

In the Matter of Merchant Mariner's Document No. Z-671344-D2
and all other Seaman Documents
Issued to: EDWARD C. NIXON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1432

EDWARD C. NIXON

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 date 8 August 1963, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for six months outright plus two months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved by plea allege that while serving as a messman on the United States SS SYLVIA LYKES under authority of the document above described, on 17 and 28 October 1962, Appellant was absent from his vessel and duties without permission while in a foreign port. The entire outright suspension imposed was a result of a six months' suspension which was placed on twelve months' probation in November 1961 for desertion in a foreign port.

At the hearing, Appellant elected to act as his own counsel. Appellant entered pleas of guilty to the above specifications.

The Investigating Officer introduced evidence which was not necessary in view of Appellant's pleas of guilty. Although Appellant did not testify, he repeatedly insisted that he stayed ashore on these two dates without permission.

Appellant's contention, on appeal, that he was mentally incompetent was not made at the hearing and is not supported by any material submitted with the appeal. It would be improper to conclude that such a bare claim of incompetence excused Appellant's absences from his ship, particularly in view of his frank admissions at the hearing that he was off the ship, on one date, because he was not awakened and, on the other date, since he went to church on Sunday (28 October 1962) (R.9).

The only other two points raised on appeal are that the Investigating Officer falsely stated that Appellant signed a copy of the charges and that Appellant's document was taken from him on 1 August 1963. With respect to the former, the Investigating

Officer stated at the hearing that Appellant refused to sign a copy of the charges when he was served on 1 August 1963 (R.8). Concerning Appellant's claim that his document was taken on 1 August, there is no evidence in the record as to whether Appellant lost possession of his document on this date but the Examiner stated, on 5 August, that Appellant had his document at the hearing (R.15).

The present order of suspension does not include any outright suspension other than that which resulted from the violation by Appellant of a previously imposed period of probation for desertion in a foreign country. Since the order of six months' suspension on twelve months' probation for the latter offense was very lenient, the present order is not considered to be excessive.

ORDER

The order of the Examiner dated at New York, New York, on 8 August 1963, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 6th day of December 1963.