

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO 553-08-5586
LICENSE NO. 476 013
Issued to: James R. Copley III

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2125

James R. Copley III

This appeal has been taken in accordance with Title 46, United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 6 July 1977, an Administrative Law Judge of the United States Coast Guard at Long Beach, California revoked Appellant's merchant mariner's document and Third Mate's License upon finding him physically incompetent. The specification found proved alleges that while serving as Mate aboard the United States F/V ELSINORE under authority of the license above-captioned from 18 September 1976 until 28 October 1976 and on the date of the charge sheet, Appellant was physically incompetent, in that he was not possessed of the normal color sense.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of Honesto S. TAJUNA, First Class Hospital Corpsman, USCG. He also introduced documentary exhibits as follows: Exhibits 1A and 1B (excerpts from Coast Guard Medical Manual, (CG-294) Section 3C, pages 43 and 44); exhibits 3A and 3B (SF FORM 88, Report of Medical Examination for Appellant dated 31 August 1976).

In defense, Appellant offered in evidence his own testimony and Respondent's exhibits A (Report of Physical Examination for Original license dated 9 March 1973), B (Report of Physical Examination for original license dated 1 March 1976), and C (letter from the Academic Dean of California Maritime Academy dated 17 January 1977).

The hearing was continued for approximately five months so that Appellant could be examined by a private physician and also make a request from the Coast Guard for a waiver of the color vision requirements set forth in the regulation pertaining to color vision. The Administrative Law Judge deferred ordering an eye examination by either a contract ophthalmologist or a physician of

the Public Health Service until Appellant had an opportunity to consult with his own private physician.

After the hearing was reconvened, Appellant introduced an application for a waiver; a letter dated 4 March 1977 from a private physician concerning the results of an examination that he gave Appellant on 17 January 1977; a letter dated 6 April 1977 from the Master of the Elsinore regarding the level of Appellant's performance of duties as Third Mate; and an article from Military Medicine on the treatment of color vision defects.

The Investigating Officer then introduced into evidence the Coast Guard denial of Appellant's waiver application.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that it was obvious that Appellant did not possess normal color vision. Subsequently, he served a written order on Appellants revoking his license and all existing seaman's documents issued to Appellant and authorizing the issuance of a new document endorsed for Ordinary Seaman only.

The entire decision and order was served on Appellant on 6 July 1977. Appeal was timely filed by Appellant on 18 July 1977.

FINDINGS OF FACT

From 18 September 1976 until 28 October 1976, Appellant was serving as Third Mate on board F/V ELSINORE and acting under authority of his license.

On 9 March 1973, Appellants color vision was examined by the U.S. Public Health Service. At that time it was determined to be normal. On 1 MARCH 1976, Appellant was again determined to be normal by the U.S. Public Health Service.

Appellant was issued his Third MATE's license on 19 June 1976. His merchant mariner's document had been previously issued on 3 May 1976.

In furtherance of an application for a Coast Guard Reserve Commission, Appellant was examined on 31 August 1976 by the U.S. Public Health Service. Appellant failed to pass the pseudo-isochromatic plate color vision test, scoring only one out of fifteen (15) plates correctly. In accordance with applicable regulations, Appellant was given the Farnsworth Lantern Color Vision test which he failed three times.

Appellant was examined on 17 January 1977 by a private physician specializing in ophthalmology. The physician concluded that the Appellant had a red/green color deficiency which could be

characterized as strongly deuteranopic.

The same private physician re-examined Appellant on 3 February 1977. By utilizing special filters, Appellant was able to pass with 100% score the Pseudo-Isochromatic Color Vision test.

BASES OF APPEAL

This appeal has been taken by Appellant from the order imposed by the Administrative Law Judge. Appellant contends that;

- (1) The Administrative Law Judge erred in allowing the hospital corpsman who administered the color vision test for the Coast Guard Reserve Commission to testify as to the results of that test and,
- (2) The Administrative Law Judge erred in revoking Appellant's documents because the Coast Guard did not meet the required burden of proof in the case.

APPEARANCE: Nissenberg and Nissenberg, LaJolla, California
92037, David N. Nissenberg, Esq.

OPINION

I

Appellant contends that although the hospital corpsman who administered the color vision test to him for the Coast Guard Reserve Commission performed numerous such tests every month, he was not competent to interpret the results of these tests since he was not a medical doctor. Appellant argues that a proper diagnosis and interpretation of color vision test results can only be made by a person trained in medicine. Appellant attempts to buttress these contentions by stating that the Coast Guard relied solely on the corpsman's testimony to establish that Appellant did not have normal color vision.

These arguments are not persuasive. At best they affect the weight to be given the corpsman's testimony rather than the admissibility of such testimony. In any event the corpsman in giving his testimony made neither a diagnosis of Appellant nor gave an interpretation of the color vision tests administered to appellant. The corpsman merely testified that the test were properly conducted and that Appellant failed these tests.

Furthermore, Appellant is incorrect in concluding that the Coast Guard relied solely on the corpsman's testimony. While it may be that his testimony was the major part of the Investigating

Officer's case, Appellant's counsel introduced the report of the private physician who examined Appellant between the first and second sessions of the hearing. This report clearly points out that Appellant has a red/green color vision deficiency which is strongly deuteranopic.

Regardless of who is capable of administering and scoring the color vision tests given Appellant, Appellant also argues that the Coast Guard regulations mandate that these tests be administered by a medical officer of the United States Public Health Service of a private physician if no such officer is reasonably available.

The regulation cited clearly applies only to applicants for original licenses who must pass a physical examination prior to issuance of that license. It does not apply to situations in which it has come to the Coast Guards attention that the holder of a license may not meet applicable physical standards. In that situation the license is tested for compliance with whatever applicable physical standards he is thought to be unable to meet. If he passes, that is the end of the matter; he is not given a complete physical exam. If he does not pass, R.S. 4450 proceedings are commenced looking toward a determination as to his physical competence. The latter is precisely what happened here. There is no requirement in the latter case that a physician or medical officer examine the licensee in all cases or testify at the R.S. 4450 proceeding. All that is required is that the Coast Guard demonstrate by reliable, substantial and probative evidence that the licensee is, in fact, incompetent. If the incompetence is based on a condition which can be observed by laymen or tested by means of a relatively simple medical test administered by laymen with special training, the fact that a medical officer does not administer the test or testify as to its results does not render the determination of incompetence invalid.

II

Appellant urges that the Coast Guard did not prove by substantial evidence that he was physically incompetent. In this regard, Appellant again contends that the corpsman who testified was not competent to state he had abnormal color vision. Appellant also argues that even assuming that the Coast Guard proved that he had abnormal color vision, there was absolutely no testimony at the hearing that he was physically unable to perform his required duties the period of time he served aboard the F/V ELSINORE.

Nowhere in the corpsman's testimony is there any conclusion drawn that the Appellant's color vision is abnormal. The corpsman merely testified that he administered color vision tests to Appellant on certain dates and that Appellant failed every one of

these tests.

Appellant's argument that there was no testimony that he was physically unable to perform his duties while serving as mate aboard the F/V ELSINORE cannot succeed.

Statutory requirements for renewal of a deck officer's license are that the applicant be possessed of the normal color sense. 46 USC 225. One who fails to meet the minimum statutory physical requirements for renewal of a license cannot continue to hold that license during the period that his failure to meet statutory minimum requirements continues. The fact that Appellant satisfactorily performed his duties while serving as mate on the vessel is not determinative. Appellant's inability to pass the required color vision tests shows that he is incapable of meeting the statutory minimum requirements for color vision. Thus, he cannot hold a license as Third Mate or any other rating which requires color vision.

CONCLUSION

The Coast Guard had jurisdiction over Appellant's license and document. There was reliable, substantial and probative evidence showing that Appellant did not possess the necessary color vision to validly hold the license and document which he held. The Administrative Law Judge's Decision and Order are correct except insofar as the Judge directed the issuance of a document endorsed for Ordinary Seaman only. In fact, Appellant may hold any entry rating document.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California on 6 July 1977, is AFFIRMED except insofar as it authorizes and directs the Officer in Charge, Marine Safety Office, San Diego, California to issue Appellant a new Merchant Mariner's document, endorsed for Ordinary Seaman only. The Officer in Charge, Marine Safety Office, San Diego, California, is authorized and directed to issue Appellant a new merchant mariner's document endorsed for Ordinary Seaman, Wiper or Messman.

J.B. HAYES
ADMIRAL, U. S. Coast Guard
Commandant

Signed at Washington, D. C. this 20th day of June 1978.

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