

NTSB Order No.  
EM-94

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.  
on the 9th day of December 1981

J. B. HAYES, Commandant, United States Coast Guard,

vs.

PETER A. AMOURY, Appellant.

Docket No. ME-90

OPINION AND ORDER

On March 26, 1981, Administrative Law Judge H. J. Gardner, following an evidentiary hearing at which the appellant appeared pro se, found that appellant, by virtue of his constructive possession of a small quantity of hashish while serving as an Engine Utilityman aboard the SS TRAVELER, was guilty of the charge of misconduct.<sup>1</sup> The law judge thereupon entered an order revoking appellant's merchant mariner's document (Z-512 70 8762). Appellant subsequently retained counsel who filed on his behalf an appeal from the law judge's decision with the Commandant. Counsel also filed with the Commandant a request that appellant be issued a temporary merchant mariner's document during the pendency of his appeal. The case before us is an appeal from the Commandant's denial of that request.<sup>2</sup> For the reasons that follow, we must reverse the denial.

In reviewing a request for a temporary document, the Commandant, by regulation, considers two factors. These are "[w]hether the service of the individual involved on board a vessel at the time of the request, or immediately thereafter, is compatible with the requirements for safety of life and property at sea" and "[t]he individual's prior record." See 46 CFR 5.30-15(b). The Commandant's denial in this case does not explain the

---

<sup>1</sup>The hashish was found in a dresser during a search of appellant's room in the Traveler. The vessel at the time was berthed in the port of Navlakhi, India.

<sup>2</sup>Appellant's appeal on the merits of the misconduct charge is still pending before the Commandant.

consideration given either factor.<sup>3</sup>

The letter denying appellant's request for a temporary document recites only that appellant's "continued service on board merchant vessels of the United States, now or in the immediate future, would be incompatible with the requirements for the safety of a life and property at sea."<sup>4</sup> This recitation, which does no more than refer to one of the two considerations applicable to a request for a temporary document pending appeal, does not comply with the Administrative Procedures Act's requirement that an agency rejection of an application "be accompanied by a brief statement of the grounds for denial" (see 5 USCA §555(e)). Absent some Coast Guard rule establishing that no seaman found guilty of a drug-related charge of misconduct would be eligible for a temporary document, the Coast Guard was obligated to explain to appellant why the charge against him, pending his appeal, should have that effect in his case. A conclusionary denial, cast in terms of only one of the two relevant considerations under the pertinent regulation, simply does not satisfy that obligation.<sup>5</sup>

ACCORDINGLY, IT IS ORDERED THAT:

1. Appellant's appeal is granted, and
2. The denial of appellant's request for a temporary document is hereby reversed.

---

<sup>3</sup>In its reply brief the Coast Guard argues that we should deny this appeal because it is interlocutory in character. We are cautioned that (Br. at 2) "[a]ny prejudgmental second guessing of the Commandant by the Board would not be in the spirit of the regulations (49 CFR 825) which set forth procedures for appeal and standards for review." The answer to the Coast Guard's concern in this connection is that our decision herein intimates no view on how we would decide this case on the merits in the event the Commandant rejected appellant's appeal and we were thereafter asked to review that decision.

<sup>4</sup>The letter made no mention of the fact that appellant has no disciplinary record. In fact, notwithstanding the provisions of the relevant regulation, the letter states that "[a]pproval or denial of a request for issuance of a Temporary Document is predicated entirely upon considerations of safety of life and property at sea" (emphasis added).

<sup>5</sup>We note, moreover, the Coast Guard's statement in its reply brief that it had stipulated that "appellant had no prior record during his four years at sea."

KING, Chairman, DRIVER, Vice Chairman, GOLDMAN and BURSLEY, Members of the Board, concurred in the above opinion and order. McADAMS, Member, was absent.