

In the Matter of Certificate of Service No. E-22027
Issued to: ARCHIE B. TINGLE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ARCHIE B. TINGLE

This appeal comes before in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 27 and 29 July and 10 August, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York City to answer a charge of "misconduct" supported by a specification alleging that while Appellant was serving as a messman on board the American SS AMERICAN CLIPPER, under authority of Certificate of Service No. E-22027, he unlawfully had in his possession, on or about 22 November, 1948, certain narcotics, to wit: marijuana.

At the hearing, Appellant was fully informed as to the nature of the proceeding, the rights to which he was entitled and the possible outcomes of the hearing. Appellant voluntarily waived his right to representation by counsel and chose to act in his own behalf. He pleaded "guilty" to the charge and specification proffered against him. After the Investigating Officer had completed his opening statement, Appellant was afforded an opportunity to present any and all mitigating circumstances believed to be material. Appellant's statement, concerning this,

was not made under oath. He stated that he had been apprehended with the marijuana on his person but he thought the package contained prayer beads and incense given to him by the Hindu; that his companion, the second cook, had paid for the marijuana and it belonged to the cook but, unknown to Appellant, the cook was carrying the package containing Appellant's beads and incense at the time of apprehension; that he had never seen nor used marijuana or any narcotics; and that he needed a job at sea to care for his family and to pay the \$500 fine imposed by the Federal court for this offense.

Upon the completion of Appellant's opening statement, the Examiner changed the "guilty" plea to one of "not guilty" since he considered Appellant's presentation to be inconsistent with a plea of "guilty". Thereupon, the Investigating Officer introduced in evidence a certified copy of a portion of the articles of the ship for the voyage in question; a certified copy of the Criminal Information setting forth charges which were preferred against Appellant before the District Court of the United States for the District of Massachusetts; and a certified copy of the Judgment and Commitment entered against Appellant in the District Court of the United States for the District of Massachusetts. The Investigating Officer then rested his case and Appellant offered no rebuttal evidence to meet the prima facie case made out by the Investigating Officer.

After the Investigating Officer and Appellant had made their arguments, they were given the opportunity to submit proposed findings of fact and conclusions. The Examiner then presented his findings and conclusions. Having found the specification and charge "proved", the Examiner entered an order revoking Appellant's Certificate of Service No. E-22027 and all other licenses, certificates, and documents issued to him by the United States Coast Guard or its predecessor authority.

The appeal is a plea for leniency requesting that the order be made probationary so that Appellant may prove that he can be trusted to work at sea without endangering the lives of his shipmates. He also states that he deserves clemency because of his perfectly clear record for eleven years at sea; that going to sea has been his life's work; that he needs to sail in order to pay the \$500 fine imposed by the Federal court for unlawfully possessing

marijuana; and that he desires to square his debt with society and the Federal Government.

FINDINGS OF FACT

On or about 22 November, 1948, Appellant was serving as a member of the crew in the capacity of messman on board the American SS AMERICAN CLIPPER, under authority of Certificate of Service No. E-22027, while the ship was berthed in the port of East Boston, Massachusetts. At about 1800 on this date, a routine search of the ship disclosed marijuana cigarettes and a piece of hashish in a shirt in Appellant's locker. Appellant disclaimed ownership of the shirt, marijuana and hashish, stating that anyone could get into his locker because there was no lock on it.

On the evening of the same day, Appellant went ashore with the second cook. They met two Hindus from the English ship, CITY OF SWANSEA. Appellant claims he asked one of them if he had incense and prayer beads and he said he did; and the cook wanted to know if they had "ganjah" (marijuana). Appellant and the cook then went aboard the CITY OF SWANSEA with the two Hindus. Upon leaving the ship shortly afterwards, they were searched by the customs agents and it was discovered that Appellant had a package of marijuana in his possession.

On 4 January, 1949, Appellant was tried in the United States District Court for the District of Massachusetts for possession of marijuana without having paid the transfer tax on it. Appellant waived his right to counsel after having been advised that the court would appoint counsel if Appellant desired. Appellant pleaded "guilty" to both counts of the Information; one of which alleged that he unlawfully had in his possession thirteen grains of marijuana and the other alleged unlawful possession of 341 grains of marijuana. Appellant was convicted and sentenced to six months' imprisonment and a fine of \$500.

OPINION

The judgment of conviction by the Federal court must be considered conclusive as to the guilt of the Appellant for the offense alleged in this proceeding since the basis of the charges in the Federal court were the same as those invoked in this

proceeding. Title 46 Code of Federal Regulations 137.15-5.

It is the statutory duty of the Coast Guard to take appropriate action against seamen's licenses, certificates and documents when seamen abuse the privilege of sailing on American merchant ships by committing offenses which have disrupted, or might reasonably lead to the disruption, of the discipline which must be maintained in order to protect lives and property. In line with this duty, it has been the consistent policy of the Coast Guard to revoke a seaman's license, certificate and documents when he has been found guilty of any association with marijuana. The actual and potential danger resulting from the possession of marijuana has been adequately emphasized in my past decisions and in the Examiner's opinion, so as to require no further amplification at this time. In view of the above, Appellant's appeal for clemency cannot be given effective consideration despite his apparently sincere desire to return to sea.

In addition, Appellant's statements concerning the circumstances were, understandably, not considered by the Examiner to be persuasive. There were several discrepancies between what Appellant said on the first day of the hearing and his statements on the last day of the hearing, two weeks later. On the first day, he stated that the alleged offense occurred on 22 November, 1948 (R.4); that he was not a Mohammedan (R.5); and that he had no children (R.10). Two weeks later, he said that the offense took place on 21 November (R.16); that he is a Mohammedan (R.19); and that he has two children (R.18). This indicates to me that Appellant's recollection of the true circumstances of the incident, which occurred eight months before the hearing, might well have been considerably distorted at the time of the hearing. And the fact that hashish, which is made from the leaves of Indian hemp and used as a narcotic, was found in Appellant's locker, on the same day he associated with the two Hindus from India, is strong circumstantial evidence that Appellant's interest in the Hindus was more than religious.

CONCLUSION AND ORDER

For these reasons, the Order of the Examiner dated 10 August, 1949, should be, and it is, **AFFIRMED**.

J.F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 30th day of November, 1949.

***** END OF DECISION NO. 392 *****

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