

In the Matter of Merchant Mariner's Document No. Z-663370 and all
other Licenses and Documents
Issued to: LUCIEN COLLINS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

959

LUCIEN COLLINS

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 23 November 1956, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document No. Z-663370 issued to Lucien Collins upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a messman on board the American SS FURMAN VICTORY under authority of the document above described, on or about 16 December 1952, while said vessel was at sea, he wrongfully had 270.5 grains of marijuana in his possession

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the two possible results of the hearing - revocation of his document or dismissal of the specification. Appellant was represented by counsel who entered a plea of "not guilty" to the charge and specification proffered against Appellant.

The motion by counsel for Appellant to dismiss the case on the ground of laches was denied by the Examiner.

The Investigating Officer and Appellant's counsel stipulated in evidence the fact that Appellant was convicted before a United States District Court, on 17 December 1953, for the offense alleged in the above specification. It was further stipulated that Appellant satisfactorily served his two years probation imposed by the court; appellant has been regularly employed as a painter; he has had no further difficulties; he possessed, but did not traffic in, marijuana; and Appellant was serving as a messman on board the FURMAN VICTORY on 16 December 1952 as alleged.

The Examiner concluded that the charge and specification had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-663370, and all other licenses and documents issued to Appellant by the United States Coast Guard

or its predecessor authority, in accordance with the mandatory requirements of 46 CFR 137.03-1.

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

FINDINGS OF FACT

On 16 December 1952, Appellant was serving as a messman on board the American SS FURMAN VICTORY and acting under authority of his Merchant Mariner's Document No. Z-663370.

On this date, Appellant knowingly had 270.5 grains of marijuana in his possession on board the ship. Such narcotic drugs did not constitute a part of the cargo entered in the manifest or part of the ship stores.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the charge should be dismissed on the ground of laches because Appellant has been prejudiced in two respects by the delay of almost four years from the date of the offense until the hearing was held and this delay was the fault of the Government. The specific prejudice arises from the fact that the mandatory regulation requiring the examiners to enter orders of revocation in all narcotics cases was not effective until 9 January 1954. Also, Appellant should now be eligible to apply for the issuance of a new document, under the provisions of 46 CFR 137.03-30(a), if the hearing had been conducted at least three years ago and an order of revocation had been imposed.

OPINION

The record shows that Appellant as well as the Coast Guard was responsible for the long delay in bringing this matter to a hearing. An unsuccessful attempt was made to serve Appellant personally with the charge and specification. The office of Appellant's counsel was contacted at least once to no avail.

Hence, one of the two elements - inexcusable delay in commencing an action - which must be shown in order to prove that the Government was guilty of laches is not present in this case. Nevertheless, the other element of claimed prejudice to Appellant will be discussed briefly.

It is not considered that Appellant was prejudiced by the fact

that there would have been no regulation requiring an order of revocation if the hearing had been conducted prior to the effective date of 46 CFR 137.03-1 on 9 January 1954. This mandatory requirement is simply a statement, in the form of a regulation, of a policy which the Coast Guard previously followed in these proceedings. The statement preceding this amendment in the Federal Register of 9 January 1954 makes this perfectly clear. For this reason, the regulation is not ex post facto in its application herein and the order of revocation will not be modified.

The other element of prejudice urged is that Appellant would now be eligible to apply for a new document if his hearing had been held expeditiously. In view of Appellant's successful completion of the probation imposed by the court and his seemingly good behavior since this offense was committed, he will not be required to await the three-year period to apply for the issuance of a new document in accordance with 46 CFR 137.03-30, but there is no assurance that the action taken on such an application will be favorable to Applicant.

ORDER

The order of the Examiner dated at San Francisco, California, on 23 November 1956, is AFFIRMED.

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

Dated at Washington, D. C., this 16th day of April, 1957.