

In The Matter of Certificate of Service No. C-128270 & Merchant Mariner's Document Z-225209D1

Issued to: ENRIQUE GUTIERREZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ENRIQUE GUTIERREZ

This appeal comes before me pursuant to the provisions of Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 1 June, 1949, Enrique Gutierrez appeared before an Examiner of the United States Coast Guard at New York to answer a charge of "misconduct" supported by a specification alleging that while serving as fireman on board a merchant vessel of the United States, the SS BORINQUEN, under authority of his duly issued Certificate of Service, on or about 10 July, 1947, Appellant had in his possession, unlawfully, while said vessel was in the port of New York, certain narcotics, to wit, marijuana.

Voluntarily waiving his right to representation by counsel, and having been fully informed of all other rights and privileges to which he was entitled, Appellant entered a plea of "guilty" to the charge and specification. Thereupon, the Examiner entered an order revoking Merchant Mariner's Document Z-225209D1 and all other documents, certificates of service and all licenses issued to Enrique Gutierrez.

This appeal followed and although Appellant has filed no formal assignments of error or grounds for appeal, I have assumed he intends to base my review upon his request at the hearing that he be given favorable consideration because he is now married; his wife is sick and cannot work; he cannot find employment which he needs in order to obtain money to pay the doctor; and that he has not used marijuana since the occasion which is under consideration.

FINDINGS OF FACT

On 10 July, 1947, Appellant was apprehended by the Customs Port Patrol at Pier 92, North River, New York, when he was leaving the SS BORINQUEN on which he was employed as a fireman under authority of his duly issued Certificate of Service and Merchant Mariner's Document. At that time, he had in his possession twenty-five marijuana cigarettes.

On 8 August, 1947, Appellant appeared before United States Judge Gaston L. Porterie sitting in the United States District Court of New York and pleaded guilty to an indictment which charged him with possession of marijuana cigarettes. Appellant was then given a sentence which was suspended and he was placed on probation for one year.

No explanation was offered by Appellant for his possession of the cigarettes.

Appellant has a clear record as a Merchant seaman both before and since the incident.

OPINION

The statement of the Examiner toward the close of the hearing (R.6) so accurately reflects my own opinion that I adopt it, in part, for the purpose of this decision:

"The use or possession or transportation of narcotics at sea is a much more serious and dangerous offense than on shore. By that I mean this, when under the influence of marijuana, a seaman is not responsible for what he does. Frequently, he doesn't know what he is doing. The result is and has been in many cases that a man who has used the drug has committed acts which have endangered the entire ship and the entire personnel aboard the ship, sometimes resulting in serious damage to the ship, other times resulting in serious injury or loss of life to crew members other than himself."

I may add the further observation that persons who use, possess, transport, or otherwise participate in the narcotic and drug traffic are undesirable seamen in the American Merchant Marine.

CONCLUSION AND ORDER

I Find nothing in this record which warrants any interference with the Order of the Coast Guard Examiner at New York dated 1 June, 1949, revoking Certificate of Service No. C-128270, Merchant Mariner's Document Z225209D1 and all other documents, certificates of service and/or licenses issued by the Coast Guard to Enrique Gutierrez, and said Order is AFFIRMED.

J.F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 9th day of Sept., 1949.