

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT AND ALL OTHER
SEAMAN'S DOCUMENTS Z-707419

ISSUED to: JOSEPH L. HOGAN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1959

JOSEPH L. HOGAN

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-1.

By order dated 30 October 1972, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, revoked Appellant's seaman's documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that on 6 April 1970, Appellant was convicted in Superior Court of the State of California of violation of the narcotic drug law of the State of California.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduce in evidence a certified copy of the court conviction.

In defense, Appellant offered evidence in mitigation.

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

The entire decision was served on 13 November 1972. Appeal was timely filed on 21 November 1972.

FINDINGS OF FACT

On 6 April 1970 Appellant was convicted by a California court of record for possession of heroin, a violation of California narcotic drug laws.

BASES OF APPEAL

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

(1) revocation upon proof of conviction for violation of a narcotic drug law is not mandatory;

(2) the regulations promulgated in the implementation of 46 U.S.C. 239b are unconstitutional;

(3) revocation constitutes "cruel and inhuman punishment;" and

(4) there is no reasonable relationship between the conviction of a narcotics offense and a life-time revocation of man's right to serve in the U.S. Merchant Marine.

APPEARANCE: Arnold Kessler, Esq. of Los Angeles, California.

OPINION

I

46 U.S.C.239b mandates that in cases where a seaman has been convicted in a Federal or State Court of record for a Violation of a narcotic drug law, as defined in Sections 239a and 239b, and proof of such conviction is submitted at a Coast Guard Hearing, the seaman's documents shall be revoked. The only discretion authorized under Section 239b is on the part of the Secretary in deciding whether or not to bring charges in the first instance. Once the charge of conviction for violation of a narcotic drug law has been submitted at a hearing, there is no one who can exercise discretion and do less than revoke the seaman's document. This interpretation is borne out by the legislative history of Section 239b. Throughout the hearings held on the bill containing Section 239b and throughout the House and Senate Reports, the only words used when discussing the appropriate order following proof of conviction are "deny" and "revoke". It is readily apparent that "deny" applies to initial issuance of a document to one previously convicted of a narcotics offense under Section 239b(a), and that "revoke" applies to taking away the document of one already holding it under Section 239b(b). Congress did not intend to distinguish between different types of convictions; so long as the conviction was for violation of a narcotic drug law, they intended mandatory revocation. See Hearings before the Senate Subcommittee on Interstate and Foreign Commerce on H.R. 8538 held June 16, 1954;

House Report No. 1559 of May 5, 1954; and Senate Report No. 1648 of June 28, 1954.

II

Appellant contends that the regulations implementing Section 239b are unconstitutional. The Coast Guard's regulations issued pursuant to Section 239b requiring automatic revocation cannot be unconstitutional, for the regulations do no more than is specifically mandated by Section 239b. The constitutionality of Section 239b itself, a statute reflecting the will of Congress, is not an issue appropriately raised at an administrative hearing.

III

Appellant's third point is not well taken. He alleges that revocation of his document under the circumstances of this case is "cruel and inhuman punishment" violative of his constitutional rights. It is presumed that Appellant means "cruel and unusual punishment" prohibited by the Eighth Amendment. First, Appellant is speaking in the wrong standards, for the prohibition against "cruel and unusual punishment" is a criminal standard, not an administrative law standard. Second, an order of suspension or revocation under R.S. 4450 (46 U.S.C. 239) or revocation under 46 U.S.C. 239b has never been held by a court since the original enactment of the Administrative Procedure Act to be "punishment", much less a "cruel and unusual punishment."

IV

Neither is Appellant's final point well taken. 46 CFR 137.13-1 (a) provides that Appellant can apply for a new license after three years. Thus, if the facts introduced at the hearing in mitigation are found to be accurate, Appellant should have sufficient grounds to request the issuance of a new document after the three year period.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California on 30 October 1972, is AFFIRMED.

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

Signed at Washington, D. C., this 27th day of June 1973.

INDEX

Narcotics

Policy relative to

Narcotics statute

Applied

Legislative history

Rationale

Discretion of examiner, not after conviction

Discretion of Secretary to bring action

Conviction conclusive

Congressional intent

Punishment

Cruel and unusual

Regulations

Constitutionality of narcotics

Revocation or suspension

Narcotics convictions basis for revocation

Not "cruel & unusual"