

In the Matter of Merchant Mariner's Document No. Z-55119
Issued to: ANACLETO CABRERA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

414

ANACLETO CABRERA

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

On 4 November, 1949, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-55119 issued to Anacleto Cabrera upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as a fireman on board the American SS PIONEER GLEN, under authority of the document above described, on or about 20 September, 1949, he wrongfully had in his possession a narcotic, to wit: marijuana, while the vessel was at Staten Island, New York.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he originally elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification.

Thereupon, the Investigating Officer made his opening statement in which he outlined the basis for the preferment of the

charge against Appellant and all other required particulars.

Appellant indicated at this time that he would like to obtain counsel and the hearing was adjourned for this purpose. Upon reconvening, the hearing record was read for the benefit of Appellant's counsel. The latter stated that he considered the record satisfactory and that he had nothing to add except to present mitigating circumstances on behalf of Appellant.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the specification and charge "proved by plea" and entered an order revoking Appellant's Merchant Mariner's Document No. Z-55119 and all other valid licenses, documents and certificates issued to him by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken. The appeal is a request for clemency based on Appellant's prior clear record as a merchant seaman for twenty years; the fact that he has a family to support; and the further statement that being fifty years old would make it extremely difficult to start anew in a different occupation.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 20 September, 1949, Appellant was serving as a member of the crew in the capacity of fireman on board the American SS PIONEER GLEN, under authority of his Merchant Mariner's Document No. Z-55119, while the ship was docked at Staten Island, New York. A search by Customs Officers disclosed that Appellant had approximately 286 grains of marijuana in a packet in his pocket. Appellant was apprehended and prosecution was recommended by the U.S. Attorney for the Eastern District of New York. On 21 September, 1949, before the United States Commissioner for the Eastern District of New York, Appellant was charged with a crime in connection with the possession of marijuana and after waiving hearing was held on \$500 bail for action by the Grand Jury. So far as the record shows, there had been neither conviction nor indictment up to the time of the Coast Guard hearing.

When Appellant was interrogated after having been apprehended by the Customs Officers, he stated that he had purchased the marijuana for one dollar from a native who was on board the ship going through the Panama Canal. Appellant mixed the marijuana with some cigarette tobacco and put the mixture in an envelope. He then placed the envelope with other envelopes in a box of stationery and, upon arrival in New York, he put the box of stationery with his clothing. Appellant stated he intended to use the marijuana upon returning to his apartment in Brooklyn.

OPINION

It is the statutory duty of the Coast Guard to preserve safety and and discipline at sea, thereby protecting 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 properly to 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 for possession as well as the actual use of marijuana. This is true since the mere possession of marijuana may lead to its use, at any time, by the owner or by other members of the crew. In this case, it is not clear that Appellant did not use any of the marijuana aboard the ship. He stated, "But I never use marijuana in my life before" (R.5); and there is no explanation as to why the mixture was transferred from the stationery box to Appellant's pocket.

CONCLUSION

For these reasons, it is necessary for the Coast Guard to give prior consideration to the safety of lives and property at sea rather than to Appellant's personal convenience and well-being. Hence, no administrative clemency should now be exercised and the order must be sustained.

ORDER

The order of the Examiner dated 4 November, 1949, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 24th day of *January*, 1950.

***** END OF DECISION NO. 414 *****

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