

In the Matter of Merchant Mariner's Document No. Z-569102 and all other Seaman Documents  
Issued to: JOSEPH F. GUILLORY

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

1114

JOSEPH F. GUILLORY

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

By order dated 31 October 1958, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents for six months upon finding him guilty of misconduct. The specification found proved alleges that while serving as an able seaman on board the United States SS ELIZABETH LYKES under authority of the document above described, on or about 3 October 1958, Appellant assaulted and battered another member of the crew, oiler Octavio Villaneuva, while the ship was in the port of Seville, Spain.

In his decision the Examiner merely made a finding that Appellant assaulted and battered Villaneuva as alleged, concluded that the specification and charge were proved, recited the names of the witnesses appearing for the respective parties, and stated that the Examiner accepted Villaneuva's testimony as the truth because "the probabilities were all with his version of the occurrence." The Examiner did not make any basic findings of fact upon which his ultimate finding was based and he did not give any explanation as to what the "probabilities" were to which he referred.

Villaneuva testified that he was attacked by Appellant while the latter flatly denied this in his testimony. The other witnesses who appeared at the hearing stated that they were not eyewitnesses to the alleged assault and battery.

On appeal, Appellant contends that the evidence does not support the finding and conclusions of the Examiner; this is a matter of Villaneuva's word against Appellant's word; Villaneuva is mistaken as to the identity of the person who assaulted him; and the doubt should be resolved in favor of Appellant in view of his clear record and the fact that the burden of proof was on the opposing party.

Appellant has been going to sea since 1945 without any prior record. The six months' outright suspension imposed in this case has been completed.

OPINION

As stated in Commandant's Appeal Decision No. 1057 of 24 July 1958, all decisions of the examiners are required by Title 5 U.S. Code 1007 (b) and Title 46 CFR 137.09-65 to "include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record - - -". This indicates that bare ultimate findings and bare conclusions or opinions in an examiner's decisions are considered to be insufficient for the purpose of review on appeal. See In re United Corporation (C.A. 3, 1957), 249 F.2d 168, 179-181 for extensive elaboration on this point. The Examiner did not comply with these requirements of the law in two respects. First, he did not include in his decision express findings of the basic facts. More detailed findings of fact than simply the ultimate finding of fact alleged in the specification are essential. Secondly, the Examiner did not give any reason for his conclusion or opinion that all the "probabilities" agreed with Villaneuva's testimony that he was attacked by Appellant.

In view of these serious omissions by the Examiner, the record will be remanded for further decision despite the often repeated statement that the examiners' findings as to credibility will not be rejected on appeal in the absence of irrational tests of credibility appearing in the examiners' decisions.

#### ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 31 October 1958; is VACATED. The finding that Appellant was guilty of assault and battery as well as the conclusions that the specification and charge were proved are set aside. The case is REMANDED to the same Examiner for revision of his decision based solely on the record submitted at the hearing and on appeal.

In the event the Examiner concludes that the charge and specification have been proved, his decision shall be considered as reactivating Appellant's appeal whether or not a second notice of appeal is submitted by the Appellant.

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

Dated at Washington, D. C., this 28th day of September, 1959.