

In the Matter of Merchant Mariner's Document No. Z-19648
Issued to: GEORGE DEWEY MUGGE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

622

GEORGE DEWEY MUGGE

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 15 August, 1952, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's document No. Z-19648 issued to George Dewey Mugge upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as messman on board the American SS WELLESLEY VICTORY under authority of the document above described, on or about 18 March, 1951, while said vessel was in the port of Yokohama, he wrongfully had in his possession a narcotic substance; to wit, morphine.

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 "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence an authenticated copy of the record of Appellant's trial before the General Provost Court at Yokohama, Honshu, Japan, on 3 April, 1951. In defense, Appellant made an unsworn statement to the effect that he was not an addict and used morphine only occasionally in small amounts in order to relieve the severe pain and nervousness which resulted from an operation performed in 1929.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-19648 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the order is too harsh and unjust to impose upon a 54 year old seaman who has had a clear record for ten years and knows no other occupation; that Appellant did not use narcotics aboard ship because his pain was less when on a voyage; that one ampule of morphine was found on him while ashore and this amount was too small a dose for an addict; that the Examiner gave too much consideration to Appellant's refusal to divulge the name of the Japanese physician who gave the morphine ampule to Appellant; and that this revocation is not required by the policy of the Coast Guard because Appellant did not have narcotics aboard ship and he is not an addict.

FINDINGS OF FACT

On 18 March, 1951, Appellant was serving as messman on board the American SS WELLESLEY VICTORY and acting under authority of his Merchant Mariner's Document No. Z-19648 while the ship was in the port of Yokohama, Japan.

When Appellant entered the North Pier, Yokohama, at about 1930 on this date, to return to his ship, he was searched by a member of the Military Police who was the guard posted at North Pier. In Appellant's right shirt pocket, the guard found one hypodermic

syringe, two hypodermic needles, and one ampule containing a white liquid. Subsequent chemical analysis at the Far East Command Criminal Investigation Laboratory on 21 March, 1951, disclosed that the ampule contained one cubic centimeter (.3937 inches cubed) of morphine hydrochloride and indicated that the syringe and two needles bore traces of a morphine compound.

As a result of his apprehension with these items, Appellant was charged with violation of the Japanese Narcotics Control Law of 1948 in that he wrongfully had narcotics in his possession on 18 March, 1951. At his trial by the General Provost Court at Yokohama, Honshu, Japan, on 3 April, 1951, Appellant was represented by regularly appointed defense counsel and he entered a plea of guilty to the alleged offense. A stipulation was entered into as to the above facts and Appellant orally submitted an unsworn statement. He said that he had obtained the morphine from a doctor to use as an "emergency shot," if necessary, to relieve him of the constant pain and nervousness from which he has suffered since the time of an improperly performed operation in 1929; that he has been using narcotics over a period of thirty years and was formerly an addict; that he has been able to stay away from narcotics addiction by going to sea since 1942 and only taking a "shot" when he feels the need to do so upon going ashore; and that he would not reveal the name of the Japanese doctor who gave him the ampule in good faith because it would mean trouble for the doctor. Appellant was convicted and sentenced to six months at hard labor but the sentence was suspended. The reviewing authority approved the sentence imposed by the Court.

OPINION

Although Appellant's conviction by the Provost Court at Yokohama is not *res judicata* in this proceeding, it presents a strong *prima facie* case against Appellant because the conviction was based upon facts which are identical to the facts in this case and also because Appellant was charged with the wrongful possession of narcotics in both cases.

None of the points raised in this appeal persuade me to consider mitigating the sentence imposed by the Examiner. The fact that Appellant was not apprehended aboard ship with the narcotics

in his possession is not significant. Appellant stated that he intended to take the morphine on board for emergency purposes (this, despite his claim that he has "never had narcotics aboard ship" and that he is "most free from the pain" when on a voyage) and he was subject to disciplinary action under these proceedings at all times while he was signed on the articles of the ship.

The amount of narcotics found in Appellant's possession is not important. In addition, the quantity has been figuratively magnified many times by Appellant's admissions concerning his wide experience with narcotics. His statement that he first used narcotics thirty years ago does not lend sincerity to his claim that he now uses narcotics because of an improperly performed operation in 1929.

Regardless of the truthfulness of Appellant's many questionable and unsworn to statements, it may be stated with all sincerity that the American Merchant Marine cannot function properly with seamen who are recuperating patients or narcotics addicts who are attempting to rehabilitate themselves. In order to properly comply with the statutory duty to protect lives and property at sea, it is the policy of the Coast Guard to revoke the documents of a seaman who is found guilty of any offense associated with narcotics or of possession of the smallest particle of narcotics.

ORDER

The order of the Examiner dated at New York City on 15 August, 1952, is AFFIRMED.

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

Dated at Washington, D. C., this 29th day of December, 1952.

***** END OF DECISION NO. 622 *****

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