

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-151735-D3
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Robert McGOWAN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1916

Robert McGOWAN

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 28 January 1970, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for three months outright plus three months on six months' probation upon finding him guilty of misconduct. The specifications found proved alleges that while serving as able seaman on board the United States SS GREEN LAKE under authority of the document above captioned, on or about 17 October 1969, Appellant was wrongfully absent without leave on numerous occasions, failed to perform on one occasion, and failed to join vessel; all while in Okinawa.

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

The Investigating Officer introduced in evidence voyage records of the SS GREEN LAKE. There was no defense.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and fourteen specifications had been proved. He then served a written order on Appellant suspending all documents issued to him for a period of three months outright plus three months on six months' probation.

The entire decision and order was served on 21 December 1971. Notice of Appeal was timely filed on 21 December 1971. Appeal cannot be perfected due to the unavailability of a transcript of the hearing.

FINDINGS OF FACT

During October and November 1969, Appellant was serving as

Able Seaman on board the United States SS GREEN LAKE and acting under authority of his document while the ship was in the ports of Bruckner Bay and Naha Okinawa. Because of the disposition to be made of this case no further findings of fact are necessary.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge.

Due to the unavailability of a record no formal bases of appeal have been presented.

APPEARANCE: Appellant, pro se.

OPINION

Suspension and revocation proceedings are for the purpose of assisting the Coast Guard in carrying out its statutory responsibility to promote safety of life and property at sea. These proceedings are remedial in nature intended to maintain standards of competency and conduct by insuring that licensed or certificated persons carry out their duties and responsibilities. They also require procedures, consistent with statutory and regulatory requirements, which provide persons charged, such as Appellant, with a fair and impartial hearing coupled with an appeal procedure providing for a proper and adequate review.

In the instant case an "in absentia" hearing was conducted with apparently adequate proof and consistent with statutory requirements. Subsequently it appears that the private court reporter was unable to transcribe a record of the hearing. Other agency personnel have been unable to offer any encouragement that a record of the hearing could ever be reconstructed. Simply stated, the Appellant cannot be provided with the required record to assist him in preparing his appeal.

In accordance with statutory requirements, 5 U.S.C. 556 and regulations, 46 CFR 137.30 the record for decision on appeal includes the transcript of the hearing and exhibits together with all the papers filed in the proceedings and this must be available for agency review.

CONCLUSION

I must conclude that the order be reversed due to the unavailability of an adequate record for appellate review.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California, on 28 January 1970, is VACATED. The charges are DISMISSED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 30th day of March 1973.

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Hearings

 Purpose of

Appeal

 Record, insufficiency of

Transcript of Hearing

 Failure to produce