

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1283500
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Terry FLEMMINGS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1934

Terry FLEMMINGS

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 12 October 1972, an Administrative Law Judge of the United States Coast Guard at Seattle, Washington, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Fireman/Watertender on board the SS ALBANY under authority of the document above described, on or about 26 September 1972, Appellant was wrongfully in possession of a controlled substance, to wit, marihuana while the vessel was in the port of Seattle, Washington.

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

The Investigating Officer introduced in evidence excerpts from the Shipping Articles, the testimony of three customs officials and a chemist who analyzed the marihuana, and a chain of custody for the marihuana.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. The Administrative Law Judge then entered an order revoking all documents issued to Appellant.

The entire decision was served on 26 October 1972. Appeal was timely filed on 31 October 1972.

FINDINGS OF FACT

On 26 September 1972, Appellant was serving as a Fireman/Watertender on board the SS ALBANY and acting under authority of his document while the ship was in the port of Seattle, Washington. On that date a plastic bag containing

marihuana was found in Appellant's possession by U.S. Bureau of Customs Officers.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

- (1) Appellant was improperly denied a change of venue;
- (2) the marihuana did not belong to Appellant

APPEARANCE: Appellant, pro se.

OPINION

I

Appellant's primary question raised on appeal is one of venue. He claims he requested his union representative to transfer the case to New Orleans, his place of residence after being advised by him that this could be done. He also claims, inconvenience, in that he had no relatives at Seattle with whom he could stay during the proceedings. All of these arguments are frivolous and are not persuasive in light of the facts in the record.

Appellant was found by U.S. Customs agent to be in possession of marihuana on 26 September 1972 and was charged with misconduct by the Coast Guard on the very next day for a hearing set for 3 October 1972. When charged he acknowledged service by signature upon the charge sheet in that he had notice as to substance of the complaint, the nature of the proceedings, his rights as specified in 46 CFR 137.20-45 (a) and 25 (a) and the method of hearing. The record shows that the Administrative Law Judge was never notified by Appellant or any duly authorized person of a desire to change the place of hearing. In accordance with duly prescribed regulatory procedures the hearing proceeded in absentia. There is substantial evidence of a reliable and probative nature to support the findings and order.

II

When Appellant failed to appear at the hearing he forfeited his right to present evidence that he did not commit the misconduct as charged. The time to provide such evidence was at the hearing before an Administrative Law Judge and cannot now be considered on appeal.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California, on 12 October 1972, is AFFIRMED.

T.R. SARGENT
Vice Admiral, U.S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 5th day of June 1973.

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