompetent. The specifications found proved allege that while serving as Third Assistant Engineer on board the SS DESOTO under authority of the document and license above captioned, Appellant:

(1) while the vessel was on a foreign voyage to Far Eastern ports from 14 May to 7 August 1969, did, by his acts and commissions while standing engine room watches, demonstrate that he did not possess and exercise the professional skills and engine room management of an ordinary prudent licensed Third Assistant Engineer, thereby rendering himself unfit to serve on merchant vessels of the United States; and

(2) while the vessel was on said voyage from 14 May to 7 August 1969, did, by his acts and omissions, demonstrate that he was suffering from a psychiatric disorder rendering him unfit to serve on board merchant vessels of the United States.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to both charges and each specification.

The Investigating Officer introduced in evidence the testimony of the vessel's First and Second Engineers, a Customs official and a psychiatrist and various documentary evidence.

In defense, Appellant offered in evidence a fit-for-duty slip.

After the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charges and specifications had been proved. He then entered an order revoking all documents issued to Appellant.

The entire decision was served on or about 1 October 1970. Appeal was timely filed on 1 November 1970 and perfected on 21 June 1971.

FINDINGS OF FACT

From 23 May to 7 August 1969, Appellant was serving as Third Assistant Engineer on board the SS DESOTO and acting under authority of his license while the ship was on a foreign voyage to Far Eastern ports.

During this voyage, Appellant displayed an inability to properly perform the following regular duties of a Third Assistant Engineer and was either unable to or refused to be taught to do so: blow down evaporators, blow tubes, sound tanks, carry out maneuvering orders from the bridge, change the settlers, check the stack gauge, follow engine room routines for assuming the watch, use and evaluate gauges on the operating platform, regulate the DC Heater. Although he was not removed from the watch, the Chief Engineer and the First Assistant Engineer alternated being in the

engine room during his watches.

As Appellant left the vessel in San Francisco on 7 August 1968, a Customs official conducted a routine search which revealed some pills and powder. Appellant stated that he was a robot and could not reveal the identity of these items. He spoke of a man, called "Duka", in a hidden cave with an atomic ray gun. He attributed to "Duka" the deaths of many people, including John F. Kennedy, Winston Churchill and Spencer Tracy. The customs search revealed a handwritten document containing an extensive discussion of "Duka" and his activities, many of which were apparently deemed by Appellant to be directed at himself.

Pursuant to a voluntary deposit agreement, Appellant was examined by a U. S. Public Health Service psychiatrist who diagnosed his condition as residual schizophrenia with paranoid ideation. He found him unfit for sea duty and recommended psychiatric treatment and medication, which Appellant refused.

On 20 August 1969, Appellant received a fit-for-duty slip from the U. S. Public Health Service Hospital, Staten Island. The examining physician was not a psychiatrist and had no knowledge of these proceedings or the Appellant's prior medical history.

BASES OF APPEAL

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

(1) Appellant's document was improperly revoked because not subject to the voluntary deposit agreement;

(2) Appellant's procurement on 20 August 1969 of a fit-for-duty slip requires return of his license pursuant to the voluntary deposit agreement;

(3) the customs search and the seizure of Appellant's handwritten account of "Duka" were illegal;

(4) the Investigating Officer had no jurisdiction over Appellant while he was in the U. S. Customs Office;

(5) there is evidence showing mental competence;

(6) there is evidence showing professional competence;

(7) the illness of the Administrative Law Judge during the course of the proceedings rendered him incompetent; and

(8) numerous "clear errors in the record" warrant reversal.

APPEARANCE: Appellant pro se.

OPINION

I

Appellant voluntarily surrendered his license by an agreement pursuant to 46 CFR 137.10-1. This agreement provided that the license would be returned to Appellant upon presentation of a fit-for-duty slip from a U. S. Public Health Service facility. The agreement provided further that the examining physician would be supplied the Appellant's medical background. This type of voluntary deposit, as opposed to that provided for in 46 CFR 137.10-10, has no effect upon the scope of the subject matter of revocation and suspension proceedings. Therefore, the fact that the deposit agreement applied solely to Appellant's license and not to his document has no bearing upon the proceeding against the latter.

II

With respect to the second ground for appeal, it need only be noted that the physician who provided the fit-for-duty slip dated 20 August 1969 had no knowledge of the pending proceedings and had not been supplied Appellant's medical background as per the agreement. Therefore, that fit-for-duty slip did not satisfy the terms of the agreement, the condition precedent to the return of his license.

III

Customs officials are empowered by 19 U.S.C. 1582 to search all persons entering the United States from a foreign country. The proper scope of such a search includes all articles of baggage and all papers carried therein or on such a person. Any question regarding the Customs official's perusal of the document at issue is, nevertheless, resolved by the discovery of pills and powders among Appellant's personal effects and his bizarre response relative to their identity. These factors presented ample justification for further inquiry on the Customs official's part, in order to ascertain the existence of any violations of law. The document at issue being the product of a lawful search was properly admitted in evidence. Furthermore, it is noted that suspension and revocation proceedings on charges of incompetence are not of a criminal nature. Therefore, the applicability of the search and seizure doctrine is tenuous at best.

In any event, it must be noted that the admission of this document was not prejudicial to Appellant. The psychiatrist's evaluation based on personal observation, together with the Customs official's testimony as to Appellant's behavior and the contents of the document, are more than sufficient to support the findings of the Administrative Law Judge.

IV

As to Appellant's fourth ground for appeal, it need only be stated that the authority of a Coast Guard Investigating Officer is not geographically limited. A member of the United States Merchant Marine is subject to Coast Guard jurisdiction wherever he may be found and there is no basis for a claim that a Customs Office constitutes a sanctuary wherein the Investigating Officer may not execute his responsibilities.

V

Appellant attempts to relitigate his case on appeal by presenting evidence of his alleged professional and mental competence. This is not a proper ground for appeal and such "evidence" will not be considered. The evidence on the record is uncontroverted and clearly supports the findings of the Administrative Law Judge. Appellant was afforded ample opportunity

to present evidence at the hearing and, having failed to do so, he will not now be heard to complain.

VI

Appellant alleges that the hospitalization of the Administrative Law Judge during the pendency of the hearing rendered him incompetent to decide the case. It is enough to say that the mere occurrence of a physical illness is not sufficient to show a diminution of judgmental capacities. Furthermore, if Appellant seriously questioned the capacity of the Administrative Law Judge, his proper remedy would have been by way of a withdrawal request during the hearing, pursuant to 46 CFR 137.20-15.

VII

The majority of the "clear errors on the record" cited by Appellant are typographical and spelling errors not deserving of comment and offers of evidence which, as stated above, cannot be considered on appeal.

He does, however, submit that the proceedings relate only to his license and not to his document. This assertion is meritless, as the Administrative Law Judge clearly stated at the outset of the hearing and the charge sheet properly noted that the Coast Guard was proceeding against both the license and the document. The fact that the voluntary deposit agreement concerned only Appellant's license is irrelevant.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California on 9 September 1970, is AFFIRMED.

T. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 29th day of June 1973.

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