

In the Matter of Certificate of Service No. E-735915
Issued to: PHILLIP MARX

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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PHILLIP MARX

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

On 13 June, 1949, an Examiner of the United States Coast Guard at New York City entered an order revoking Appellant's certificate of service upon finding him guilty of "misconduct". The charge was supported by a specification alleging that while serving as officer's bedroom steward on board the American S. S. WASHINGTON, under authority of Certificate of Service No. 735915, on or about 31 May, 1949, Appellant made improper advances towards James Sharpe, a passenger, while said vessel was at sea. An appeal was taken from this order and on 27 September, 1949, I remanded the case for further proceedings because the Examiner failed to enter a plea of "not guilty" even though Appellant's testimony was inconsistent with his plea of "guilty" and also because of the inadequacy of the incomplete log entry to establish a prima facie case in support of the specification.

On 11, 13 October and 3,9 November, 1949, pursuant to my order of 27 September, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York City to answer the above charge and specification.

At this latter hearing, Appellant was fully informed as to the nature of the proceedings, the possible consequences and all the rights to which he was entitled. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. In accordance with the order of the Commandant, the Examiner rejected Appellant's former plea of "guilty" and entered a plea of "not guilty" to the charge and specification.

After the Investigating Officer had completed his opening statement which was revised to conform to the plea of "not guilty", he introduced in evidence the testimony of two special agents of the Federal Bureau of Investigation who had conducted an investigation with respect to Appellant's alleged immoral conduct. He also submitted a deposition by James Sharpe and then rested his case. In defense, Appellant testified under oath in his own behalf and presented letters of recommendation.

After both parties had been given an opportunity to make closing arguments and submit proposed findings and conclusions, the Examiner found the specification and charge "proved." He,

thereupon, entered an order revoking Appellant's Certificate of Service No. E-735915 and all other valid certificates, licenses and documents issued to him by the Coast Guard or its predecessor authority.

In the appeal submitted by Appellant, it is urged that the deposition states Appellant did not use any profane language; that Appellant's actions in the gear locker were over emphasized and some of his statements were misunderstood; that Appellant had no attorney at the hearing; that he has a commendable record; and that the order of revocation is too severe.

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

FINDINGS OF FACT

On 31 May, 1949, Appellant was serving as officer's bedroom steward on board the American S.S. WASHINGTON, acting under authority of his Certificate of Service No. E-735915, while the ship was at sea. On this date, James Sharpe, who was sixteen years of age, was traveling as a passenger aboard the S.S. WASHINGTON with his family.

Late in the morning on this date, Appellant was in the vicinity of his gear locker on the boat deck when James Sharpe approached. Appellant had often seen Sharpe on deck and usually spoke to him. On this occasion, Appellant started conversing with Sharpe and asked him if he would like to have some "Popular Sciences" magazines to look at. Sharpe replied that he would like to have some of the magazines and he voluntarily accompanied Appellant to the gear locker to get the magazines. After they had both entered the gear locker, Appellant shut and locked the door. Appellant then admired Sharpe's build and felt his chest, arms and limbs. He started talking about Sharpe's diet and his limp which was caused by infantile paralysis. Appellant asked Sharpe about the physical condition of his leg and whether it bothered him very much. As Appellant questioned him as to whether his infirmity bothered or affected his penis, he twice briefly touched the boy's private parts through his trousers.

Appellant said he did not have any immoral intentions or desire to frighten the boy by doing this. Sharpe immediately moved away from Appellant and said he had to leave to get dressed for lunch. Appellant stepped back and continued to talk about the boy's diet. About five minutes after Appellant had touched Sharpe, he unlocked the door, gave him the "Popular Sciences" magazines and let the boy go. When Appellant had first opened the door, he looked out, as if to make sure that nobody was outside, before he opened the door for Sharpe to leave. Appellant did not make any physical attempt to detain Sharpe in the gear locker.

Appellant is 36 years of age, single, and has been going to sea for approximately four years. There is no record of any prior disciplinary action by the Coast Guard and the letters submitted by him recommend him highly. Included in these letters of recommendation is one by the chief officer of the S.S. WASHINGTON.

OPINION

Despite Appellant's previously clear record and the numerous recommendations in his behalf, it is my opinion that there is no merit in his contention that the order of revocation is too severe.

Whether Appellant used any profane language, during his conversation with Sharpe in the gear locker, is immaterial to the proof of the charge and specification on which this proceeding is based. By his own admission, Appellant touched the private parts of this minor passenger with his hand. Appellant admits that this action on his part was intentional and not accidental. The Examiner has fully amplified, in his opinion, why the Appellant's actions, in themselves, are ample to support the charge and specification herein and why the order of revocation is not considered to be excessive. Appellant was fully informed of his right to counsel but he voluntarily chose to represent himself.

CONCLUSION

It is the Coast Guard's position that it will not wait until acts of perversion have taken place but will act protectively at the earliest time that the potential evil comes to light. Therefore, the order of the Examiner must be sustained.

ORDER

The order of the Examiner dated 9 November, 1949, should be, and it is, AFFIRMED.

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

Dated at Washington, D. C., this 8th day of March, 1950.