

In the Matter of Merchant Mariner's Document No. Z-689180-D2 and all other Seaman Documents

Issued to: SILVANO F. FIGUEROA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1226

SILVANO F. FIGUEROA

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 23 March 1960, 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 specification found proved alleges that while serving as chief utilityman on board the United States SS BRASIL under authority of the document above described, on 6 January 1960, Appellant assaulted and battered utilityman Raul Leyenda while the ship was at sea.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence testimony by crew member Raul Cruz that he saw Appellant swing his fist at Leyenda, and testimony by Leyenda that he was hit in the right eye by Appellant. In his defense, Appellant testified that he did not strike, or even swing at, Leyenda.

After considering the evidence, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period for four months outright plus two months on twelve months' probation.

OPINION

This appeal is based solely on the ground that the order of suspension is excessive. The Examiner's refusal to accept Appellant's testimony, denying that he struck Leyenda, is not questioned on appeal. In any event, this was a matter of credibility to be decided by the Examiner who accepted the testimony by Leyenda and Cruz mentioned above.

Because of the fact that Appellant has a prior record of an assault for which his document was suspended for six months in 1955, the present order of suspension is not considered to be excessive.

ORDER

The order of the Examiner dated at New York, New York, on 23 March 1960, is
AFFIRMED.

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

Signed at Washington, D. C., this 31st day of March, 1961.