

In the Matter of License No. 233887 Merchant Marine Seaman's Document No.

Issued to: EDWIN SYBIAK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1164

EDWIN SYBIAK

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 29 May 1959, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The six specifications found proved allege that while serving as Fourth Mate on board the United States SS FLYING GULL under authority of the license above described, between 22 January and 5 April 1959, Appellant disobeyed a lawful order; he twice failed to perform his duties and on both occasions he was under the influence of intoxicants; Appellant had intoxicating liquor in his possession on the ship.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and each specification except the one alleging possession of intoxicants to which he entered a plea of guilty. Evidence was introduced by both parties.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and six specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of three months on twelve months' probation.

FINDINGS OF FACT

On the below dates in 1959, Appellant was serving as Fourth Mate on board the United States SS FLYING GULL and acting under authority of his License No. 233887 while the ship was on a foreign voyage.

While the ship was at sea on 23 January, Appellant made a change of course without notification to, or authorization from, the Master. This was in direct disobedience of the verbal and written orders of the Master.

On 7 February, the ship was at Singapore when Appellant failed to stand his 0800 to 1200 watch. Appellant was awakened twice, but

he did not get up from his bunk. He had been drinking most of the night and smelled of whisky when he was called.

At San Juan, Puerto Rico on 4 April, Appellant was in his room drinking intoxicating liquor when he was supposed to have been on deck in charge of the watch during cargo operations. The Master relieved Appellant of his duties upon finding him in his room.

Appellant's prior record consists of an admonition in 1951 for inattention to duty.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision is:

1. Contrary to law and the facts established by the record.
2. Not supported by reliable, probative and substantial evidence.
3. Predicated in part on Appellant's prior record which was improperly received in evidence.
4. Incorrect as to the last specification because possession of intoxicating liquor on board ship does not constitute an offense.

APPEARANCE: Marvin Schwartz, Esquire, of New York City, of Counsel

OPINION

In view of the general nature of this appeal, for the most part, it is sufficient to state that the Examiner's findings are supported by reliable, probative and substantial evidence contained in the record and that these findings constitute proof of the allegations in the six specifications.

Concerning the possession of intoxicating liquor on board the ship, to which specification Appellant entered a plea of guilty, it is noted that all Shipping Articles for foreign voyages contain the statement, "No dangerous weapons or grog allowed, and none to be brought on board by the crew." Grog is commonly defined as any intoxicating liquor. Since Appellant had possession of the intoxicating liquor when he was drinking it on 4 April, regardless of who took it on board the ship, it is clear that he was violating the contract of employment (the Shipping Articles) which he had signed. This is an offense which is often overlooked when more serious charges are involved.

At the hearing, the Examiner reserved decision on whether to receive a telegram as evidence of Appellant's prior record for the purpose of impeaching the credibility of Appellant as a witness. In his decision, the Examiner stated that he considered this evidence but did not feel that it reflected

upon Appellant's credibility. Hence, Appellant was not prejudiced in this respect.

It is my opinion that, regardless of whether Appellant had any prior record, the probationary suspension imposed for the present offenses was a very lenient order, especially since Appellant was one of the ship's officers.

ORDER

The order of the Examiner dated at New York, New York, on 29 May 1959, is AFFIRMED.

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

Dated at Washington, D. C., this 29th day of April 1960.