

Issued to: George D. Kerr

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1488

George D. Kerr

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 23 October 1963, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents for two months outright plus four months on eighteen months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as a Junior Third Assistant Engineer on the United States SS BAYOU STATE under authority of the license above described, on 6 June 1961, Appellant wrongfully failed to stand his 2000 to 2400 watch when he was absent from the ship without permission at Nagoya, Japan, and, on 8 June 1961, he wrongfully failed to join the ship upon her departure from Kobe, Japan at 1530; and that while serving as an oiler on the United States SS PIONEER MYTH under authority of the above document, on 24 June 1961, Appellant was wrongfully absent over leave when he returned on board at 2122, thereby failing to return one hour before the posted sailing time of 2200 as required. Nine other specifications were found not proved and dismissed.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence extracts from the Shipping Articles and copies of entries in the Official Logbooks of the ships on which Appellant was sailing at the times of the offenses alleged.

No evidence in defense was offered relative to the offenses under consideration.

At the end of the hearing, the Examiner rendered a written decision, dated 23 October 1963, in which he concluded that the charge and the above specifications had been proved. The decision was not served on Appellant until 22 September 1964.

The sole contention on appeal is that "there was not sufficient evidence in the record to sustain the findings of the Examiner on the specifications and charge as found proved."

APPEARANCE: Dodd, Hirsch, Barker and Meunier of New Orleans, Louisiana by Harold J.

Lamy, Esquire, of Counsel

OPINION

The entries in the Official Logbooks were made in substantial compliance with 46 U.S. Code 702 and, therefore, constitute prima facie evidence of the offenses alleged in the specification. See 46 CFR 137.20-107. Since there is no evidence to the contrary, the Examiner correctly concluded that the specifications were proved on the basis of the prima facie case made out by the logbook entries. Appellant's reply to these entries was, "No comment," except with respect to the offense of failure to join the ship prior to the completion of the voyage.

In view of the blanket nature of this appeal without any supporting reasons, it is sufficient to state that the Examiner's findings and conclusions are supported by substantial evidence in the record. Review of the Examiner's decision on appeal should be limited to specific exceptions and clear errors on the record. Title 46 CFR 137.30-1(f); Attorney Generals's Manual on the Administrative Procedure Act (1947), p.84, note 5; Commandant's Appeal Decisions Nos. 1208 and 1416.

The order imposed by the Examiner is lenient in view of Appellant's Prior record of unrelated offenses in 1944 and 1946, and of similar offenses in 1955 and 1959.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 23 October 1963, is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 2nd day of February 1965.