

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-492761-D2 AND
ALL OTHERS SEAMAN'S DOCUMENTS

Issued to: Everett J. RAY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1917

Everett J. RAY

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 4 October 1971, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida suspended Appellant's seaman's documents for four months outright plus four months on 18 months' probation upon finding him guilty of misconduct. The specifications found proved alleges that while serving as an able bodied seaman on board the United States NS COSSATOT under authority of the document above described, on or about 28 August 1970, Appellant wrongfully failed to join said vessel at Naples, Italy.

At the hearing, Appellant failed to appear, therefore the hearing proceeded in absentia. A plea of not guilty was entered to the charge and specification on behalf of the Appellant.

The Investigating Officer introduced in evidence the original signed copy of the "Advice to Person Charged" provided Appellant, an extract of the shipping articles, and a certified copy of page 36 of the official logbook.

Since Appellant did not appear, there was no defense.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. The Administrative Law Judge the entered an order suspending all documents issued to Appellant, for a period of four months outright plus four months on 18 months' probation.

The entire decision and order was served on 4 October 1971. Appeal was timely filed on 5 November 1971.

FINDINGS OF FACT

On 28 August 1970, Appellant was serving as an able bodied seaman on board the United States NS COSSATOT and acting under authority of his document while the ship was in the port of Naples, Italy.

On that date the vessel was scheduled to depart at 1600 hours and did so depart. At the time of the departure, the Appellant was not aboard the vessel and failed to sail with her as required.

On 2 September 1971, the U.S. Coast Guard Investigating Officer at Jacksonville, Florida, served the charges upon the Appellant and fully advised him of all of his rights in regard to the hearing. In particular he was advised that should he fail to appear at the hearing, it could and would proceed to a decision in his absence. By signing the statement admitted at the hearing, the Appellant acknowledged that he had been fully advised of all of his rights and understood them.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended by Appellant that there are certain errors on the record and that he was unable to present his defenses since he was at sea at the time of the hearing.

APPEARANCE: Appellant, pro se.

OPINION

I

Generally the grounds asserted on appeal are matters that should have been raised at the hearing in defense of the charge. I have repeatedly held that affirmative defenses must be raised at the hearing and cannot be considered for the first time on appeal. See Decision on Appeal No. 1723. By failing to appear at the hearing as scheduled, Appellant has waived any defenses he may have had.

Appellant contends that he wanted to be present at the hearing, but was unable to attend because he was at sea on that date. This contention is clearly without merit as the record clearly establishes that Appellant had been fully advised of his rights in regard to the hearing and that it could and would proceed in his absence. Voluntary service aboard another vessel after having received adequate notice of the hearing does not excuse Appellant's failure to appear therein. See Decision on Appeal No. 1785.

II

The error in the record complained of by Appellant is that the date shown on his discharge is at variance with the date noted in the transcript for the date of his departure from the vessel. Since he failed to appear at the hearing and present his discharge for examination, Appellant is unable to do so now. Assuming, however, the Appellant's discharge does contain a different date for his departure of the vessel, such a discrepancy would not be fatal since the certification of Shipping Articles (I.O. Exhibit 2) and the logbook entry (I.O. Exhibit 3) are in agreement that Appellant departed on 28 August 1970 at Naples, Italy. Together these documents provide substantial evidence of a reliable and probative nature to support the findings of the Administrative Law Judge.

CONCLUSION

The findings of the Administrative Law Judge together with the prior record of the Appellant reveal that the order entered in this case was a proper one requiring its affirmance.

ORDER

The order of the Administrative Law Judge dated at Jacksonville, Florida, on 4 October 1971, is AFFIRMED.

C. R. BENDER
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 31th day of March 1973.

INDEX

Hearing

In absentia, authorized
Absence from, dut to being at sea

Affirmative Defenses

Must be presented to examiner at hearing

Defenses

Failure to present, effect of

Error

Found harmless