

In the Matter of Merchant Mariner's Document No. Z-169842
Issued to: WILLIAM SAMUEL WRIGHT

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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WILLIAM SAMUEL WRIGHT

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 15 June, 1951, an Examiner of the United States Coast Guard at Norfolk, Virginia, entered an order revoking Appellant's Merchant Mariner's Document No. Z-169842 upon finding him guilty of misconduct. The charge was supported by a specification alleging in substance that while serving as ordinary seaman on board the American SS HAMILTON VICTORY, under authority of the document above described, on or about 1 April, 1951, while said vessel was in the port of Hampton Roads, Virginia, he wrongfully had a quantity of marijuana in his possession. An appeal was taken from this order and on 8 November, 1951, I remanded the case for further proceedings.

On 15 and 18 February, 1952, pursuant to my order of 8 November, 1951, Appellant appeared before a different Examiner of the United States Coast Guard at Norfolk, Virginia, to answer the above charge and specification.

At each 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 specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of U. S. Customs Agent Wallace J. Osmer, U. S. Customs Port Patrol Officer Francis L. Thomason, and U. S. Customs Clerk Herbert E. Bing.

In defense, Appellant testified under oath in his own behalf. It was stipulated by the parties that the testimony of Vernon L. Giddings would be substantially the same as the testimony which he had given in the previous hearing.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had

been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-169842 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:

- A. The findings of fact and conclusions of the Examiner are not in accord with the opinion on the prior appeal of this case.
- B. No consideration was given to Appellant's acquittal in the Federal court based upon an identical charge and the same evidence.
- C. Appellant's testimony should be given serious consideration since it is corroborated by the testimony of Giddings.
- D. Assuming the correctness of the Examiner's findings of fact, the evidence is not sufficient for an adverse decision.
- E. On 10 January, 1952, the Examiner advised Appellant that he was guilty in the opinion of the Examiner.
- F. The entire decision was contrary to the law and evidence and should be set aside in accordance with Appellant's dismissal in the Federal court.

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

FINDINGS OF FACT

On 1 April, 1951, Appellant was serving as ordinary seaman on board the American SS HAMILTON VICTORY and acting under authority of his Merchant Mariner's Document No. Z-169842 while the ship was at Hampton Roads, Virginia, after completion of a foreign voyage.

On this date, a searching party boarded the HAMILTON VICTORY. This party included U. S. Customs Agent Wallace J. Osmer and U. S. Customs Port Patrol Officer Francis L. Thomason. These two men went to Appellant's quarters and sent for him. When Appellant arrived, Agent Osmer commenced searching him and found five cellophane packages of marijuana in the right side pocket of the tan leather jacket which Appellant was wearing. These packages were each about five inches long, two inches wide, and one-half inch thick. All five packages were sealed and four of them included a white slip of paper containing figures indicating the price or weight of the contents.

Osmer ordered Appellant to take off the jacket and Officer Thomason continued the search of Appellant's person. In his right trouser pocket, Thomason located a small size wood and cardboard match box which contained a key and a white slip of paper similar to the other four slips of paper. Each of these pieces of paper was approximately the size of a postage stamp.

When asked about the five packages, Appellant stated that he had found them on deck. A thorough search of Appellant's person, clothes and quarters failed to disclose any additional evidence of marijuana. These five packages were turned over to Customs Clerk Bing. He took a sample from each package for analysis purposes. This composite sample amounted to 14.7 grains;

and the total weight of the five packages was four ounces, 110 grains. Analysis of the sample at the U. S. Customs Laboratory in Baltimore, Maryland, disclosed that the substance was marijuana.

OPINION

I do not think there is persuasive merit in any of the several contentions set forth by Appellant.

Appellant's testimony was that he had found the five packages when he and Giddings were cleaning up in the number five hold of the ship and Giddings had told Appellant to pick up a piece of a broken shovel. Appellant claims that these packages of marijuana were in a brown paper bag under the shovel. This is said to have occurred about an hour before the packages were found on Appellant. He stated that he did not turn them over to the Master because he was ashore; and since there was friction between the Master and the Chief Mate, Appellant did not tell the latter about the discovery even though Giddings had told Appellant that the packages might contain dope.

Giddings testimony corroborates that of Appellant only to the extent that Giddings told Appellant to pick up the piece of broken shovel, Giddings started up the ladder, turned around when Appellant called, and saw the packages in Appellant's hand. These are stated by Appellant to be the same packages which were discovered in his jacket pocket by Agent Osmer. Even if they were the same packages, there is not any testimony by Giddings that he saw Appellant take the packages out of the paper bag or that Giddings saw Appellant pick up the paper bag. Therefore, although Giddings' testimony corroborates the testimony of Appellant about being in the hold cleaning up, it does not corroborate Appellant's story that he found the marijuana in the paper bag under the shovel.

On the other hand, we have the testimony of two Customs men which is substantially the same concerning important factors in the search of Appellant; and the testimony of both of these men is in direct conflict with the testimony of Appellant with respect to these factors. Agent Osmer and Port Patrol Officer Thomason testified, as appears in my findings of fact, that: both Osmer and Thomason participated in the search of Appellant's person (Appellant stated that Osmer was the only person who searched him); all five packages were sealed - and a third witness, Bing, supports this view (Appellant claims he tore the end off of one of the packages when he found them in the hold); a match box was found in Appellant's pocket by Thomason and the box contained a fifth white slip of paper (Appellant testified that no match box was found in his pocket and no white slip of paper was located on his person).

On the basis of such strong evidence against Appellant, I feel bound to accept the evaluation of the credibility of the witnesses, which was made by the Examiner, despite Appellant's contention that he was acquitted in the Federal court. To accept Appellant's uncorroborated story, as to where he obtained the marijuana packages, would be indirectly rejecting the mutually corroborating testimony of Osmer and Thomason concerning the above mentioned factors since it is not plausible that Appellant's explanation could be accepted as credible evidence after rejecting his directly conflicting testimony concerning the above factors. Nor would there then be any way to account

for the presence of the fifth white slip of paper in Appellant's trousers.

It has been noted above that, contrary to Appellant's contention, this second hearing was conducted by a different Examiner than the one who presided at the first hearing of this case. In this connection, Appellant claims that the present Examiner advised Appellant before the hearing that, in the opinion of the Examiner, Appellant was guilty and that Appellant should not have to overcome the Examiner's prejudice. Routinely, I would be precluded from considering anything not contained in the record in arriving at my decision; but since Appellant has raised this issue which goes to the essence of fairness, I further note that Examiner Cuff in a letter dated 27 March, 1952, emphatically denies that he expressed any such opinion to Appellant. The Examiner states in this letter that before the hearing Appellant asked him if he had any private opinion in the case and the Examiner answered that he did not. In the absence of any proof of personal bias or prejudice on the part of the Examiner and in view of Appellant's at least partially inaccurate basis for claiming that such prejudice existed, I do not think this contention merits further consideration.

ORDER

The Order of the Examiner dated 15 June, 1951, should be, and it is, AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 7th day of July, 1952.