

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-223605
AND ALL OTHER SEAMAN DOCUMENTS

Issued to: John J. Grady

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1434

John J. Grady

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 18 February 1963, an Examiner of the United States Coast Guard at Seattle, Washington revoked Appellant's seaman documents upon finding guilty of misconduct. The specification found proved alleges that while serving as an oiler on board the United States Nuclear Ship SAVANNAH under authority of the document above described, on or about 10 October 1962, Appellant failed to perform his assigned duties on the 1600 to 2400 watch due to intoxication. The SAVANNAH was in a domestic port at the time of the offense.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification. He offered the statement, in mitigation, that he wanted to pay another man to stand the watch and this was permissible with respect to port watches.

OPINION

Appellant contends on appeal that he went to the Chief Engineer in order to obtain authorization for someone else to stand his watch; Appellant could terminate his services at will because he was on a port pay roll at the time after having signed off the shipping articles; and the minor nature of the instant offense does not justify the order of revocation.

It is not clear from the record whether Appellant stood his watch in an improper manner or did not show up to stand his watch. But Appellant admits that one or the other did occur. Consequently, if he did attempt to obtain authorization to have somebody else stand his watch as he contends, Appellant either was not given permission to do this or he did not see to it that someone else stood his watch as authorized by the Chief Engineer.

It was Appellant's obligation to stand watches as an oiler in port whether serving under shipping articles or employed on a port pay roll basis. If it were the latter as contended, Appellant could terminate his services at will but he would be required to

give notice to his employer in advance of his watches so that a replacement could be obtained. Appellant makes no claim that he did this. Hence, Appellant was guilty of misconduct even if the circumstances were such as he contends on appeal.

As to appropriateness of the order of revocation, it is noted that Appellant's prior record of similar offenses consists of a probationary[suspension in 1961 for three offenses involving failure to perform duties and a six months' outright suspension plus six months on eighteen months' probation in 1962 for failing to perform duties on four occasions due to intoxication. The offense of failure to perform duties due to intoxication which is presently under consideration occurred while Appellant was serving under a temporary document which was issued pending the outcome of an appeal from the suspension imposed in 1962 by an Examiner. This order was affirmed by Commandant's Appeal Decision No. 1359 of 11 December 1962.

Orders of revocation were affirmed by Commandant's Appeal Decision Nos. 1329, 1374 and 1406 for offenses of failure to perform duties due to intoxication. But in two of these cases there were at least three of these offenses and, in the other case, additional offenses were found proved at the same hearing and the seaman had a more extensive record of similar offenses than Appellant has. Therefore, considering the fact that the instant offense occurred in a domestic port, it is my opinion that the order should be modified to a twelve months' outright suspension (including the six months' suspension placed on probation un 1962) as was done in Commandant's Appeal Decision No. 1419. The se cerned in the latter case also had a prior record of four offenses i intoxicants and the offense under immediate consideration was his failure to stand a port watch.

This order may seem harsh in the light of the single offense alleged herein, but it is not considered to be excessive when Appellant's cumulative record is also taken into consideration.

ORDER

The order of the Examiner dated at Seattle, Washington, on 18 February 1963, is modified to provide for a suspension of twelve (12) months.

As so MODIFIED, the order is AFFIRMED

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

Signed at washington, D. C., this 11th day of December 1963