

In the Matter of Certificate of Service No. E-513668
Issued to: WAN CHI CHUN

DECISION and FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

375

WAN CHI CHUN

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

Appellant was originally charged by the United States Coast Guard on 12 July, 1948, and no hearing was held, at that time, due to the fact that Examiners were not available. The hearing was commenced in January, 1949. After several delays and adjournments, Appellant obtained the services of his present counsel who is an attorney. Appellant's counsel objected to the manner in which the offense was set forth in the specification and the Examiner found the specification fatally defective on the technical ground that it did not allege the possession of narcotics to be unlawful or contrary to law. Therefore, the Examiner dismissed the charge without prejudice and Appellant was served, on 27 May, 1949, with the corrected specification on which this proceeding is based. At the time of service, it was stipulated by Appellant's counsel that jurisdiction had been properly established by the service of the new charge and specification.

On 2 June, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York City to answer the charge of

"misconduct" supported by the latter specification which alleges that while Appellant was serving as a utilityman on board the American SS FRANCIS E. WARREN, under authority of Certificate of Service No. E-513668 on or about 24 March, 1948, he possessed, concealed and facilitated "the concealment of a quantity of narcotics, to wit: 2 3/4 ounces of crude opium, knowing the opium to have been illegally imported into the United States. (21 U.S.C., Sec. 174)."

At the hearing, Appellant was duly informed as to the nature of the proceedings, the rights to which he was entitled and the possible outcomes of the hearing. Appellant was represented by counsel of his own choice and a plea of "not guilty" to the specification and charge was originally entered. A motion by counsel for dismissal of the specification was denied after the Investigating Officer had introduced in evidence a copy of the judgment of conviction by a Federal court; and Appellant's plea was changed to "guilty" on advice of counsel.

After Appellant had presented mitigating circumstances of the offense and both parties had been given an opportunity to submit proposed findings and conclusions, the Examiner found the specification and the charge "proved by plea" and, thereupon, he entered an order revoking Certificate of Service E-513668 and all other valid licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

A copy of the Examiner's order and decision dated 7 June, 1949, was delivered to Appellant.

It is contended on appeal that although Appellant pleaded "guilty" to the specification, the facts introduced in the course of the hearing indicate clearly that the further employment of the Appellant aboard American vessels would not be contrary to the best interests of the United States Government; and that the entire matter taken in proper perspective indicates that Appellant has already been penalized sufficiently to warrant the return of his documents and his reemployment. Hence, it is urged, the present order is unjust, unfair and unwarranted in view of all the facts in the case.

Appellant testified under oath that he has been serving for seventeen years on American, British and Panamanian ships, and that he was torpedoed three times during the war. There is no record of any prior disciplinary action having been taken against Appellant by the United States Coast Guard.

FINDINGS OF FACT

On or about 24 March, 1948, Appellant was serving as a member of the crew in the capacity of utilityman on board the American SS FRANCIS E. WARREN, under authority of Certificate of Service no. E-513668, while that ship was in the vicinity of Staten Island, New York, within the Eastern District of New York. The ship had just completed a foreign voyage. On this date, Appellant was apprehended during a routine search of the ship and it was discovered that he had 2 3/4 ounces of crude opium in his possession. The opium was found in Appellant's trouser pocket wrapped in paper.

He was indicted by the Grand Jury of the United States District Court for the Eastern District of New York. The wording of the indictment is precisely the same as that of the specification contained in this record. On 18 June, 1948, Appellant pleaded "guilty" to the offense, before the Federal court, and received a probationary suspended sentence of one year and one day.

Appellant testified that he had obtained the opium in Cuba about a month before the SS FRANCIS E. WARREN returned to New York. He had a pain in his chest and paid a doctor five dollars for this "medicine". It was in powder form and wrapped in paper. He took it once on the day it was purchased; but since it did not agree with him, he put it in a drawer and did not use it again. The ship sailed from Cuba to Hamburg. Appellant was ashore at Hamburg but did not consult a doctor. When the ship returned to New York from Hamburg, Appellant was apprehended. Appellant contends he did not know that the "medicine" was opium and he had retained possession of it only for the purpose of having it analyzed in order to find out what he had paid so much money for.

OPINION

Appellant contends the order of revocation is unfair and unjust because the violation of such a technical statute as 21 U.S.C. 174 is not necessarily "misconduct"; the facts introduced at the hearing indicate that the presence of Appellant on American vessels would not have any adverse effects; Appellant has been sufficiently penalized by the Federal court; and Appellant's long and satisfactory service at sea should be taken into consideration.

In answer to Appellant's argument that possession of opium in violation of statute is not necessarily "misconduct", it is appropriate to use his counsel's own words:

"However, the real point at issue in this, is the conduct of the accused as a whole such as would make him incompetent to carry on his employment or would it endanger other persons if he were permitted to resume his employment." (R.11).

The gist of the matter is that "possession of narcotics aboard vessels is extremely dangerous to the safety and welfare of the entire crew and vessel." (R.14). I completely agree with this statement of the Examiner. The offense of possessing narcotics on board vessels must be considered in the light of the possible disastrous consequences attending participation in drug and narcotic traffic and not in view of the results attending possession of it in some isolated cases. A statutory duty is imposed upon the Coast Guard to preserve discipline and thereby to protect American crews and ships against threatened or potential danger as well as against the recurrence of actual loss of life, personal injury and other damage which has already been done. Obviously, in order to properly perform its duty in this respect, the Coast Guard must eliminate all known risks before the threatened harm becomes an actuality. And the danger is so great, in the case of narcotics, that the Coast Guard has consistently adopted a policy of revocation as soon as the offender's activities are disclosed. This is true whether or not there is any evidence to indicate that the person charged is an addict.

Appellant argues that the testimony of Appellant should be given persuasive influence so as to moderate the order imposed. The Appellant testified that he did not know he had purchased opium and that he is not a user of narcotics. These statements were not

contradicted by any other testimony but the fact remains that Appellant pleaded "guilty" in the Federal court to knowingly possessing and concealing opium. In view of the conclusiveness in this proceeding of a judgment of conviction by a Federal court (46 C.F.R. 137.15-5) and the seriousness of the act committed, the Appellant's testimony is not sufficient to overcome the significance of the Federal court record so as to justify a modification of the order. In addition, the Examiner's opinion points out two specific weaknesses in Appellant's claim that he had no knowledge that the "medicine" was opium.

There is no merit in Appellant's contention that Appellant has already been sufficiently penalized. First, there was no sentence actually imposed since the sentence was suspended and Appellant placed on probation for one year; secondly, the purpose of this proceeding is not to impose a penalty against Appellant or his property. It is directed solely against his privilege to retain and use the merchant marine certificate of service and any other documents or licenses held by him.

Appellant's good conduct, long service at sea, and his war experiences have been given due consideration but the gravity of the offense overshadows any effectiveness they might otherwise have had. Furthermore, it must be remembered that this is not a criminal action to penalize Appellant for his actions but it is a remedial proceeding to protect others from the probable evil consequences of similar recurrent offenses by the Appellant. Since the objective is not to punish Appellant, his clear record in the past does not offset the seriousness of his present offense upon which the order imposed in this proceeding is based.

CONCLUSION and ORDER

I have observed the Examiner's Order is made effective against Certificate of Service E-515663. This is clearly a clerical error.

The order of the Examiner dated 2 June, 1949, is corrected by changing "Certificate of Service E-515663" to read "Certificate of Service No. E-513668". As so corrected, the order should be, and it is, AFFIRMED.

J. F. FARLEY

Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 15th day of Sept, 1949.

***** END OF DECISION NO. 375 *****

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