

In the Matter of Certificate of Service No. E-539216 Merchant
Mariner's Document No. Z-478984 and Documents Licenses,
Issued to: PEDRO LOPEZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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PEDRO LOPEZ

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.

By order dated 21 February 1955, an Examiner of the United States Coast Guard at New York, New York, revoked Certificate of Service No. E-539216 and Merchant Mariner's Document No. Z-478984 issued to Pedro Lopez upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a messman on board the American SS ROBIN GOODFELLOW under authority of the documents above described, on or about 5 August 1947, he wrongfully had in his possession a narcotic substance; to wit, marijuana.

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 counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement in which he pointed out that Appellant was apprehended at Weehawken, New Jersey, with a pound and eight ounces of marijuana in his possession.

Appellant then made a statement in mitigation. He stated that he did not go to sea on American ships between 1948 and 1955 because of injuries to his right arm and hand; he was never notified of a hearing until he shipped on an American merchant ship in 1955; he knows he was guilty of a serious offense but he was only 19 years of age at the time; and he would like to be given another chance to go to sea.

At the conclusion of the hearing, having given both parties an opportunity to submit argument as well as proposed findings and

conclusions, the Examiner announced his findings and concluded that the charge had been proved by plea to the specification. He then entered the order revoking Appellant's Certificate of Service No. E-539216, Merchant Mariner's Document No. Z-478984, and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

This appeal is a plea for clemency and a request that Appellant be given another chance since he now has a wife and two children to support. Appellant states that he is not able to hold a steady job ashore because of his crippled right arm. Appellant requests the Commandant to take into consideration the lapse of time since the offense and the fact that Appellant was not notified of a hearing, until he returned to sea in 1955, although he contacted the Coast Guard on 4 or 5 occasions in the interim for different purposes. Appellant also claims that another seaman on the GOODFELLOW, who was found guilty of possession of about four pounds of marijuana, had his documents suspended for only 6 months at a hearing in 1948 or 1949.

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

FINDINGS OF FACT

On 5 August 1947, Appellant was serving as a messman on board the American SS ROBIN GOODFELLOW and acting under authority of his Certificate of Service No. E-539216 and Merchant Mariner's Document No. Z-478984 while the ship was in the port of New York.

On this date, Appellant was searched by a Customs official who found a quantity of marijuana in Appellant's sea bag. When the Customs official asked Appellant what the substance was, he admitted that it was marijuana. For this offense, Appellant was convicted on his plea of guilty before the United States District Court for the District of New Jersey.

OPINION

Official notice is taken of the fact that Appellant contacted the New York Coast Guard office on five different occasions in 1952 and 1953. But Coast Guard records do not indicate that Appellant requested a hearing and he does not contend that such a request was made. Hence, Appellant was also at fault for the lapse of time since the offense occurred. In addition, Appellant's defense could not have been prejudiced by this delay since the federal court conviction would be res judicata in these proceedings regardless of the interval since the offense.

Official notice is also taken of the fact that the documents of Appellant's fellow crew member on the GOODFELLOW were revoked at a hearing held in 1948. The case was remanded on appeal but the documents are in the custody of the Coast Guard because the seaman has not appeared for the further hearing to be held in his case.

Regardless of the personal hardship to Appellant and his family, the order of revocation will be upheld in accordance with the statutory duty of the Coast Guard to protect lives and property on American merchant vessels. Narcotics offenses are considered to be so serious that revocation of seamen's documents is mandatory in all such cases. 46 CFR 137.03-1. But in view of the length of time since this offense and the possibility that Appellant may be able to present satisfactory evidence that he has not been associated with narcotics for a period of years, Appellant will be permitted after 31 December 1955, to file an application requesting administrative clemency and the issuance of a new document. Ordinarily, such an application may not be filed until three years after revocation for a narcotics offense. 46 CFR 137.03-30.

ORDER

The order of the Examiner dated at New York, New York, on 21 February 1955 is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 10th day of June, 1955.