

In the Matter of Certificate of Service No. E-46462
Issued to: JULIAN ANABO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JULIAN ANABO

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

On 10 December, 1951, an Examiner of the United States Coast Guard at San Francisco, California, revoked Certificate of Service No. E-46462 issued to Julian Anabo upon finding him guilty of misconduct based upon two specifications alleging in substance that on or after 18 April, 1938, he wrongfully altered and changed his Continuous Discharge Book No. 055505 and his Certificate of Service No. E-46462, the former by entering four additional ratings and the latter by changing the original rating and department designations.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer introduced in evidence his own testimony and that of Yeoman Domingo who had interviewed Appellant when he applied for duplicate documents.

In defense, Appellant made a statement and was questioned while not under oath. He stated that he was in the Philippine Islands during the war years and left these papers at his brother's house in Manila for "over four years" (R.9). Appellant claims that when his seaman's papers were later returned to him by somebody in Manila, the alleged alterations had already been made (R.13).

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by proof of the two specifications and entered the order revoking Appellant's Certificate of Service No. E-46462 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the alterations to Appellant's Continuous Discharge Book and Certificate of Service were made by someone else while these documents were not in Appellant's possession.

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

FINDINGS OF FACT

On 18 April, 1938, Appellant was issued Certificate of Service No. E-46462 and Continuous Discharge Book No. 055505 by the U. S. Board of Local Inspectors, Bureau of Marine Inspection and Navigation, United States Department of Commerce, at the Port of San Francisco, California.

The face of the Certificate stated that Appellant was "qualified to serve aboard American vessels of 100 tons gross and upward in the Steward's Department in a rating of Messman. (F.H.)" The department designation of "Steward's" and the rating designation of Messman (F.H.)" were filled in by the issuing authorities with a pen on the regular form certificate. On the date of issuance, 18 April, 1938, the certificate was endorsed on the reverse side to qualify Appellant to serve in the Deck Department "in the rating of Ordinary seaman" and in the Engine Department "in the rating of Wiper." These department and rating designations were also filled in with a pen by the issuing authority. The Certificate now shows that the department and rating designations of "Steward's" and "Messman," respectively, on the face of the Certificate have been partially erased and the word "Oiler" substituted in both places.

In Appellant's Continuous Discharge Book, the word "Messman" was originally written in with ink in the blank space under the column headed "Seaman's Certificates . . . Grade"; and under the adjoining column, headed "Seaman's Certificates . . . Number," was written "E-46462." At some time subsequent to the issuance of the Continuous Discharge Book, the ratings in the "Grade" column were added to so as to include cook, engineer, fireman, watertender, and oiler, as well as the proper rating of messman. The only voyage listed in Appellant's Continuous Discharge Book was on the STEPHEN HOPKINS from 22 August, 1945, at Manila, P.I., to 9 October, 1945, at San Francisco, California, during which Appellant served as a wiper in accordance with one of the original endorsements on his Certificate of Service.

In 1951, Appellant appeared at the Marine Inspection Office at San Francisco and requested documents to replace the altered Certificate of Service No. E-46462 and Continuous Discharge Book No. 055505 which were in his possession at the time. Appellant handed the two altered documents to Yeoman Domingo who then examined them and noticed the alterations, some of which are very obvious from observation of the documents. When questioned by the yeoman about the alterations, Appellant stated that he had buried the documents under the ground while in the Philippines during the war in order to avoid being identified and persecuted by the Japanese occupation Forces; but he did not offer any explanation for the alterations.

At the hearing, Appellant verified the accuracy of Domingo's testimony that Appellant stated he had buried the documents. But Appellant later testified both that he had left the documents at a friend's house and at his brother's house in Manila.

I take official notice of the fact that Appellant deposited the two altered documents with the Yeoman and later signed a Lost Document Affidavit made out in accordance with his Certificate

of Service as it was originally issued to him.

OPINION

This appeal rests upon the sole proposition that the alterations in Appellant's documents were made by someone other than the Appellant during the war years when he claims the documents were not in his possession.

Because of the confusing and unsatisfactory nature of Appellant's testimony, the Examiner did not accept such testimony as creditable evidence and concluded that it failed to overcome the prima facie case made out by proof of the alterations and possession of the documents by the Appellant.

The record in this case leaves much to be desired in connection with the Appellant's purpose in seeking to exchange the two altered documents for "valid" documents, and the testimony of Yeoman Domingo affords little light on this point. If, in fact, Appellant's bona fide design was to surrender the forged documents because they had been altered and were invalid in exchange for new documents of the type originally issued to him, it appears to me that such action would support his denial that the alterations were made by him. On the other hand, if Appellant's purpose was to exchange the documents for new ones in their altered form, or to secure the "validation" of such documents under the Port Security Regulations, a different situation would be presented.

Ordinarily, because of the unsatisfactory state of the record, I would remand this case to the Examiner for the purpose of taking further testimony. However, in view of the circumstances, particularly the fact that Appellant has been denied the use of any documents since 10 December, 1951, I feel that he should be given the benefit of the doubt and the charge and specifications dismissed.

ORDER

Certificate of Service No. E-46462 and Continuous Discharge Book No. 055505 having been altered and mutilated are revoked and shall be canceled.

A Merchant Mariner's Document shall be immediately issued to Appellant in the ratings originally authorized on 18 April, 1938, by Certificate of Service No. E-46462.

The order of the Examiner dated 10 December, is VACATED, SET ASIDE and REVERSED. The charge and specifications proffered against Appellant are hereby DISMISSED.

MERLIN O'NEILL
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 23rd day of April, 1952.