

IN THE MATTER OF LICENSE NO. 333863 MERCHANT MARINER'S DOCUMENT NO.
Z-915627-D2 AND ALL OTHER SEAMAN DOCUMENTS
Issued to: JOSEPH F. O'CONNOR

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1610

JOSEPH F. O'CONNOR

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 11 July 1966, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman documents for two months outright upon finding him guilty of misconduct. The first specification found proved alleges that while serving as a First Assistant Engineer on board the United States SS AMES VICTORY under authority of the license above described, on 4 May 1965 and on 13 May 1965 Appellant wrongfully failed to perform his assigned duties by reason of intoxication. Two additional specifications found proved allege that while serving as First Assistant Engineer on board the United States SS DELAWARE under authority of the license above described, Appellant was wrongfully away from his duties on 26 May 1966 and wrongfully failed to perform his duties by reason of intoxication on 19 June 1966.

The hearing was conducted in absentia when Appellant failed to appear. The Examiner entered pleas of not guilty on behalf of Appellant.

The Investigating Officer introduced in evidence certified copies of extracts from the Shipping Articles for the two voyage in question and certified copies of entries in the Official Log Books of the two ships on which Appellant was serving.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and three specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of two months outright.

The entire decision was served on 21 July 1966. Appeal was timely filed on 26 July 1966.

FINDINGS OF FACT

Appellant served as First Assistant Engineer on board the SS AMES VICTORY while acting under the authority of his license on the voyage which commenced 19 March 1965 and terminated 28 May 1965. While the ship was at Saigon, Viet Nam, on 4 May 1965 and while the vessel was at sea on 13 May 1963, Appellant wrongfully failed to perform his assigned duties by reason of intoxication. Appellant served as First Assistant Engineer on board the SS DELAWARE while acting under the authority of his license on the voyage which commenced 19 April 1966 and terminated 30 June 1966. On 24 May 1966 while the vessel was at Bangkok, Appellant wrongfully absented himself from his duties in the engine room from 0800 to 1030. On 19 June 1966 while the vessel was at sea, Appellant wrongfully failed to perform his assigned duties by reason of intoxication.

Appellant's prior disciplinary record consists of three months suspension on twelve months probation from 31 May 1963 for failure to perform duties due to intoxication, and a warning issued on 14 August 1963 for absence without leave.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was physically unable to be present at the hearing or to be represented by Counsel and therefore did not have an opportunity to be heard in his own behalf. Failure to attend the hearing was attributed to the fact that he was an outpatient at both the Marine Hospital in San Francisco and Lodi Memorial Hospital in Lodi, California, for an injury.

OPINION

The entries in the Log Book of the SS DELAWARE make out a prima facie case since the entries were made in compliance with 416 USC 702. When the entries were read to the offender, his reply was that he had nothing to say. The entries in the Log Book of the SS AMES VICTORY by the Master also constitute substantial evidence of the offenses charged. Although the entries do not contain a statement that they were read to the offender, they were properly witnessed by the Chief Mate and Chief Engineer and indicate that they were read to the offender by the notations to the effect that seaman's reply was "no reply".

The Investigating Officer stated that the DELAWARE paid off on 1 July 1966 and on that date Appellant was given notice of the charge and specifications. He was advised that the hearing would

be held on 6 July and would proceed in his absence if he did not appear. Appellant did not request a postponement or notify the Coast Guard that he could not appear. Nothing was submitted to sustain the contention that he was physically unable to appear or to obtain Counsel, and he states only that he was an outpatient due to a concussion which required several stitches. No information was furnished as to the date or alleged injury or treatments. By his failure to take affirmative action with respect to appearance at the hearing, Appellant waived his right to submit a defense to the allegations contained in the charge and specifications.

CONCLUSION

It is concluded that the Log Book entries are sufficient to support the Examiner's findings, and that Appellant was informed of the complaint, the possible consequence of the proceeding, and his right to be represented at the hearing.

ORDER

The order of the Examiner dated at San Francisco, California, on 11 July 1966 is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 10th day of May 1967.

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