

In the Matter of License No. 118700 Merchant Mariner's
Document No. Z-669135-D1
Issued to: STANLEY A. CULIVER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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STANLEY A. CULIVER

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 26 March, 1952, an Examiner of the United States Coast Guard at Long Beach, California, revoked License No. 118700 and Merchant Mariner's Document No. Z-669135-D1 issued to Stanley A. Culiver upon finding him guilty of misconduct based upon eleven of fifteen specifications alleging in substance that while acting in various capacities in the service of American merchant vessels and one U.S.N.T., under authority of either his license or merchant mariner's document, between November, 1945, and July, 1951, inclusive, he failed to join his ship seven times; he was twice absent from his vessel without permission; he assaulted and injured a seaman, H. Bjork; and he once deserted his ship. The latter specification was found proved to the extent that Appellant was found guilty of the lesser included offense of failure to join.

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. Appellant was represented by an attorney of his own selection. He entered a plea of "guilty" to six of the specifications and "not guilty" to the other nine specifications proffered against him.

Thereupon, the Investigating Officer and Counsel for Appellant made their opening statements and the Investigating Officer introduced in evidence numerous documentary exhibits.

In defense, Appellant offered in evidence his own sworn testimony and the testimony of one character witness.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that four specifications were not proved, but that the charge had been proved by plea to seven specifications and proved by proof of four specifications. He then entered the order revoking Appellant's License No. 118700 and Merchant Mariner's Document No. Z-669135-D1.

From that order, this appeal has been taken, and it is urged that clemency be granted since the assault and injury of Bjork was the only serious offense found proved; Appellant served the maximum imprisonment for that offense; Appellant voluntarily appeared and requested the Coast Guard to straighten out these matters; Appellant showed good faith by attempting to rejoin his ship in several cases; and the Examiner indicated that clemency should be granted by someone in higher authority. For these reasons and in order not to deprive Appellant of his only means of livelihood, it is requested that an order short of revocation be imposed.

APPEARANCES: Messrs. Ekdale, Shallenberger & Toner, of San Pedro, California by
Gordon P. Shallenberger, Esquire, of Counsel.

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

FINDINGS OF FACT

At all times mentioned herein, Appellant was acting under the authority of his License No. 118700 or Merchant Mariner's Document No. Z-669135-D1 and in the service of the particular American Merchant Marine vessel (except the U.S.N.T. CEDAR CREEK) as set forth below.

On eight different occasions between November, 1945, and February, 1951, inclusive, Appellant failed to join his ship as follows: the SS PADUCAH VICTORY on 30 November, 1945, while serving as Junior Engineer, at Portland, Oregon; the SS NEW ZEALAND VICTORY on 11 May, 1948, while serving as Ordinary Seaman, at Cebu, P. I.; the SS PARISMINA on 6 April, 1949, while serving as Junior Third Assistant Engineer, at Seattle, Washington; the SS CHARLES BRANTLEY AYCOCK on 24 May, 1949, while serving as Fireman-Watertender, at Kobe, Japan; the USNT CEDAR CREEK on 28 August, 1949, while serving as Fireman-Watertender, at Manila, P. I.; the SS PIONEER TIDE on 4 September, 1949, while serving as Electrician, at Hongkong, China; the SS PIONEER DALE on 14 October, 1949, while serving as Engineer Utility, at Nagoya, Japan; and SS THOMAS F. BAKER on 23 February, 1951, while serving as Oiler, at Liverpool, England.

For two separate periods of time, Appellant was absent from his ship without permission: from 14 April to 3 May, 1948, inclusive, while in the service of the SS MAHLON PITNEY as Fireman-Watertender; and from 18 May to 24 May, 1949, inclusive, while in the service of the SS CHARLES BRANTLEY AYCOCK as Fireman-Watertender.

On 3 July, 1951, Appellant was serving as Third Assistant Engineer on board the SS STRATHPORT while the ship was at Narvik, Norway. On the evening of this date, and after Appellant had consumed a quantity of beer and whiskey, he was in the crew's messroom when he attacked a shipmate, H. Bjork, with his fists and without provocation. Bjork received serious injuries including a deep gash on the forehead. As a result of this offense, Appellant was convicted upon his plea of "guilty" in the United States District Court for the District of Maryland and sentenced to serve the maximum term of imprisonment of six months.

Appellant's documents were previously revoked in 1941 for a similar vicious assault but administrative clemency was granted and the issuance of new documents was authorized in 1945. In 1946, Appellant's documents were suspended for two months on nine months' probation for inattention to duty.

OPINION

The view of Appellant's prior record and the fact that he was serving in the capacity of a licensed officer when he committed the unprovoked attack upon Bjork which resulted in severe injury to Bjork, I do not think that the mitigating circumstances presented on appeal are such that the order imposed should be reduced to something less than revocation of all the seaman's documents held by Appellant. An assault of this nature indicates an abuse of responsibility by a ship's officer which is alone sufficient to merit sustaining the order.

In addition to the most serious offense, Appellant failed to join his ship eight times since being granted new documents after they were revoked the first time. Six of these incidents occurred outside of the United States and four of these six took place within a period of five months. This is a strong indication of Appellant's undependability to serve even in an unlicensed capacity aboard United States merchant vessels.

Although the eleven specifications are amply supported by the evidence, it is noted that the specification alleging failure to join at Cebu, P. I., on 11 May, 1948 (Twelfth Specification), was proved by the evidence, rather than by plea as the Examiner concluded.

ORDER

The order of the Examiner dated at Long Beach, California, on 26 March, 1953, is ~~REVERSED~~ **FIRMED**.

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

Dated at Washington, D. C., this 20th day of March, 1953.