

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT  
Issued to: James Kelly REED 421-70-3485-D1

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2460

James Kelly REED

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR Part 5, Subpart J.

By order of 24 November 1986, an Administrative Law Judge of the United States Coast Guard at Alameda, California, revoked Appellant's merchant mariner's document upon finding him incompetent to serve on board merchant vessels of the United States.

the incompetence charge is supported by three specifications which allege that Appellant, while serving under the authority of his Merchant Mariner's document as an Able-bodied Seaman aboard the SS PRESIDENT FILLMORE, while the ship was at sea, did:

- (1) At or about 1300 hours, 8 June 1986, fail to obey an order, to wit: After specifically being told not to use water about any electrical equipment, he washed down the anchor windlass hydraulic unit and associated electrical equipment with salt water;
- (2) Between the hours of 0000 and 0400 on 19 March 1986, improperly disrupt engine room operations, to wit: he was observed to be talking and shouting to himself in the engineroom;
- (3) From 21 February 1986 to 9 June 1986, demonstrate unusual behavior, to wit: probable paranoid schizophrenia.

The hearing was held on 30 October 1986, at Coast Guard Island, Alameda, California and, following a continuance to facilitate a mental examination of the Appellant, was concluded on 24 November 1986. Appellant, initially, appeared at the hearing without counsel. The Administrative Law Judge advised the Appellant that he should

obtain counsel. During a recess, the Appellant contacted his union and obtained the assistance of a Union business agent, Bobby Iwata, to act as his counsel. The Coast Guard was represented by LTJG W. Whitson, Jr., USCG, a duly authorized Investigating Officer. The Appellant entered pleas of not guilty to the charge and its supporting specifications.

The Investigating Officer introduced in evidence five exhibits in support of his case, and testimony of five witnesses. Appellant called no witnesses, presented no evidence, and elected to remain silent.

During the course of the hearing, the Administrative Law Judge ordered the Appellant to submit to a medical examination concerning his mental condition. The psychiatric report was made a part of the record.

At the conclusion of the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charge and the three supporting specifications had been proved. He then entered an Order in Open Hearing revoking all documents issued to Appellant.

The entire decision was served on 30 June 1987. An appeal was timely filed on 3 February 1987. No brief or memorandum was filed in support of the notice of appeal, however the appeal is considered perfected due to Appellant's pro se status and the nature of the proceedings below.

#### FINDINGS OF FACT

Appellant is the holder of a Coast Guard merchant mariner's document, No. 421-70-3485-D1, which authorizes him to serve as Ordinary Seaman and Wiper.

On 21 February 1987, the Appellant, James Kelly REED, joined the SS PRESIDENT FILLMORE at Yokohama, Japan in the capacity of wiper. On 19 March and 8 June 1987, Appellant continued to serve aboard the SS PRESIDENT FILLMORE as Wiper under the authority of MMD No. 421-70-3485-D1.

SS PRESIDENT FILLMORE, Official No. 513860, is a United States flag cargo vessel of 17,801 gross tons, owned by American President Lines of San Francisco, California.

During the morning of 19 March 1986, while SS PRESIDENT FILLMORE

was underway at sea, Appellant entered the engine room and wandered about the fidley and other areas of the engine room while talking and occasionally shouting to himself and other persons not present, disrupting engine room operations.

Following this incident, while SS PRESIDENT FILLMORE was underway at sea at full speed in seas and swells, Appellant was observed, during boat drills, in an extremely precarious position as he tried to walk along the outboard bulwark cap rail with the sea painter from the lifeboat in one hand while trying to steady himself against the cargo vans stowed on deck with the other hand.

On 8 June 1986, Appellant was assigned to clean the hydraulic unit of the anchor windlass. He was specifically told to take rags and warm soogee water and wipe down the hydraulic unit, taking care not to get any water on the electric motor.

Later that day, Chief Engineer Burnham, upon being advised that Appellant had called for water on deck, went forward towards the anchor windlass. On the way, he noticed that a one and one half inch fire hose hydrant had been energized. Burnham tuned the hose off at the hydrant. Upon arriving at the anchor windlass, Burnham found the Appellant standing with the fire hose, fitted with a straight nozzle, in his hand with water dribbling out of the nozzle and mumbling about someone having turned his water off. Burnham discovered that Appellant had coated the hydraulic unit with hydrochloric acid and then washed it down with a stream of salt water from the hose. The water had splashed over the electrical motor and collected in the after corners of the windlass room where about 150-200 gallons of salt water was pooled.

Appellant was discharged from the SS PRESIDENT FILLMORE and left the vessel in Singapore at 1000 on 9 June 1986.

Appellant had a medical history of psychiatric disorders, including having been a patient at the University Hospital in Mobile, Alabama and had been placed on Trilafon medication for six years for these disorders.

Dr. Ruthrauff, a psychiatrist, at French Hospital in San Francisco, California observed Appellant on 17 July 1986 and diagnosed him as suffering from probable paranoid schizophrenia.

Appellant was ordered by the Administrative Law Judge to appear for mental examination during the hearing. The examination was

performed by the same Dr. Ruthrauff, who found Appellant suffering from chronic paranoid schizophrenia.

Appellant was fully assisted and represented by non-lawyer counsel of his own choice.

#### BASES OF APPEAL

Appellant has filed a disjointed, handwritten letter requesting an appeal. Upon review, there are no clear errors on the record. Appellant appears to raise two grounds for appeal:

1. Discrimination;
2. Testimony of the medical witnesses was not credible.

APPEARANCE: Appellant, pro se.

#### OPINION

##### I

Appellant's assertion that he was discriminated against is not supported by any evidence presented at the hearing. Appellant's counsel makes reference to discrimination in his closing argument, but Appellant fails to present an issue on appeal that is justiciable. Appellant's notice of appeal makes no indication of the manner of discrimination or individuals that may be responsible. I find that Appellant's assertion of discrimination is unsupported in the record.

##### II

Appellant, also, appears to attack the credibility of the medical witnesses for the first time on appeal. His challenge is not properly before me for review.

This issue is best resolved at the hearing level by cross examination of the witnesses and presentation of evidence that places the credibility of the witnesses in doubt, on the record. It is within the purview of the fact-finder, after hearing all the testimony and viewing the evidence, to determine credibility. The Administrative Law Judge can only be reversed on these matters if his

findings are arbitrary, capricious, clearly erroneous, and unsupported by law. Appeal Decision 2390 (PURSER); Appeal Decision 2356 (FOSTER); Appeal Decision 2344 (KOHAJDA); Appeal Decision 2340 (JAFFE); Appeal Decision 2333 (AYALA); Appeal Decision 2302 (FRAPPIER). The record below clearly indicates that the Administrative Law Judge's findings were fully supported, and in keeping with prior decisions. Appeal Decision 2417 (YOUNG); Appeal Decision 2181 (BURKE), Modified sub nom. Commandant v. Burke, NTSB Order EM-83 (1981); Appeal Decision 1203 (DODD).

### CONCLUSION

The findings of the Administrative Law Judge asto the charge of incompetence and the underlying specifications are supported by substantial evidence of a reliable and probative character. Those who suffer from a psychiatric disability should not be permitted to serve aboard any vessel in a capacity in which he could cause serious harm to himself, to others, or to the vessel.

### ORDER

The decision and order of the Administrative Law Judge dated 29 January 1987 at Alameda, California, is AFFIRMED.

J.C. IRWIN  
Vice Admiral, U.S. Coast Guard  
Vice Commandant

Signed at Washington, D.C. this 5th day of November, 1987.

\*\*\*\*\* END OF DECISION NO. 2460 \*\*\*\*\*