

In the Matter of License No. 222459 Merchant Mariner's Document Book No. 027960 and all other seaman Documents

Issued to: WILLIAM H. METZGER

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1171

WILLIAM H. METZGER

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 17 September 1959, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents upon finding him guilty of misconduct based on his pleas of guilty to two specifications. The specifications allege that while serving as Master on board the United States SS VALIANT ENTERPRISE under authority of the license above described, on 14 August 1959, Appellant departed New Orleans with the applicable load line submerged and without having entered the vessel's draft in the Official Logbook. The Examiner entered an order suspending Appellant's documents for a period of one month outright plus three months' suspension on twelve months' probation.

This appeal is solely from the probationary suspension imposed by the Examiner. Appellant contends that since the regulations in 46 CFR 137.09-75(b) provide for revocation "or" outright suspension "or" probationary suspension, both of these types of suspension are not permitted in the same order; this is analogous to cases where the courts have held that a sentence of both a fine "and" imprisonment is improper when the statute in question permits only a fine "or" imprisonment. Therefore, Appellant contends that the suspension on probation should be remitted.

APPEARANCE FOR APPELLANT: Lemle and Kelleher of New Orleans by Thomas H. Leach, Esquire, of Counsel.

OPINION

I do not agree with this contention. In effect, Appellant's documents were suspended for a total period of four months but the Examiner then placed three months of this suspension on probation for twelve months. If Appellant is found guilty of another offense committed within the period of probation, the probation will be revoked and the additional three months' suspension put into effect. The only disciplinary factor involved is the suspension of Appellant's documents. This is entirely different from situations where the two distinct factors of a fine as well as imprisonment are present. Appellant has not cited any case where it was held to be improper to suspend the execution of a portion of a fine or term of imprisonment subject to a person's good behavior during

a specified period of probation. This is the proper analogy.

For these reasons, the order imposed by the Examiner will be sustained in toto.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 17 September 1959, is AFFIRMED.

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

Dated at Washington, D. C., this 24th day of May, 1960.