

In the Matter of Merchant Mariners Document No. Z-181308-D5
Issued to: JOSEPH CANDOS

DECISION OF THE COMMANDANT
APPEAL No. 1385

JOSEPH CANDOS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 9 November 1962, an Examiner of the United States Coast guard at Jacksonville, Florida suspended Appellant's seaman documents for one year outright plus 6 months on 18 months' probation upon finding him guilty of misconduct.

Seven specifications were lodged against Appellant charging him with failure to join his ship, failure to obey a posted order, failure to attend to his duties, and failure to stand his assigned watches. All these specifications were found proved by pleas of guilty.

No witnesses were introduced by either side. Appellant took the stand and testified in mitigation.

FINDINGS OF FACT

From approximately 11 January 1962 to and including 24 October 1962, Appellant was serving as an able seaman aboard the USNS COSSATOT, and acting under authority of his document, having signed Shipping Articles for a foreign voyage on or about 11 January (R.10).

On 23 April 1962, while the vessel was lying at a port in Japan, Appellant went ashore and proceeded to visit friends in a town 12 to 15 miles from the port. His attempt to return to the ship the following day was frustrated when the cab, in which he was riding, experienced mechanical difficulties.

On 22 July 1962, Appellant failed to obey the posted order of the Master to report for duty at 1500.

On 22, 23 July and 1 September 1962, Appellant failed to stand his assigned watches from 0000 to 0400, and also his 1200 to 1600 watch on 1 September.

On 10, 11, 12, 13 and 14 September 1962 Appellant failed to

perform his assigned duties from 0800 to 1700.

Notice of Appeal was filed timely and alleges the following grounds for reversal of the Examiner's order:

1. The Examiner's decision was "contrary to the evidence" and "contrary to the law."
2. The Examiner's order was "excessive, arbitrary, unreasonable and capricious."

Appellant also urges in the alternate that an order be entered remanding the case for a rehearing. No brief was submitted in support of Appellant's contentions.

APPEARANCE: Benjamin B. Sterling, New York, New York, counsel for Appellant.

OPINION

It is difficult to understand Appellant's contentions that the Examiner's decision and order were contrary to evidence and law in view of the fact that he pled guilty to each specification. Appellant testified that he missed the ship at Yokosuka, Japan, because the taxicab in which he was riding "broke down". It has long been established by the Commandant's decisions that when the seaman leaves his vessel on authorized liberty, he assumes the responsibility of returning on time to discharge his assigned tasks. I do not believe that Appellant's excuse in this matter warrants or justifies a departure from this policy.

To justify his failure to obey the Master's order to report for duty at 1500 on 22 July 1962 while the vessel was in a Japanese port, Appellant stated that the vessel was to be in port for only one night. On previous occasions it was customary for a Master to allow part of the crew to take shore leave. However, the Master of the COSSATOT refused to adhere to this precedent. Despite the Master's explicit orders, Appellant did not return to the vessel by 1500. The custom for crew members to receive shore leave when the vessel was tied up for one night in a Japanese port, did not create any right in the crew member to be absent from the ship in violation of the Master's instructions. Appellant, as any other crew member, owed an affirmative duty of obedience to his superior officers. By violating this duty Appellant exhibited conduct unbecoming a merchant marine seaman.

As to the other charges, Appellant's sole excuse centers around the fact that prior to the commission of these offenses he indulged in intoxicants. It has been decided in past decisions that consumption of alcohol, if voluntary, is not an excuse for

failure to perform assigned duties. See Commandant's Appeal Decisions Nos 1371, 1325, 1316, 1272, 1881, 1164, 1136, 1117. This point is well settled and merits no further comment.

Appellant's prior record, which dates as far back as 1944, shows a persistent path of violations similar to those in the instant case. This type of behavior indicates a gross lack of responsibility by Appellant which cannot be tolerated. In view of this the Examiner's order is far from being arbitrary and capricious.

ORDER

The order of the Examiner dated at Jacksonville, Florida on 9 November 1962 is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 22nd day of April 1963