

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1071587-D3
AND ALL OTHER SEAMAN'S DOCUMENTS
ISSUED to: John R. CHRISTEN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1985

JOHN R. CHRISTEN

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 14 December 1971, an Administrative Law Judge of the United States Coast Guard at Portsmouth, Va., revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as a messman on board SS AMERICAN CORSAIR under authority of the document above captioned, on or about 14 January 1971, Appellant:

- (1) failed to perform duties because of intoxication;
- (2) assaulted one Charles G. PACE, pantryman, by setting fire to his mattress while PACE was sleeping on it;
- (3) threatened on several occasions to blow up AMERICAN CORSAIR, which carried military explosives as cargo; and
- (4) carelessly lighted matches about the deck of the explosive - carrying vessel.

At the hearing, commencing at San Francisco, California, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification. At Appellant's request the hearing was transferred to Portsmouth, Va., where Appellant did not appear.

The Investigating Officer introduced in evidence the testimony of witnesses and voyage records of AMERICAN CORSAIR.

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 specifications had been proved. He then entered an order revoking all documents issued to Appellant.

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

FINDINGS OF FACT

On 14 January 1971, Appellant was serving as a messman on board SS AMERICAN CORSAIR and acting under authority of his document. Appellant on that date committed acts as recited in the specifications found proved.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that Appellant should have an opportunity to present his side of the case.

APPEARANCE: Max A. Goldfarb, Esq., Miami, Fla.

OPINION

I

Appellant was personally served with the charge and specifications at San Francisco, California, on 9 February 1971. At this time he was advised of his rights and was put on notice that if he failed to appear at the time and place specified for the hearing it would be conducted in absentia. Appellant acknowledged service with his signature. Once again, at the hearing accompanied by legal counsel, Appellant was advised of his rights. Subsequently the hearing was adjourned sine die subject to call. On 19 February 1971 direct interrogatories proposed by the investigating office were submitted to counsel. However, on 24 February 1971 counsel requested by telephone a change of venue to Portsmouth, Va., where witnesses would be available. Counsel also advised that the Appellant was already enroute and would report to the Coast Guard at Portsmouth. The request for the change of venue was subsequently confirmed by letter. The Administrative Law Judge granted the request and directed Appellant through his duly authorized counsel at San Francisco to report to the Judge at Portsmouth, Va.

At no time prior to 2 March 1971, the date of the continued

hearing, did Appellant report to any cognizant Coast Guard official or Administrative Law Judge in Portsmouth, Va. or any other place. On that date the hearing was continued in absentia as provided for in 46 CFR 137.20-25 and on 15 December 1971 the Judge rendered a written decision. In the interval no communication had been received from Appellant. The Decision with the order was mailed to Appellant at three addresses in Louisiana, New Jersey and California which were all returned unclaimed. On 27 December 1971, the Judge in Portsmouth, Va., received a letter dated 21 December 1972 from a new attorney at Miami, Florida purporting to represent Appellant. A copy of the decision was also forwarded to this attorney for service; however, it was not until 21 April 1973 that service of the Decision and order on Appellant was acknowledge. Prior to this, on 12 April his apparently authorized new counsel petitioned for a rehearing which was denied by the Judge on 3 May 1973 since the petition did not identify any newly discovered evidence nor did it allege that newly discovered evidence was probably produce a different result.

With all of this, Appellant now complains that he was unable to present his side of the case.

II

In brief, I am faced with ascertaining from the record whether or not the statutory and regulatory requirements of providing Appellant with an opportunity to be heard were met. In a recent appeal I stated that to proceed with a hearing in absentia the record must contain proof that Appellant was provided notice of the hearing. Appeal Decision 1923 (Adams). In the instant case the record is rather extensive and includes substantial evidence that notice of the hearing and related procedural requirements were met.

At the first session of the hearing on 9 February 1971 Appellant appeared and was duly represented by counsel of his choice. These facts were so noted on the record. At no time thereafter is there any attempt, on the record or otherwise, to disavow his San Francisco attorney. The hearing was continued on notice by the Administrative Law Judge after carefully considering the availability of witnesses to assure Appellant a fair and impartial hearing. Subsequently, counsel of record requested and was granted a change of venue for the proceedings to be continued at Portsmouth, Va. to permit the obtaining of live testimony as desired by Appellant. The fact that the order issued at San Francisco for Appellant's appearance at Portsmouth on or before 26 February 1971 was itself dated 26 February 1971 is of no significance. The request for transfer to Portsmouth emanated from Appellant's counsel of record on 19 February 1971 and was orally granted on that date.

At this point in time it was reasonable to believe that Appellant would report to the proper authorities in Portsmouth. Additionally, his counsel advised that Appellant had left the San Francisco area for Portsmouth, Va. to report to the Coast Guard in Portsmouth. When the Appellant failed to communicate with anyone within a reasonable time the Administrative Law Judge had no choice but to proceed in absentia.

III

It should be noted that Appellant also had a duty to keep appropriate parties informed as to his whereabouts. Although the hearing terminated on 2 March 1971 and the Decision was dated 14 December 1971 no word was received from the Appellant during this lengthy intervening period. The fact that Appellant's present and apparently authorized attorney initiated communications with the Administrative Law Judge at Portsmouth, although not until nearly ten months later, merely affirms the conclusion that Appellant well knew that Portsmouth was the proper venue for the proceeding.

CONCLUSION

It is concluded that Appellant had his opportunity to be heard and failed to use it. In view of his voluntary disregard of the procedures I find no merit in his contention that he was denied a fair opportunity to present his side of the case in defense against the charge of misconduct. Although the order of Revocation is severe I find it wholly consistent with Appellant's misconduct and the Coast Guard's responsibility for assuring safety of life and property at sea.

ORDER

The order of the Administrative Law Judge at Portsmouth, Va., on 15 December 1971, is AFFIRMED.

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

Signed at Washington, C. C., this 9th day of August 1973.

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