

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-435-54-4991
Issued to: Lafayette King

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2157

Lafayette King

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

By order dated 27 March 1973, an Administrative Law Judge of the United States Coast Guard at Wilmington, North Carolina, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as utilityman on board SS JAMES under authority of the document above captioned, on or about 17 November 1972, Appellant, at Apra, Guam, wrongfully had a quantity of marijuana in his possession.

The hearing was opened at Wilmington, North Carolina, on 19 December 1972.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced certain evidence and moved for the taking of testimony of two witnesses by deposition on written interrogatories. The motion was granted and the hearing was adjourned sine die.

A timely notice of reconvening of the hearing was delivered to Appellant by registered mail, and the hearing was reopened as scheduled on 8 March 1973 at Wilmington. Appellant did not appear nor give notice of any kind. The hearing proceeded in absentia.

After the hearing the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order revoking all documents issued to Appellant.

The decision was not served on Appellant until 28 November 1978. Notice of Appeal was timely filed on 26 December 1978.

Appellant requested a transcript of proceedings for use in perfecting his appeal. A transcript could not be provided because

no decipherable record of the hearing remains in existence and there are no means of producing one.

OPINION

No findings of fact are required and there need be no statement of special grounds for appeal. Since no final agency action had been entered in this case, the appeal having been filed within thirty days of the service of the initial decision, and since no record exists upon which to predicate a final agency action, the entire proceeding must be set aside. In view of the length of time has been permitted to elapse there is no profit in speculating whether a new proceeding could properly be undertaken.

ORDER

The order of the Administrative Law Judge dated at Wilmington, North Carolina, on 27 March 1973, is VACATED. The findings entered are SET ASIDE. The charges are DISMISSED.

J. B. Hayes
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 31st day of July 1979.

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Agency Action

not complete when appeal filed

Examiner's Order

appeal precludes finality

Initial Decision

not final when appealed

Record of Hearing

needed for valid proceedings

Transcript

basis for appellate review