

In the Matter of License No. 36146 And All Other Licenses,
Certificates and Documents
Issued to: DONALD E. FISHER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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DONALD E. FISHER

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

On 3 January 1955, an Examiner of the United States Coast Guard at Seattle, Washington, revoked, on probation, License No. 36146 issued to Donald E. Fisher upon finding him guilty of misconduct based upon four specifications alleging in substance that while holding the above license as Second Mate, he did:

First Specification: * * * * on or about 26 November 1951, at Boston, Massachusetts, falsely swear that he had not been rejected after applying for a Chief Mate's license within the previous 12 months although he knew that he had failed the examination for Chief Mate at Long Beach, California, on 6 November 1951.

Second Specification * * * * on or about 26 November 1951, he violated 46 CFR 10.02-19(b) by failing to obtain the sanction of the Officer in charge, Marine Inspection, Long Beach, prior to taking the examination for a chief Mate's license at Boston.

Third Specification: * * * * on or about 13 December 1951, at Baltimore, Maryland, falsely swear that he had not been rejected after applying for a chief Mate's license within the previous 12 months although he knew that he had failed the examination for chief Mate at Long Beach on 6 November 1951 and at Boston on 3 December 1951.

Fourth Specification: * * * * on or about 13 December 1951, he violated 46 CFR 10,02-19(b) by failing to obtain the sanction of the Officers in Charge, Marine Inspection, at Long Beach and Boston, prior to taking the examination for a Chief Mate's license at Baltimore.

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 each specification proffered against him.

Thereupon, the Investigation Officer made his opening statement and Appellant stated that he did not have anything to say. The Examiner briefly questioned Appellant about his past experience. Appellant said that he had been going to sea since 1944 and had served under his improperly obtained Chief Mate's license for almost a year and a half.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by plea to the four specifications, He then entered the order revoking Appellant's License No. 36146, and all other licenses and documents presently held by Appellant or issued to him in the future by the United States Coast Guard, on probation for a period of ten years.

From that order, this appeal has been taken, and it is urged that the ten year probationary period is excessive since it will deter Appellant in obtaining employment; it will reduce the effectiveness of Appellant's ability to maintain the discipline of other seamen; and it will serve as a harassment rather than as a punishment.

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

FINDINGS OF FACT

On 6 June 1947, Appellant was issued License No. 36146 which authorized him to serve as Second Mate of ocean steam or motor vessels of any gross tons. Appellant was the holder of this Second Mate's license when he failed to pass an examination for a raise of grade to Chief Mate at Long Beach, California, on 6 November 1951 and was so notified.

On 26 November 1951, Appellant filed with the Officer in Charge, Marine Inspection, at Boston, Massachusetts, an application for a raise of grade to Chief Mate. Immediately above Appellant's signature, on the application form, is the following statement: "I have not made application to the Officer in Charge, Marine Inspection, of any other district and been rejected within twelve (12) months of the date of this application." Appellant's signature was subscribed and sworn to before a Marine Inspection Officer as required by 46 U.S.C. 231. On 3 December 1951, Appellant was given the examination for a license as Chief Mate without the approval of the Officer in Charge, Marine Inspection, at Long Beach. This was a violation of 46 CFR 10.02-19(b) because Appellant had been examined and refused a Chief Mate's license at Long Beach within one year of the examination at Boston. Appellant was notified that

he failed the latter examination and he was not issued a Chief Mate's license.

On 13 December 1951, Appellant filed another application, containing the same sworn statement, for a Chief Mate's license with the Officer in Charge, Marine Inspection, at Baltimore, Maryland. The examination was given without the approval of the Officer in Charge, Marine Inspection, at either Long Beach or Boston. Appellant passed the examination at Baltimore and was issued Chief Mate's License No. 125889 on 19 December 1951. In December 1954, the latter license was surrendered to the Coast Guard and canceled as a void and invalid license. Appellant had satisfactorily served under it as Chief Mate for a total time of about one and a half years.

There is no record of prior disciplinary action having been taken against Appellant by the United States Coast Guard. He has been going to sea since 1944 and is now 29 years of age.

OPINION

The facts definitely establish that Appellant was guilty of false swearing when he signed an application for a Chief Mate's license at Boston and again at Baltimore without disclosing the fact that he had made a prior application or applications for a Chief Mate's license within a year and had been refused such a license. See cases cited in Appeal No. 809 defining false swearing. By his pleas of "guilty" Appellant admitted that he knew he had failed at least one prior examination in each instance when he made a subsequent application; and that he did not obtain the approval of a prior examining Officer in Charge, Marine Inspection, in either case. Hence, there is no doubt about the proof of the alleged offenses and the charge of misconduct.

The Examiner stated in his decision that Appellant was considered to be a highly qualified Officer. This is borne out by his prior service and clear record, in view of these circumstances and since there is no evidence of professional incompetence to the contrary, the order will be modified to impose a suitable probationary suspension as a remedial measure to discourage Appellant from indulging in such practices in the future.

ORDER

The order of the Examiner dated at Seattle, Washington, on 3 January 1955 is modified to provide for a suspension of six (6) months. This suspension shall not be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed within one year of 3 January 1955.

J. H. Hirshfreed
Rear Admiral, U.S. Coast Guard
acting Commandant

Dated at Washington, D.C., this 5th day of October, 1955.