

In the Matter of Certificate of Service No. E-734265
Issued to: JOHN W. WITKOWSKI

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

371

JOHN W. WITKOWSKI

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

On 7 July, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York City to answer a charge of misconduct supported by two specifications. The first specification alleges that while Appellant was serving as a crew member on board the American SS WESTERLY VICTORY, under authority of Certificate of Service No. E-734265, he carried away the sum of approximately two hundred and forty-four dollars which was the property of Captain Timmons, a passenger aboard the said vessel. The second specification alleges that, while Appellant was serving as above, he unlawfully had firearms in his possession aboard the SS WESTERLY VICTORY.

At the hearing, Appellant was fully informed as to the nature of the proceedings, the possible consequences and all the rights to which he was entitled at the hearing. Appellant voluntarily waived his right to representation by counsel and pleaded "guilty" to the specifications and charge. After the Investigating Officer had completed his opening statement, including a summary of the investigation, and Appellant had been given an opportunity to introduce evidence concerning mitigating circumstances, the Examiner found the specifications and charge "proved by plea." He thereupon entered an order suspending Certificate of Service No. E-734265, and all other valid certificates or documents issued to Appellant by the United States Coast Guard, for a period of twelve months; six months of this suspension to be outright and the remaining six months subject to six months probation.

The appeal is a plea of clemency based on the fact that Appellant was intoxicated at the time of the theft and he was not aware of the gravity of the offense. Appellant also states that he is the main source of support for his family.

The prior record of the person charged consists of an admonition on 21 December, 1945, for unlawfully disposing of ship's stores on 22 November, 1945, while serving aboard the SS JOEL CHANDLER HARRIS.

Appellant states that he desires to make the sea his livelihood. He has been going to sea since he entered the U.S. Navy in 1942. He received an honorable discharge after approximately three and a half years in the Navy. He is twenty-seven years of age and not married.

FINDINGS OF FACT

On or about 28 October, 1946, Appellant was serving as a member of the crew in the capacity of second baker on board the American SS WESTERLY VICTORY, under authority of Certificate of Service No. E-734265, while the ship was at sea. On this date, at about one o'clock in the morning, Appellant entered the room on board the WESTERLY VICTORY which had been assigned to Captain Timmons, an Army officer who was a passenger aboard the vessel. Appellant had been drinking rather heavily at this time. He searched the trousers of Captain Timmons and found a wallet in a pocket while the latter person was asleep. Appellant removed approximately two hundred and forty-four dollars from the wallet. When he awoke and discovered the loss, Captain Timmons reported the theft to the transport commander attached to this troop carrier. That same afternoon, Appellant was questioned about the theft. He admitted that he had taken the money and it was returned to Captain Timmons. Upon searching Appellant's room, an unloaded 32-calibre German Luger pistol was discovered. There was no ammunition for the pistol in the room of the person charged. Appellant had purchased it from one of the soldiers aboard the ship. Civil charges were not pressed against Appellant because Captain Timmons was anxious to return to his home rather than to delay in New York to appear before the Grand Jury.

OPINION

From my examination of the record in this case, I find no reason, especially in view of Appellant's admissions, to disturb the order of the Examiner.

Appellant stated that he committed the theft even though he was not in need of money, knew that he was stealing and did not know why he took it. (R.3) He suggests that the order imposed is unreasonable because he was intoxicated at the time and would not have committed the offense if he had been in his right mind and realized the gravity of the offense.

It does not appear from Appellant's above statements that he was so intoxicated at the time as not to know what he was doing. In addition, the defense of intoxication is of no avail since it is considered an act of misconduct in itself for a merchant seaman to have intoxicating liquors in his possession while at sea on an American vessel. Hence, the added factor of intoxication intensified the necessity for the Coast Guard to take action concerning the theft rather than being any reason to justify modification of the Examiner's order by reducing the period or terms of the suspension imposed.

According to Appellant's testimony, he was honorably discharged from the Navy in July, 1945, and joined the merchant marine service a month later. Then he received an admonition for an offense committed in November, 1945, only three months after he began sailing as a merchant mariner. And less than a year later, he committed the offenses with which this proceeding is

concerned. This offense is further aggravated by the fact that the first specification herein alleges an offense of the same nature as the offense for which Appellant received the admonition for the offense committed in November, 1945.

CONCLUSION AND ORDER

In view of the above circumstances, I feel that the order of the Examiner is extremely lenient, and said order is, therefore, AFFIRMED.

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

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