

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-904 023
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Robert L. TOMPKINS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1723

Robert L. TOMPKINS

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 30 March 1967, and Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for six months upon finding him guilty of misconduct. The specifications found proved allege that while serving as an oiler on board SS BEAVER VICTORY under authority of the document above described, Appellant:

- (1) on or about 31 December 1966, wrongfully failed to join the vessel at Yokohama, Japan, and
- (2) on or about 29 and 30 January 1967, at Ving Tem, Viet Nam, and on 13 February 1967 at Yokohama, Japan, wrongfully failed to perform duties.

At the hearing, Appellant did not appear. The Examiner entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of BEAVER STATE.

Since Appellant did not appear, there was no defense.

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

The entire decision was served on 7 May 1968. Appeal was timely filed on the same date. While Appellant had until 22 July 1968 to perfect his appeal, he has added nothing to his original statement of grounds.

FINDINGS OF FACT

On 31 December 1968, Appellant was serving as an oiler on board SS BEAVER VICTORY and acting under authority of his document while the ship was in the port of Yokohama, Japan.

On that date, Appellant wrongfully failed to join the vessel, although he was restored to the articles on 17 January 1967 at Da Nang, Viet Nam.

No further findings are made since only the findings of the Examiner on the "failure to join" specification are attacked on appeal.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the order is excessive because Appellant holds a certificate of discharge for leaving the vessel at Yokohama on 31 December 1966 which proves that he did not fail to join.

APPEARANCE: Appellant, pro se

OPINION

I

The evidence presented to the Examiner, on Officer Log Book entry, was sufficient to support his finding that Appellant wrongfully failed to join the vessel at Yokohama on 31 December 1966. The fact, asserted but not proved by Appellant, that Appellant holds a discharge from the vessel showing termination of his service as of that time at that place means nothing. A seaman is entitled to a certificate of discharge (46 U.S.C. 643) no matter what the circumstances of his separation from the vessel, so that it comes as no surprise that he might have such a document.

Two observations may be made here. If Appellant had produced before the Examiner a certificate of discharge showing "mutual consent" or "hospitalization" as the reason for discharge he would have presented a good defense. But he did not.

Even if, on appeal, he had presented such a discharge, the presentation would have been untimely because affirmative defenses must be presented to an examiner at hearing, not on appeal.

II

Although Appellant's grounds for appeal must be rejected, there is still a difficulty encountered in this case. At the time the Examiner entered his order in this case he was aware of, and

properly considered, an order of suspension of five months entered at Corpus Christi, Texas, which order had not yet been served upon Appellant. It was the intention of the Examiner that the suspension ordered by him should not run concurrently with the suspension ordered at Corpus Christi. The order is quoted in full:

"Based upon the above findings IT IS THEREFORE ORDERED that the above-described Merchant Mariner's Document and all other documents and licenses issued to and in the name of Robert Lee Tompkins he and the same are hereby suspended outright. The said outright suspension shall terminate six months after he deposits all of the said documents and licenses with the U.S. Coast Guard, provided, however, that this order is in addition to and cumulative with the decision of an Examiner in Corpus Christi for misconduct aboard the SS YELLOWSTONE wherein the said documents were suspended for a period of five months, and this order shall in no event run concurrently with that order."

Subsequent to service of this order, Appellant was served with the Corpus Christi order and appealed from it. Because of differences in time of delivery of the requested transcript of hearing to Appellant, the instant case has come up for review before Appellant's time for submission of grounds for appeal from the Corpus Christi decision has elapsed.

CONCLUSION

Since I construe the order of the Examiner in the instant case to mean that he intended that Appellant should have a total suspension of eleven months if the Corpus Christi order should become effective or should have a six month suspension if the Corpus Christi order should be vacated, or should have a total of six months' suspension plus whatever remained of a modified Corpus Christi order if that order should be modified, and since the instant case is ripe for final action, the order of the Examiner in the instant case must be modified.

ORDER

The findings of the Examiner made at San Francisco, Calif., on 30 March 1967, are AFFIRMED. The order of the Examiner is hereby made effective upon service of this decision on Appellant and its termination date will be six months from the date upon which Appellant surrender his extent temporary document which was issued pending this appeal. Disposition of the Corpus Christi order will be made in consonance herewith when the case involved is ready for review.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 23rd day of September 1968.

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