

UNITED STATES OF AMERICA
UNITED COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT Z-1161 972
Issued to: Harris B. Boykin

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2191

Harris B. Boykin

This appeal has been taken in accordance with 46 United States Code 239(g) and CFR 5.300-1.

By order dated 16 January 1978, an Administrative Law Judge of the United States Coast Guard at Galveston, Texas, revoked Appellant's seaman's documents upon finding him mentally incompetent. The specifications alleged that Appellant, while serving as ordinary seaman on board SS MARINE CHEMICAL TRANSPORTER under authority of the document above captioned, did on or about 8 August 1979, wrongfully assault the Chief Mate by threatening him with a tank top ratchet wrench.

The hearing was held at Galveston, Texas, on 13 October 1977 and 14 November 1977.

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

The Investigating Officer introduced in evidence voyage records, the testimony of witnesses, given both in person and by stipulation, and certain medical records.

In defense, Appellant offered in evidence both written and oral testimony of witnesses.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had not been proved. He concluded that the Appellant was mentally incompetent at the time of the assault. He additionally concluded that Appellant was not fit for duty because he was required to remain on medication. He then served a written order on Appellant revoking all documents issued to Appellant.

The entire decision was served on 17 January 1978. Appeal was timely filed on 16 February 1978 and perfected on 18 July.

FINDINGS OF FACT

On 8 August 1977, Appellant was serving as ordinary seaman on

board SS MARINE CHEMICAL TRANSPORTER and acting under authority of his document while the vessel was anchored off Freeport, Texas. Appellant, while mentally incompetent, assaulted the Chief Mate. Appellant was removed from the vessel and treated for emotional instability. His condition was diagnosed as acute paranoia. At the time of the hearing his illness was in remission, although heremained on a daily medication.

BASES OF APPEAL

The appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the ruling of Administrative Law Judge was arbitrary and capricious to the weight and preponderance of the evidence.

APPEARANCE: Mr. Clement Aldridge, Jr., Esq., of Jackson, Aldridge & Wolinsky, Houston, Texas.

OPINION

I

The issue of Appellant's mental competence, although not initially in issue, was raised by Appellant himself and was exhaustively explored at the hearing. The Administrative Law Judge specifically noted that Appellant's mental competence was in issue, and continued the hearing at a later date to allow Appellant to fully and fairly litigate this issue. Extensive testimony was taken by the Administrative Law Judge to determine the type and severity of Appellant's illness. Appellant's psychiatrist opined that while Appellant was mentally incompetent during the alleged assault, he is fit for duty as a merchant seaman.

The Administrative Law Judge concurred with the psychiatrist in finding that Appellant was mentally incompetent during the alleged assault. However, he concluded that Appellant was not fit for duty and revoked his document.

II

Appellant's appeal is based upon the Administrative Law Judge's failure to adopt the expert witness's opinion as to Appellant's fitness for sea duty. An administrative law judge will, of course, carefully consider expert medical opinion. However, as I stated in Decision on Appeal No. 2021:

"...an administrative Law Judge is not bound by the recommendations of the psychiatrist or even by the medical findings and opinion. Although the medical opinion is of great weight in the ascertainment of a medical condition, the ultimate finding as to fitness of the person is a function of the Administrative Law

Judge's authority." Also see Decision on Appeal Nos. 1466 and 1720.

Accordingly, I shall affirm this order without modification.

ORDER

The order of Administrative Law Judge dated at Galveston, Texas on 16 January 1978, is AFFIRMED.

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

Signed at Washington, D. C., this 24th day of March 1980.

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