

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT No. Z-056-26-4182-D4
Issued to: Hugh Jerome Van Wyck GREEN

DECISION OF THE VICE COMMANDANT
UNITED STATES COAST GUARD

2151

Hugh Jerome Van Wyck GREEN

This appeal had been taken in accordance with 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 14 April 1978, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's seaman's documents for a period of four months upon finding him guilty of misconduct. The specifications found proved allege that while serving as able bodied seaman on board the United States SS THOMAS JEFFERSON under authority of the document above captioned, Appellant failed to perform his duties on the 0000-0400 seawatch on 1 March 1978, and again on 16 March 1978, while the vessel was at sea.

The hearing was held at Boston, Massachusetts, on 14 April 1978. Appellant was present at the hearing, but was not represented by counsel. The Administrative Law Judge advised him of his right to be so represented, but Appellant elected to proceed without counsel. Upon arraignment, Appellant pleaded guilty to the charge and specifications. Warned by the Administrative Law Judge of the possible consequences of his action, Appellant nevertheless persisted in his plea of guilty.

Despite the plea, the Investigating Officer introduced in evidence voyage records of THOMAS JEFFERSON, as well as the testimony of Captain Orié F. Graves, Master of the vessel.

After being reminded of his right to remain silent, Appellant chose to make a sworn statement in explanation of his guilty plea.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and two specifications had been proved by plea. He then served a written order on Appellant suspending all documents issued to him for a period of four months.

The entire written decision was served on 8 May 1978. Appeal was timely filed on 8 May 1978 and perfected on 12 May 1978.

FINDINGS OF FACT

On both 1 March 1978 and 16 March 1978, Appellant was serving as able bodied seaman on board the United States SS THOMAS JEFFERSON and was acting under authority of his document while the vessel was at sea.

On 1 March 1978, Appellant failed to perform his duties on the 0000-0400 sea watch.

On 16 March 1978, Appellant failed to perform his duties on the 0000-0400 sea watch.

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge. Appellant urges that the transcript of his Merchant Marine Personnel Record, which was reviewed by the Administrative Law Judge at the end of the hearing, was incomplete and in error. Appellant also has brought forth additional evidence which was not presented at the hearing, and has requested that this additional evidence now be considered on appeal.

APPEARANCE: Appellant, pro se.

OPINION

I

The decision of the Administrative Law Judge, finding Appellant guilty of misconduct, is not contested on appeal. Appellant seeks only a review of the appropriateness of the sanction imposed by the Administrative Law Judge in this case. It is contended that the order imposed was based in part upon a consideration of Appellant's prior record, and that the transcript of Appellant's record which was reviewed at the hearing by the Administrative Law Judge was inaccurate. Implicit in Appellant's contention is the argument that the sanction imposed by the Administrative Law Judge was erroneously determined and is inappropriate to the circumstances of this case. It was at the hearing, however, that Appellant was given the opportunity to examine the transcript of his prior record, and to comment upon its accuracy. The verbatim transcript of the hearing shows that before the order of suspension was imposed, the Administrative Law Judge asked Appellant, directly, whether the transcript of his Merchant Marine Personnel Record was correct. After inspecting the transcript of his record, Appellant replied that it was correct.

In his appeal, Appellant has failed to describe, with any degree of specificity, the nature of the alleged error(s) in the transcript of his prior record. Rather, he claims merely that the record is "incomplete as to the amount of charges and suspensions back to 1945". Insofar as Appellant raised no exceptions to the use or accuracy of his prior record at the hearing, and has failed on appeal to identify any clear errors appearing in that record, no discernible issue has been presented by Appellant which warrants my consideration on appeal. I am forced to conclude, therefore, that Appellant's first basis of appeal is without merit.

II

Appellant requests that additional evidence, which was not presented at the hearing, now be considered on appeal. The evidence consists of a Russian medical report form which indicates that Appellant was not fit for duty during the period between 30 March 1978 and 4 April 1978. The diagnosis indicated on the form is chronic bronchitis. Appellant suggest that "perhaps" this condition influenced his conduct on 1 March, and 16 March 1978. At the hearing, however, Appellant stated that he did not perform his duties on the 1st of March because he was intoxicated. (He had no recollection of the events of the 16th of March.) In light of his statements at the hearing, the relevance of Appellant's medical condition on the 30th of March to his conduct on the 1st and 16th of March becomes difficult to comprehend.

Problems of relevance notwithstanding, Appellant has failed to show why this evidence was not presented at the hearing, or why it should be considered now on appeal. My consideration of this case is limited to a review of the case record. Appellant has not alleged that the medical report form was "newly discovered". Because the medical report form is not referred to in the record, and because there has been no showing why it does not appear, I am not required to give it any further consideration on appeal. However, it may be remarked in sum that the "evidence" is neither relevant nor probative of anything on the issues.

CONCLUSION

The charge of misconduct and two supporting specifications were proved at the hearing by plea. The order imposed by the Administrative Law Judge was not inappropriate under the circumstances of this case.

ORDER

The order of the Administrative Law Judge dated t Boston,

Massachusetts, on 14 April 1978 is AFFIRMED.

R. H. SCARBOROUGH
VICE ADMIRAL, U. S. COAST GUARD
Vice Commandant

Signed at Washington, D. C., this third day of April 1979.

INDEX

APPEALS

-evidence outside record, use of on appeal

-grounds for, specificity required

-limited to matters raised at hearing, clear error and newly discovered evidence