

In the Matter of License No. 105155
Issued to: KIRBY A. WHITE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

563

KIRBY A. WHITE

This matter comes before me by Appellant's motion for reconsideration and mitigation of the Examiner's order dated 19 December, 1951, which suspended Appellant's license, and all other documents issued to him, for a period of one year outright and for an additional year on two years' probation from 19 December, 1952.

NOW UPON FURTHER consideration of said order and the grounds assigned by Appellant, it appears that the order of suspension should be modified and that the interests of equity and justice will be served by the following

ORDER

The Examiner's Order dated 19 December, 1951, is hereby modified to provide for suspension of Appellant's License No. 105155, and all other valid licenses, documents, certificates and endorsements, for a period of two (2) years commencing 19 December, 1951. The last fifteen (15) months of such suspension shall not be made effective, provided no charge is proved against Appellant for offenses cognizable under R.S. 4450 (46 U.S.C. 239), as amended, within two (2) years of 19 September, 1952. The nine (9) months' outright suspension shall not be extended beyond 19 September,

1952, although Appellant possessed a temporary license for one month between 22 April, 1952, and 23 May, 1952.

As so modified, the Examiner's Order as aforementioned is AFFIRMED.

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

Dated at Washington, D.C., this 25th day of June, 1952.

In the Matter of License No. 105155
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DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

563

KIRBY A. WHITE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 19 December, 1951, an Examiner of the United States Coast Guard at Milwaukee, Wisconsin, suspended License No. 105155 issued to Kirby A. White upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Second Officer on board the American MV HIGHWAY 16 under authority of the document above described, on or about 22 November, 1951, while said vessel was docked at Muskegon, Michigan, he assaulted and battered Sigurd W. Svendsen who was a member of the crew serving as a helmsman.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and Appellant made a statement in mitigation. He stated that he did not realize Svendsen was hurt in the scuffle, both of them had been drinking, and he was willing to take the consequences.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by plea. He then entered the order suspending Appellant's License No. 105155 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of two years; one year outright suspension and one year suspension on two years' probation from 19 December, 1952.

From that order, this appeal has been taken, and it is urged that Appellant pleaded guilty without advice of counsel; that he is in fact not guilty; that Appellant was embarrassed to speak plainly due to the presence of a woman reporter; and that the order is too severe. Two letters of recommendation were also submitted.

APPEARANCES: Messrs. Muchin and Muchin, of Manitowoc, Wisconsin, by Arden A. Muchin, Esquire, of Counsel.

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

FINDINGS OF FACT

On 22 November, 1951, Appellant was serving as Second Officer on board the American MV HIGHWAY 16 and acting under authority of his License No. 105155 while the vessel was at Muskegon, Michigan.

At approximately 0030 on this date, Appellant was in the ship's pantry and he attacked Svendsen when he entered the pantry to put a cup in the sink. Appellant struck Svendsen in the face knocking him first against the door casing and then onto the floor in the hallway. Svendsen received injuries for which he was hospitalized for approximately two weeks.

Svendsen is approximately 60 years old and weighs about 165 to 170 pounds. Appellant is 43 years old and weighs 210 pounds. He has no prior disciplinary action during 23 years of sailing on the Great Lakes.

OPINION

There is no merit in the four points raised by Appellant in this appeal.

POINT 1. Appellant was given every opportunity to obtain counsel to represent him at the hearing. He was told of this right when served with the charge and specification on 11 December, 1951, and the hearing was not convened until 19 December, 1951. At the commencement of the hearing, the Examiner went to great length to explain to Appellant his right to be represented by counsel and the effect of his plea of "guilty." Appellant affirmatively stated, "I do not desire any counsel" and his plea of "guilty" was perfectly voluntary.

POINT 2. The contention that Appellant acted in self-defense will not be considered at this late date. Appellant was afforded a fair hearing before the Examiner and any defense he had should have been presented at that time. This contention is not based on new evidence which was not known to Appellant at the time of the hearing.

POINT 3. It is stated that Appellant refrained from repeating the vulgar and vile language used by Svendsen because there was a woman acting as the reporter at the hearing. But the record does not disclose that Appellant raised any objection of this nature during the course of the hearing. In any event, Appellant would have been compelled to take proper disciplinary

steps against Svendsen for any verbal abuse rather than to take matters in his own hands to the extent of two weeks' hospitalization for Svendsen.

POINT 4. In view of the fact that the execution of proper disciplinary measures rests primarily upon a ship's officers and since Appellant will be deprived of work for less than a year due to the seasonal nature of shipping on the Great Lakes, I do not think that the order imposed by the Examiner is too harsh. There is no authority to levy a fine against seamen in these remedial proceedings. Consequently, the desired end is best served by the outright and probationary order imposed, and said order will be sustained in its entirety.

ORDER

The Order of the Examiner dated 19 December, 1951, 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 April, 1952.

***** END OF DECISION NO. 563 *****

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