

In the Matter of Certificate of Service No.: E-17457  
Issued to: RALPH ROLAND

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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RALPH ROLAND

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

On 6 May, 1949, an Examiner of the United States Coast Guard at New York City revoked Certificate of Service No. E-17457 issued to Ralph Roland upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as steward on board the American S. S. SANTA CECILIA, under authority of the document above described, on or about 21 October, 1946, he unlawfully had in his possession 17.616 ounces of pure cocaine hydrochloride while said vessel was in the Port of New York.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of the seriousness of the charge and of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification.

Thereupon, the Investigating Officer made his opening statement and Appellant made a statement under oath relating the circumstances leading up to the commission of the offense.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the charge "proved" by plea and entered an order revoking Appellant's Certificate of Service No. E-17457 and all other valid licenses, certificates or documents issued to him by the U. S. Coast Guard or its predecessor authority.

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

1. Appellant was denied due process, as required by the Administrative Procedure Act, since the Examiner was precluded from imposing any other order as a result of the Coast Guard policy of revoking documents in all narcotics cases; or the Hearing Examiner's construction of Section 239 of Title 46 U.S.C.A. (4450 Revised Statutes, as amended) divesting him of discretion to make a finding other than "revocation", because the offense involved dealing in narcotics, was erroneous as a matter of law;
2. Appellant was incorrectly advised that several possible determinations might

be made in this proceeding when, under the Hearing Examiner's restricted construction of said Section 239, only one determination -- to wit, revocation -- was possible;

3. Whether or not there was error of law in the interpretation and application of Section 239, the revocation of license and certificate in the instant case inflicts punishment that is excessive, unduly cruel and hence an abuse of power; and
4. In any event, the termination of a year has almost occurred since the Hearing Examiner's revocation order, and upon a review thereof, in the light of all the facts and circumstances herein, the said order should now be modified.

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

#### FINDINGS OF FACT

On 21 October, 1946, Appellant was serving as steward on board the American S. S. SANTA CECILIA, acting under authority of Certificate of Service No. E-17457, while the ship was in the Port of New York.

On this date while leaving the SANTA CECILIA at Pier "K", Weehawken, New Jersey, Appellant was searched by Customs Patrol Officers and a package containing 17.616 ounces of cocaine hydrochloride was found next to his body under a back supporter worn by him.

Appellant had acquired the cocaine while the ship was in the port of Valparaiso, Chile. He purchased it for \$150 intending to sell it at a profit in the United States in order to help his brother's family in Spain. Appellant had aided in supporting this family for a considerable number of years and, at this time, the financial burden was unusually heavy since one of Appellant's brother's children had been injured by an automobile.

On 19 November, 1946, Appellant pleaded guilty in the U. S. District Court for the District of New Jersey, to the charge of having the 17.616 ounces of cocaine hydrochloride in his possession and he was sentenced to three years in the Federal Correctional Institute at Milan, Michigan. He served approximately two and half years, time off having been granted him because of good behavior.

There is no record of any prior disciplinary action having been taken against Appellant during his twenty-eight years at sea. He is single and approaching fifty years of age. Numerous letters attesting to Appellant's good character and satisfactory sea service were submitted for consideration.

#### OPINION

The facts of the case as set forth above are not contested. Appellant's complaints are that the requirements of due process, as made applicable to administrative proceedings by the Administrative Procedure Act, have not been met; Appellant was erroneously apprised as to what the possible results might be if the charge against him were sustained; revocation, in this case, was excessive and an abuse of power; and due to the elapsed time of more than a year since the order was imposed, it should be modified in view of Appellant's good record.

A large portion of Appellant's oral argument on appeal was devoted to the contention that Appellant was not afforded a fair hearing and he was thereby denied due process. It is stated that the Examiner was divested of the discretion demanded by the Administrative Procedure Act because he felt bound either by the law (46 U.S.C. 239) or by the policy of the Coast Guard to impose no order other than revocation of all Appellant's documents. In connection with this argument, Appellant stated that the Examiner should have advised Appellant that if the charge and specification were proved, he would have his documents revoked.

It appears that Appellant's position regarding the above two points is somewhat inconsistent. It was held in Ashburg Truck Company v. Railroad Commission of the State of California, 52 F. 2d 263, affirmed 287 U.S. 570, that the requirement of a fair hearing is fulfilled if the party is apprised of the nature of the hearing and is afforded an opportunity to offer evidence and examine the opposition. If, as Appellant suggests, he had been told that there was no alternative to revocation if the charge was proved, he might well argue that he was deprived of a fair hearing because the statute gives the hearing officer the authority to "suspend or revoke." Since the Examiner followed the statute in this respect, I see no merit in this contention.

The argument that the Examiner was precluded by his interpretation of the statute from suspending Appellant's certificate is not convincing. The fact that the ultimate order imposed was revocation does not justify the statement that the Examiner felt bound by the statute to resort to this action exclusive of all other remedies. As pointed out by Appellant, there is no specific reference to narcotics offenses in the statute; and there is nothing in the record from which it can reasonably be inferred that the Examiner construed the statute in this manner.

Whether or not the choice of words used by the Examiner was due to his concept of the policy of the Coast Guard in narcotics cases, I do not think that his language indicates he felt conclusively bound to find Appellant guilty regardless of the circumstances. The Examiner dwelt on the extremely grave nature of narcotics offenses and he specifically pointed out that Appellant knowingly and wilfully brought the cocaine hydrochloride back to this country with him. He then stated that Appellant's "creditable service \* \* \* \* cannot be taken into consideration, in mitigation of any order that I may give \* \* \* \*." But immediately after this sentence, the Examiner said, "I have considered the letters which you have offered here in evidence \* \* \* \*." It seems to me that although the precise selection of words may be open to argument, the gist of the Examiner's statements is that he considered all the evidence in the case but was of the opinion that the circumstances did not justify imposing any order less than revocation of Appellant's documents. Admittedly, he was probably strongly influenced by the Coast Guard policy of revocation in narcotics cases. But this policy was not, in any way, involved in arriving at the conclusion that

Appellant was guilty of the offense charged. Appellant readily and completely admitted his guilt. He was at liberty to deny the charge and offer evidence to substantiate his denial. Simply because he freely admitted his guilt and then presented evidence of an unblemished record for twenty-eight years at sea which did not persuade the Examiner to impose a lesser order than revocation, is not a valid reason for claiming that Appellant was not given a fair hearing. The situation would have been entirely different if the Examiner had permitted the policy of the Coast Guard to influence him in arriving at the conclusion that Appellant was guilty.

There is no statutory or other prohibition which prevents the Coast Guard from adopting policies consistent with the safety of lives and property at sea. On the contrary, it is my duty under Title 46 U.S.C. 239 to prescribe rules and regulations for this purpose. This policy of revocation in narcotics cases is considered expedient to diminish the many risks to the lives of seafaring men and to protect ships and their cargoes from unnecessary danger. The Coast Guard Examiners are expected to comply with all such policies formulated by me; and they may at any time consult with me on questions of policy. 46 C.F.R. 137.07-5(d). Such a policy as this is necessary for the sake of uniformity as well as because of the seriousness of narcotics offenses. Hence, I do not think that such a policy controls the Examiners to such an extent that it defeats due process so long as its influence is brought to bear only after the Examiner has arrived at the conclusion that the charge has been proved.

In view of the above comments and those of the Examiner, it does not appear that the order of revocation imposed is unduly cruel or an abuse of power. My duties under Title 46 U.S.C. 239 do not encompass rehabilitation as in the Federal Institutions for the detention of criminals. My primary obligation under the statute is to impose restrictions on men sailing on American merchant vessels when their past conduct has marked them as potential dangers to thousands of other seamen. Naturally, these restrictions should be commensurate with the gravity of the offenses committed. Consequently, it is my opinion that the order of the Examiner should be sustained.

#### ORDER

The Order of the Examiner dated 6 May, 1949, should be, and it is, AFFIRMED.

Merlin O'Neill

Dated at Washington, D. C., this 2nd day of August, 1950.

#### APPEARANCES:

Carol King and Blanch Freedman of New York City  
Blanch Freedman, Advocate

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