

In the Matter of Merchant Mariner's Document Z-524765  
Issued to: SAUL MILTON PENNER

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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SAUL MILTON PENNER

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

On February 17, 1949, an Examiner of the United States Coast Guard entered an order revoking Merchant Mariner's Document Z-524765 issued to Saul Milton Penner. This action of the Examiner was predicated upon a duly conducted hearing at which the appellant was charged with and found guilty of negligence (repeatedly fail to perform duties in engine room and on deck) misconduct (permit person and clothing remain in such dirty condition as to be source of continual complaint by crew members and damage to ship's linen by lying on bunk when clothing was substantially soiled with oil) and incompetence (physically and/or mentally incompetent to perform duties) while serving aboard the SS JULIEN DUBUQUE on a voyage commencing May 9, 1948 and continuing until September 9, 1948. Appellant, acting as his own counsel, interposed no objection to the introduction into evidence of the record of the investigation held at Philadelphia, Pennsylvania, on September 10, 1948.

The appellant pleaded guilty, with an explanation, to the charge of negligence and the two supporting specifications. The appellant pleaded not guilty to the charge of misconduct and the two supporting specifications. He also pleaded not guilty to the third charge and its supporting specification. The appellant took the stand in his own behalf and pleaded in mitigation of the charge of negligence that he had agreed to serve in the wrong rating aboard the vessel, i.e., wiper as he was unfamiliar with the duties required of such rating and the engine room was too hot. With respect to the charge of misconduct, the appellant admitted lying on his bunk on several occasions without removing his soiled clothing but stated in mitigation that each time he did so there was a blanket between him and the linen on the bunk. No other witness appeared for the appellant. The Investigating Officer described the results of his investigation of the complaint. The Philadelphia investigation record, which was admitted without objection into evidence, reveals that five witnesses appeared for the Government and one witness appeared for the appellant. After receiving this evidence the Examiner found the charge of negligence supported by two specifications proven by plea; the charge of misconduct supported by two specifications proved; the charge of incompetence supported by one specification proved and entered the order of revocation.

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

- (a) That the appellant made a mistake in switching to the engine room in the capacity of wiper;
- (b) That it was the appellant's first trip as a wiper;
- (c) That the appellant was so fatigued after his tour of duty in the engine room he fell across his bunk without washing;
- (d) That the appellant has served on several vessels in the steward's department satisfactorily; and
- (c) That the appellant is his sole support of his widowed mother.

#### OPINION

The record in this case indicates that the appellant after being properly instructed on his duties as a wiper in the engine room of the JULIEN DUBUQUE repeatedly failed to perform such duties in the manner in which he had been instructed. There can be no question that the evidence in the case clearly supports the charge of negligence and the first specification. As to the second specification, the assignment of the appellant to the rating of ordinary seaman, a rating for which he was not certificated was in violation of the provisions of 46 U.S.C. 672(g) and therefore I am setting aside the appellant's plea of guilty to this specification. The record with respect to the charges of misconduct and incompetence and supporting specifications offers substantial evidence to sustain the findings of the Examiner as to such charges and specifications.

I find nothing to warrant my intervening in this case.

#### CONCLUSION AND ORDER

It is ordered and directed that the decision of the Coast Guard Examiner dated February 17, 1949, should be, and it is AFFIRMED.

J.F.FARLEY  
Admiral, U. S. Coast Guard

Commandant

Dated at Washington, D. C., this 26th day of April, 1949.