

In the Matter of Merchant Mariner's Document No. Z-801263-D3 and all other Seaman Documents

Issued to: THOMAS G. MARSHALL

DECISION OF THE COMMANDANT

1428

THOMAS G. MARSHALL

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 1961, an Examiner of the United States Coast Guard at Houston, Texas revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a messman on board the United States SS FREDERICK LYKES under authority of the document above described, on 28 August 1961, Appellant wrongfully had marijuana in his possession.

On 10 October 1961, Appellant was served with notice to appear at a hearing to commence on 13 October at 1000. The beginning of the hearing was delayed until 1440 on 13 October since Appellant had not appeared or contacted the Coast Guard. The hearing was then conducted in absentia after the Examiner entered a plea of not guilty on behalf of Appellant.

The Investigating Officer introduced in evidence the testimony of a Customs Officer and police officer, who found what they thought was marijuana in Appellant's locker on the ship, and the testimony of the chemist who had verified by analysis that the substance found was marijuana.

Appellant was not located and served with the Examiner's decision until 29 June 1963 when Appellant applied for a duplicate merchant mariner's document.

FINDINGS OF FACT

On 28 August 1961, Appellant was serving as a messman on board the United States SS FREDERICK LYKES and acting under authority of his document while the ship was in the port of Houston, Texas.

On this date, Customs and police officers searched Appellant's locker on the ship after having been told than Appellant was

suspected of possessing marijuana. In the locker, there was found, in a matchbox, a cigarette containing marijuana, and loose marijuana was located in a tobacco can in a pocket of a coat. Appellant admitted that the matchbox and tobacco can belonged to him. The pockets of the coat Appellant was wearing contained particles of marijuana. Appellant told the officers that he had purchased the marijuana for his personal use.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant never received notice of the hearing and was on board a ship when the hearing started on 13 October 1961. Appellant denies that he admitted to the searching officers on the FREDERICK LYKES that the marijuana belonged to him, that he knew about it, or that he any other admission concerning the marijuana. Appellant was not informed of the Examiner's decision until it was served on him on 29 June 1963.

APPEARANCE: J. S. Jiuliante, Esquire, of erie, Pennsylvania, of Counsel.

OPINION

Appellant's signature on the back of a copy of the summons and charge form is evidence that he received notice to appear at the hearing on 13 October. By not appearing as ordered, he waived his right to present evidence in his defense whether or not he was on board another ship when the hearing commenced as schedule. Hence, Appellant's denials on appeal are to no avail. The Examiner was entirely justified in deciding the issue on the basis of the uncontradicted testimony of the witnesses who appeared at the hearing.

It is unfortunate that the service of the Examiner's decision on Appellant was delayed for so long due to the inability to locate him. Except for this delay, Appellant would have been deprived of the use of his seaman documents at a much earlier date. Since Appellant had no reason to believe that this matter was not still pending, he was responsible to the extent of making inquiry as to the outcome of the hearing. There is no indication that he ever did this.

ORDER

The order of the Examiner dated at Houston, Texas, on 9 November 1961, is AFFIRMED.

G. A. Knudsen

Rear Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 21st day of October 1963.