

IN THE MATTER OF LICENSE NO. 277004 AND ALL OTHER LICENSES
Issued to: Andy Del Proposto

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1547

Andy Del Proposto

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 139.30-1.

By order dated 16 December 1964, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's license for six months upon finding him guilty of negligence. The two specifications found proved allege that while serving as Master on board the United States SS IKE under authority of the license above described, on or about 5 November 1962, while navigating on the Gulf of Suez, the person charged wrongfully failed to navigate the vessel with caution thereby contributing to its grounding in shoal water near Ras Za'farana Lighthouse; and, on or about 29 November 1962, while in the Red Sea, the person charged wrongfully ordered an improper course change thereby contributing to the grounding and ultimate loss of the IKE on a reef off Quoin Island.

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

The Investigating Officer introduced in evidence the testimony of 3 crew members and entries from the Official Logbook.

In defense, Appellant offered in evidence his own testimony and various documents.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all valid licenses issued to Appellant, as indicated above.

FINDINGS OF FACT

During November 1962, Appellant was serving as a Master on board the United States SS IKE, a steam freighter of 441 1/2 feet registered length and 7209 gross tons. Appellant was acting under authority of his license while so serving.

On November 1962, the ship, in ballast, was navigating the Strait of Gubal in the Gulf of Suez on a voyage which was intended to take the vessel through the Suez Canal to Sfax, Tunisia. There

was a fathometer on board which was not in use because it was not accurate when the vessel was in a light condition and underway. There was no radar or course recorder on board. The draft of the vessel was 6' 4" forward, 14' aft. There was no appreciable current. The Master went on the bridge shortly after the vessel left the Red Sea. He plotted the various northerly courses to be navigated, wrote his night order, and left the bridge at approximately 2325 to retire to his quarters. The weather was clear and a northwest wind, coming from the port side, was blowing at about Force 5 (17-21 knots). The course was 339° true, speed 11 knots.

The night orders were approximately the following: pass Ras Za'farana Light 4 miles off to port; call the Master when abeam of that light so he could make adjustments to the course; if the night officer was in doubt or trouble, he was to call the Master. There were also standing night orders which included an order to call the Master in case of any change in the wind.

Second Mate Oscar A. Williams had the 0000 to 0400 watch on 5 November 1962. At approximately 0250, when Ras Za'farana light was abeam to port at an estimated distance of 3 miles, the Second Mate called the Master to the bridge and the Master adjusted to a new course, from 339° to 343°. He made the change on the following basis: The ship was approximately 3 miles off the light (according to Mr. Williams' statement to the Master that it was 18 minutes from the time when the light was 4 points on the port bow until it was abeam); and the wind was still on the port side. The new course was intended to keep the vessel approximately 3 miles away from the west coast of the Gulf of Suez for 17 miles until the next light was abeam to port. The Master returned to his quarters about 0300 leaving the Second Mate in charge of the bridge. Shortly thereafter, the wind shifted to the north and became stronger.

As the vessel proceeded, the Second Mate could see the loom of the next light off the port side. He presumed this indicated that the ship was on the right course. While sitting in a chair, he talked with the helmsman and was thus engaged until the ship went aground at approximately 0330.

The first signs that something was amiss was when the engines changed their rhythm and the vessel lost steerageway. She had run aground without a jar in shoal water near the coast about 8 miles beyond Ras Za'farana light. The course from 3 miles abeam of Ras Za'farana light to the point of grounding is 321° true.

The Master was informed of the grounding. When he reached the bridge, he observed that the wind had increased in velocity to about Force 8 (34-40 knots), had shifted to the north, and was now on the starboard side. The standing order to report any shift of wind to the Master had not been obeyed. The Master observed that the compass reading was 337°.

There were no injuries or deaths resulting from the grounding. The IKE remained grounded for over 11 hours until she floated free, with the help of the engines, at high tide. Inspection disclosed that there were no material defects or failures involved. The vessel then continued to Sfax. Subsequently, the IKE was involved in a collision with another vessel (with which the present action has no concern) but a survey indicated the vessel was seaworthy.

In Sfax, the Appellant consulted a doctor about his health. Medication was prescribed, but the Master was permitted to continue on the voyage after the doctor determined that he was fit for duty.

On 29 November 1962, the IKE was in the Red Sea, approaching Quoin Island Light. Second Mate Williams was again on the 0000 to 0400 watch. The vessel, making about 8 knots, was en route to Saigon, Vietnam, with a cargo of phosphate. At 0100, the Master was called to the bridge. The seas were heavy with a southeast wind of Force 9-10 (41-55 knots) and visibility was poor. The Master ordered a southeasterly course to head directly for the light on Quoin Island. He intended to change course to 156° true when the vessel was about 2 miles from the small island in order to pass through the 2-mile wide Abu Ali Channel between Quoin Island and Zuqar Island.

Inadvertently, the Master gave an order at 0250 to change course to 136° instead of 156° when less than 2 miles from Quoin Island and its surrounding reefs. The change of course to 136° did not substantially alter the heading of the ship. Consequently, a reef off Quoin Island was sighted dead ahead a few minutes later. The lookout warned the bridge of the reef and the Master ordered "hard left" rudder instead of "hard right." The rudder remained hard left for about a minute until the Master shifted the rudder to hard right.

At approximately 0300, the vessel hit the reef and subsequently was lost. There were no injuries or loss of life. The Master and crew were repatriated, and the Master was hospitalized due to his continuing poor health.

The Master has had a license since 1932. He has had a commendable record at sea except for a probationary suspension in 1946 for negligent navigation. He is presently 68 years old.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the decision be reversed and the charge and the two specifications be dismissed. This is based on the following grounds:

As to the first specification, the officer on watch gave no reason for the grounding even though the Master set a course to keep the vessel at least 3 miles from the shore. In addition, the Captain was not called until after the vessel had gone aground despite his orders to be called in event of any change in conditions. Consequently, the government failed to prove its case by substantial evidence.

As to the second specification, the Master has no knowledge as to which course (156° or 136°) he gave to the helmsman. Due to the physical pain and mental condition resulting from his extreme illness and medications taken, the Master should not be held responsible for his actions. He was too ill to realize the extent of his illness and have himself relieved from duties of Master. After

his hospitalization, he returned to duty for the same company and has proven his ability as a skillful navigator. Therefore, he was not guilty of negligence.

APPEARANCE: McHugh and Leonard, New York, New York by Maurice F. Beshlian,
 Esquire

OPINION

Negligence is predicated on a want of proper care and whether it exists in a particular case must be determined by a consideration of all the surrounding facts and circumstances. The criterion in the present case is whether a prudent navigator, charged with the full responsibility for the safety of his crew, cargo and ship, would have followed the course of conduct pursued by the Master if the prudent navigator were faced with the same situation under similar circumstances. Commandant's Appeal Decision No. 1200. A Master of a ship must use the very reasonable means to avoid dangers in navigation.

The record does not reveal any material failure on either 5 November or 29 November. During the events leading to the November 1962 grounding, the Master decided upon the courses to be steered with proper regard for the prevailing situation. These judgments were never under attack and it appears from the record that the vessel been navigated on course 343° true, as ordered at 0250, the ship would not have been in danger. When this course change was made abeam of Ras Za'farana light, it was not unreasonable for the Master to rely on the word of the Second Mate as to the bearings he took (which indicated the ship was 3 miles off the light) although subsequent events cast doubt on the accuracy of this information and indicate the probability that the ship was much closer to the light than 3 miles. Except for this information from the Second Mate, it would have been definitely imprudent for the Master not to have stopped the ship and obtained an accurate fathometer reading.

In addition, the standing night order to report any wind shift to the Master was not followed. When the Master left the bridge, the wind being on the port side had a tendency to push the vessel away from the shore, but when it shifted to the starboard side soon after the Master left, the tendency was to push it toward the shore. It was especially important to notify the Master of this change in wind direction because it was accompanied by an increase in velocity and the ship was in a light condition. The failure of the Second Mate to report this shift of wind was not the fault of the Master.

After the Master left the bridge about 0300, the Second Mate stated that, by watching the loom of the next light off the port bow, he determined the vessel was maintaining its position off shore. There is no evidence that he checked the compass course at any time prior to the grounding at 0330. On the contrary, the evidence indicates that he remained seated in a chair all, or practically all, of the time during this half-hour when the ship made good a course well to the left of 343° true.

The above combination of factors might well have been the cause of the grounding. The fact that the Master was below decks for 30 minutes before the grounding, after having taken all

reasonable precautions that the vessel would be navigated in a safe manner, relieves him from any imputation of negligence. Accordingly, in the absence of substantial evidence to prove the first specification, the conclusion that the specification was proved is reversed and the specification is dismissed.

However, this is not the case concerning the second grounding. There is substantial evidence that the Master's negligence contributed to this disaster.

Prior to daylight on 29 November, the Master intentionally navigated the ship on a course which headed her directly toward the light on Quoin Island. He intended to order a course of 156° when the vessel was 2 miles away from Quoin Island so that the vessel would travel through the Abu Ali Channel. However, the record indicates that a course of 136° was ordered in error and that this was a course change of only a few degrees since the vessel remained on a course toward the small island and the surrounding reefs, one of which was sighted shortly thereafter. Despite subsequent orders of change of helm, the wrong order of 136° was the primary factor which placed the vessel in danger and led to the grounding. The later shift of the rudder from hard left to hard right caused the vessel to proceed in substantially the same direction as when the reef was first sighted, thus precluding any possibility of avoiding the reef. Obviously, this careless order to change course did not meet the criterion of conduct required of a prudent navigator.

In addition, even if the Master had ordered 156°, he would have been responsible for seeing that this order was carried out. He admitted in his testimony that, if any course was repeated by the helmsman, he did not hear what it was. The Master should have required the new course to be repeated by the helmsman both when given and when steady on the new course.

By his quick actions and alertness while in extremis, the Master demonstrated that the medications and his sickness had not dulled his mind to his surroundings. In addition, the doctor at Sfax had found him fit for duty and, therefore, capable of continuing on the voyage. Since the Master was competent to continue in command, there is no reason why he should have had himself relieved. Consequently, it is concluded that the Master was responsible for his navigation of the ship and, therefore, guilty of negligence as alleged. The Master's subsequent good conduct has no bearing on the events leading up to the 29 November grounding.

CONCLUSION

Considered alone, the dismissal of one of the two specifications would justify a modification of the order of suspension from six months to three months. Appellant's illness will be taken into consideration as a mitigating circumstance. In view of these factors as well as the length of time since the casualty and the delay in rendering this decision, the suspension will be reduced to three months and places on probation.

ORDER

The order of the Examiner dated at New York, New York, on 16 December 1964, is modified to provide for a suspension of three (3) months which is not to become effective unless Appellant is found guilty of an offense committed within twelve (12) months of service of this decision on Appellant or counsel.

As MODIFIED, the order is

AFFIRMED.

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

Signed at Washington, D. C., this 5th day of April 1966.

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