

In the Matter of Merchant Mariner's Documents No. ZOL 54714 and
Issued to: CHARLES DOROBA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1161

CHARLES DOROBA

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 8 December 1959, an Examiner of the United States Coast Guard at Norfolk, Virginia suspended appellant's seaman documents upon finding him guilty of misconduct based on four specifications to which he entered pleas of guilty. One specification alleges that Appellant wrongfully failed to answer a Coast Guard subpoena. The other three specifications allege that Appellant wrongfully failed to perform his shipboard duties on fifteen separate occasions in foreign ports. At the hearing on 8 December 1959, the Examiner rendered an oral decision in which he ordered Appellant's documents suspended for three months outright from 8 December and also suspended for three months on eight months' probation. The Examiner retained possession of Appellant's document, told him that it would be returned in three months from 8 December, and stated that the decision would be effective as of the date of delivery to Appellant. The latter agreed to service of the written decision at an address in Seattle, Washington. The decision (including the order), dated 8 December, was mailed on 11 December and receipted for by someone other than Appellant. Stamped on the decision is the statement that an appeal may be filed within thirty days from the date of the order and not thereafter. In Appellant's notice of appeal, dated 21 January 1960, he states that he did not reach Seattle and receive the written decision until 20 January.

Appellant did not sail between 8 December and 2 February. He was issued a temporary document on 2 February.

OPINION

The only ground for appeal is a request that the remaining five weeks of the outright suspension (this includes the period between 8 December and 2 February) be placed on probation in view of Appellant's prior good record for almost thirty years at sea.

It is my opinion that no reduction of this portion of the suspension is merited. The Examiner considered Appellant's prior record, his length of service and other mitigating circumstances before announcing the order. However some comment is required concerning the effective period

of the order and the time for filing an appeal.

As pointed in Commandant's Appeal Decision No. 1068 of 8 September 1958, the return receipt for the mailed, written decision should be signed only by the person charged (with one exception which is not pertinent here) because, at present, the regulations require actual notice to the person charged of the delivery of the entire, written decision before the order is effective. Also 46 U. S. Code 239(g) requires a written order to suspend or revoke a document and limits the taking of an appeal to within thirty days from the time of the order. consequently, the order cannot be made retroactive to a time prior to when the written decision is actually received by the person charged. See Commandant's Appeal Decision Nos. 845 and 1014.

It is apparent from this that the decision, mailed on 11 December, should not have stated that the order was effective on 8 December; and that the return receipt should have been requested from the addressee only in order to determine both the effective date of the decision (including the order) and the time within which to appeal. Timely filing of the notice of appeal is essential to the jurisdiction. Knowles v. United States (C. A. 5, 1958), 260 F. 2d 852. But since the correct procedure was not followed, the appeal will be considered as having been timely submitted on the basis of Appellant's statement that he could not appeal within the thirty days from the date of the order (8 December) because he did not receive the written decision until 20 January. The wording of the order will be amended, in accordance with Commandant's Appeal Decision No. 1014, to take into consideration the fact that Appellant deposited his document with the Examiner on 8 December.

This confusion would have been avoided if the Examiner had continued the hearing a day or two until he could have complied with 46 CFR 137.09-80 by personally delivering the written decision to the Appellant at the time of announcing the decision at the hearing.

ORDER

The order of the Examiner dated at Norfolk, Virginia, on 8 December 1959, is affirmed except to provide that the three months' outright suspension shall be considered to have commenced on 20 January 1960 rather than on 8 December 1959. Appellant shall be given credit, toward the three months' suspension, for the time between these two dates since his document was then in the custody of the Examiner or other Coast Guard personnel.

As so modified, the order is AFFIRMED.

A. C. Richmond
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 19th day of April 1960.