In The Matter Of Merchant Mariner's Document No: Z-112062-D1
Issued to: WILLIAM SHELTON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

455

WILLIAM SHELTON

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

On 17 May, 1950, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-112062-D1 issued to William Shelton upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as assistant cook on board the American S.S. EXPEDITER, under authority of the document above described, on or about 21 April, 1950, he wrongfully had marijuana in his possession while said ship was in the port of 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 elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification.

Thereupon, the Investigating Officer and Appellant made their opening statements. The Investigating Officer then introduced in

evidence the testimony of the Customs Officer, who had found a marijuana cigarette in Appellant's possession, and the Customs chemist who had identified the substance as marijuana.

In defense, Appellant stipulated with the Investigating Officer that Appellant's roommate for the past six months aboard ship would testify that he had never seen Appellant use marijuana cigarettes.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of the specification and entered an order suspending Appellant's Merchant Mariner's Document No. Z-112062-D1, and all other documents, certificates and licenses issued to him by the United States Coast Guard, for a period of one year outright and one year on two years' probation from 17 May, 1951.

From that order, this appeal has been taken, and it is urged that:

Point 1: The Examiner's findings are based upon the unsupported presumptions that marijuana is a narcotic and has harmful effects; and that mere possession of a single marijuana cigarette indicates that Appellant is "connected" with narcotics.

Point 2 The penalty imposed was too severe in the light of the fact that Appellant is the sole support of his wife and four children and he has gone to sea as a merchant seaman for over twelve years including the dangerous war years.

APPEARANCES: Messrs. Bassoff and Pollack of New York City
Isidore Bassoff, Esquire, of Counsel

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

FINDINGS OF FACT

On 21 April, 1950, Appellant was serving as assistant cook on board the American S.S. EXPEDITER, acting under authority of his duly issued Merchant Mariner's Document, while said vessel was in the port of New York.

On this date, Customs officers boarded the ship and conducted a routine search. One of these officers walked into the galley and saw Appellant in there working. The officer asked Appellant if he had anything on his person and Appellant replied in the negative. But the subsequent search disclosed that Appellant had one marijuana cigarette in his watch pocket. When the officer discovered this, Appellant acted surprised and said he did not know how the cigarette got in his pocket although he recognized it as a marijuana cigarette. A search of Appellant's room disclosed no further evidence of marijuana in Appellant's possession. Appellant admits that he did smoke one or more marijuana cigarettes on one occasion in 1939 while ashore near New Orleans.

An analysis at the Customs Laboratory showed that the cigarette found on Appellant's person contained eight grains of marijuana. The Federal authorities declined prosecution because of the small quantity of marijuana involved.

Appellant's only prior disciplinary record with the Coast Guard consists of an admonition in 1943. As mentioned above, he has been going to sea for more than twelve years and has five dependents. He is thirty-five years of age.

OPINION

It is not necessary to look to the laboratory report to establish that marijuana is a "narcotic substance," as alleged in the specification, and that it is known to have harmful effects. For the purposes of Title 21, United States Code, section 184a(a), marijuana is included within the definition of a "narcotic drug." This classification would not be accorded it unless it were known to be injurious in some way. In addition, it is permissible for the Examiner or myself to arrive at findings which are based upon common knowledge as well as upon evidence introduced at the hearing; and there are numerous publications from authoritative

sources, such as the Bureau of Narcotics, which relate the harmful and pernicious nature of marijuana. These publications lend adequate support to the findings of the Examiner in this respect.

Appellant was "connected" with narcotics to the extent that he had a marijuana cigarette on his person. Of course, this does not mean (and the Examiner did not find) that Appellant was "connected" with the drug traffic to a much greater extent, as is implied by Appellant. Nevertheless, any connection with marijuana is considered to be a serious act of misconduct even if it is only the possession of a single cigarette made of this substance.

Appellant contends that his words and actions, at the time the cigarette was discovered in his possession, indicate that he was "framed" and, therefore, he was not proven guilty "beyond a reasonable doubt." Possibly, this factor entered into the decision of the Federal authorities not to prosecute Appellant but the presence or absence of proof "beyond a reasonable doubt" is not significant in this administrative proceeding since this is not a criminal trial and a different degree of proof is required. The purpose of these proceedings is to impose remedial sanctions when the "privilege" of sailing on American merchant vessels has been abused to the extent that an individual's conduct is an actual or potential threat to the lives of his fellow crew members and the safety of the ship. The degree of proof required is that there must be "substantial" evidence. Thus, the proof required to overcome the presumption of innocence in a criminal trial is greater than is needed in these proceedings. This is logical because in one instance a person's "rights" are at stake while this hearing involves only the "privilege" which has been voluntarily granted to Appellant.

Regardless of the personal hardship imposed on Appellant and his family by this order, I do not think that it is too severe. Considering the policy of the Coast Guard to revoke a seaman's documents when there has been any association at all with narcotics, I feel that the Examiner was extremely lenient in suspending Appellant's document outright for a period of only one year. Since judicial standards prevent me from increasing the severity of the order, it must be sustained in its present form.

ORDER

The Order of the Examiner dated 17 May, 1950, should be, and it is, AFFIRMED.

A.C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

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

***** END OF DECISION NO. 455 *****

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