

In the Matter of Merchant Mariner's Document No. Z-19626 and all other Licenses and Documents

Issued to: FRED STOOF

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

984

FRED STOOF

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.

An Examiner of the United States Coast Guard at Portland, Oregon, revoked Appellant's seaman documents upon finding him guilty of misconduct. Six specifications allege, in substance, that while serving as Boatswain on board the American SS WILLAMETTE TRADER under authority of the document above described, on or about 21 September 1956, while said vessel was in the port of Portland, Oregon, Appellant assaulted and battered a Coast Guard Investigating Officer after directing obscene gestures and remarks toward him and a Coast Guard petty officer; Appellant resisted arrest by, and engaged in fisticuffs with, local police officers; he wrongfully damaged ship's property, to wit: a flashlight; and Appellant created a disturbance as a result of his intoxicated condition.

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 counsel of his own choice and he entered a plea of "not guilty" to the charge and each specification.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of eight witnesses and a single documentary exhibit - a Public Health Service clinical record.

In defense, Appellant offered in evidence his sworn testimony and several documentary medical exhibits. Appellant stated that he took three or four phenobarbital pills at 0300 on 21 September, drank two bottles of beer after awakening later in the day, and has no recollection of the matters referred to in the specifications.

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

conclusions, the Examiner announced his decision. He concluded that the charge and six specifications had been proved. The Examiner then entered the order revoking Appellant's Merchant Mariner's Document No. Z-19626 and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

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

#### FINDINGS OF FACT

On 21 September 1956, Appellant was serving as Boatswain on board the American SS WILLAMETTE TRADER and acting under authority of his Merchant Mariner's Document No. Z-19626 while the ship was in the port of Portland, Oregon, preparing to pay off the crew members for the two months' foreign voyage just completed. Appellant had performed his duties in a normal and competent manner during the entire voyage although he complained of headaches and inability to sleep. He had obtained a prescription of phenobarbital at Pusan, Korea, to relieve this condition. (On 26 March 1956 during a prior voyage, Appellant had received a head which caused headaches and dizziness.)

On the afternoon of 21 September 1956, petty officer Rodriguez, USCG, was on board the ship performing his duties as assistant to the U. S. Shipping Commissioner when Appellant approached Rodriguez and directed obscene language toward him, accompanied by a gesture of the same nature, after ascertaining that Rodriguez was associated with the office of the Shipping Commissioner. Appellant staggered slightly and he was in an intoxicated condition. A short time after this, Appellant broke a flashlight by banging it against a chair near Rodriguez after threatening him.

As a result of this conduct by Appellant, a Coast Guard Investigating Officer was called to the ship to investigate Appellant's behavior. Lieutenant Commander Mason, USCG, boarded the ship in reply to this call and attempt to question Appellant regarding his actions. As soon as Lieutenant Commander Mason had identified himself and his purpose to Appellant, he became belligerent and addressed obscene language toward Lieutenant Commander Mason in a very loud voice while making a gesture with his fingers. Appellant's attitude continued to be so belligerent that Lieutenant Commander Mason requested one of the ship's officers to call the police. The word "police" seemed to infuriate Appellant. He struck Lieutenant Commander Mason a blow which knocked him against the ladder leading to the next deck. The Night

Mate stepped between the two men and Appellant was restrained by members of the crew. Appellant was unsteady on his feet during the course of this accident as well as later.

Shortly thereafter, two local policemen arrived. While the situation was being explained to them, Appellant attempted to strike Lieutenant Commander Mason but the blow grazed the sleeve of his coat as he raised his arm for protection. Appellant then resisted arrest by fighting with the policemen when they attempted to take him off the ship. Appellant knocked one of the officers to the deck during the scuffle. Police reinforcements were called. The efforts of four policemen were required to handcuff Appellant before he was escorted to the police station. Appellant was charged with being drunk and disorderly, disturbing the peace and resisting arrest. Appellant was found guilty after trial in the magistrate's court and imposition of sentence was suspended indefinitely.

Appellant's prior record consists of a probationary suspension in 1943 for fraudulent procurement of a seaman's document; a six months' suspension in 1949 for assaulting the Master of a vessel; and outright and probationary suspensions in 1953 for desertion.

#### BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Portland court found him guilty of creating a disturbance in order to prevent Appellant from charging the officers with false arrest. It is inconceivable to Appellant that his document should be revoked when the court did not impose any penalty. Appellant was under the influence of phenobarbital prescribed by a physician at Pusan, Korea, and does not remember what happened. The hearing record proves that Appellant did not destroy any government property. It is requested that Senator Magnuson be contacted concerning Appellant's character and behavior during the past four years.

APPEARANCE AT THE HEARING:      Kneland C. Tanner, Esquire, of  
Portland, Oregon, of Counsel.

#### OPINION

Appellant's primary ground for appeal seems to be the contention that he was not at fault since he was not conscious of what he was doing as a result of having taken three or four phenobarbital pills. This medication had been prescribed by a physician at Pusan, Korea, to give Appellant relief from severe headaches caused by the head injury he received on 26 March 1956. At the hearing, counsel for Appellant tried to create the

impression that Appellant was mentally deranged and insane on the date in question due to a disorder of his nervous system caused by the head injury.

The latter theory is not supported by the documentary exhibits in evidence which indicate that, although the headaches might be partially due to the head injury, Appellant was suffering from nervousness and emotional instability rather than from any mental disorder or disease caused by the head injury. This conclusion was based on various tests given to Appellant at the Seattle Neurological Institute and different Public Health Service Hospitals. The exhibits show that Appellant's fitness for sea duty is questionable only because of frequently recurring severe headaches and dizzy spells. Neither the exhibits nor other evidence in any way support the claim that Appellant's conduct was due to insanity resulting from the head injury.

Appellant's contention that the phenobarbital induced a state of loss of memory is tantamount to claiming that this drug brought about a condition of temporary insanity. Insanity produced by drugs administered as medicine is a complete defense. 16 Corpus Juris, Criminal Law, section 88. But Appellant had been taking the pills for some time without such results; he had performed his duties as Boatswain in a competent manner; and the record is void of any medical evidence that phenobarbital, properly administered, sometimes causes such a condition. On the other hand, all except one of the Investigating Officer's eight witnesses gave testimony that Appellant appeared to be drunk or intoxicated; and Appellant admitted that he had been drinking beer earlier in the day. Hence, the great weight of the evidence indicates that Appellant's behavior was the result of his voluntarily intoxication. Where no specific intent is required by statute, "voluntary intoxication affords no excuse, justification, or extenuation of a crime committed under its influence." Hopt V. People (1881), 104 U.S.631. No specific intent is a prerequisite to the proof of these specifications.

It also seems pertinent to note in this case that the fact that liquor has a greater effect because of an accidental injury to a person's head does not make any difference in the degree of responsibility for his conduct; and the responsibility is the same even though an intoxicated person does not know what he is doing. 16 Corpus Juris, Criminal Law, section 81. The Examiner rejected Appellant's testimony that he had no recollection of what he was doing. This belief has some support from the fact that Appellant's violent actions were directed only toward Coast Guard personnel and police officers. In either case, Appellant was equally responsible for his conduct toward these persons when they were engaged in the performance of their official duties. The above findings of fact

clearly indicate the seriousness of these offenses.

The fact that the Portland court suspended the imposition of sentence against Appellant does not affect the severity of the order resulting from this proceeding. One of the purposes of such hearings is to maintain discipline on board United States merchant vessels. Appellant's conduct was a gross breach of discipline and included repeated abuses of duly constituted authority. Consequently, the order of revocation is justified regardless of how favorable an impression of Appellant's character might have been gathered by other persons observing Appellant at other times.

The one point raised on appeal which merits favorable consideration is the contention that the specification alleging damage to a ship's flashlight was not proved. There is nothing in the evidence to indicate who owned the flashlight. Hence, the finding that this was a "ship's flashlight" is reversed and the specification is dismissed.

The order of revocation is amply supported by the remaining five specifications.

ORDER

The order of the Examiner rendered at Portland, Oregon, is  
AFFIRMED.

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

Dated at Washington, D.C., this 9th day of September, 1957.