

In the Matter of Merchant Mariner's Document No. Z-55095-D2
Issued to: RAUL AGUAYO ORTEGA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

933

RAUL AGUAYO ORTEGA

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 1 August 1956, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-55095-D2 issued to Raul Aguayo Ortega upon finding him guilty of misconduct based upon five specifications alleging in substance that while serving as a wiper on board the American SS TRANSAMERICAN under authority of the document above described between 20 June and 21 July 1956, inclusive, he wrongfully remained absent over leave from his duties and vessel on three occasions; and, on two of these occasions, he failed to join his ship upon her departure from port.

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 choice, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to three specifications and "not guilty" to the other two.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence certified copies of entries in the Official Logbook of the TRANSAMERICAN. Appellant testified in his behalf.

At the conclusion of the hearing, having given both parties an opportunity to submit argument, the Examiner announced his decision and concluded that the charge and five specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-55095-D2, and all other licenses, certificates, and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of eighteen months - nine months' outright suspension and nine months' suspension on probation until twelve months after the termination of the outright suspension. This order included a prior six months probationary suspension.

Based upon my examination of the record submitted, I hereby

make the following

FINDINGS OF FACT

Between 21 June and 21 July 1955, Appellant was serving as a wiper on board the American SS TRANSAMERICAN and acting under authority of his Merchant Mariner's Document No. Z-55095-D2.

On 21 June 1955, Appellant was absent overleave from his duties and vessel without authority while the ship was in the Port of New York. Appellant failed to join his vessel upon her departure from New York on this date.

While the ship was at San Juan, Puerto Rico on 19 and 20 July 1955, Appellant was absent overleave from his duties and vessel without authority. On the latter date, Appellant failed to join the ship upon her departure from San Juan, Puerto Rico.

Appellant's prior record consists of prior suspensions, partially outright and partially probationary, in October 1954 and December 1955. In both cases, Appellant violated his twelve months' period of probation.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant admits that he was guilty as charged but requests that consideration be given to modifying the order because it will be very difficult for him to obtain a job ashore for eighteen months.

OPINION

Since the present order includes a prior probationary suspension of six months. Appellant received only an additional outright suspension of three months and a probationary suspension for the offenses under consideration in this case. This order is not excessive in view of Appellant's record during the last two years. If Appellant continues this pattern of misconduct and violation of probation, he may lose his document altogether or for a much greater length of time.

The present order provides for an outright suspension of nine months rather than eighteen months as indicated in the appeal. The other nine months of the suspension will not become effective provided Appellant does not commit an offense within twelve months after his document is returned. The order of the Examiner will not be modified.

ORDER

The order of the Examiner dated at New York, on 1 August 1956, is **AFFIRMED.**

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 14th day of November, 1956.