

In the Matter of Merchant Mariner's Document No. Z-131010-D3 and
all other Seamen Documents
Issued to: CARL J. BISCUP

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1450

CARL J. BISCUP

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 15 November 1963, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania suspended Appellant's seaman documents for four months outright plus six months on twelve months' probation upon finding him guilty of misconduct. The offenses alleged in the two specifications were proved by evidence that while serving as an engine utilityman on board the United States SS POTOMAC under authority of the document above described, Appellant wrongfully failed to perform his duties on 30 and 31 October 1963 in a foreign port.

The four months outright suspension in the order was the result of a prior suspension of four months which had been placed on probation for nine months. This order was rendered orally by an Examiner in December 1960 but it was not served on Appellant until August 1963. He had twice contacted the Coast Guard about it after it was not mailed to his home as promised by the Examiner.

The only issue on appeal is whether or not the four months' suspension should be made effective at this time on the theory that the prior order was not effective until the Examiner's written decision was served on Appellant in August 1963 and, therefore the offenses in October 1963 violated the probation. Appellant contends that since the Examiner told Appellant that he was on probation starting in December 1960 and he has not committed any offense for almost three years, it is unjust and harsh to take away his livelihood for four months at this time.

OPINION

Unlike the present regulations which provide that an examiner's order shall be effective when the oral decision rendered on the record is accompanied by delivery of the written order to the person charged (46 CFR 137.20-175(b)), the regulations in 1960 required service of the entire written decision to make the examiner's order effective. Accordingly, the probationary period of nine months' did not begin until service of the written decision in August 1963.

Nevertheless, I feel that there are sufficient mitigating circumstances to justify a modification of the present order to an entirely probationary suspension. There is no evidence that the decision of December 1960 was mailed to Appellant. There is evidence that Appellant twice attempted to get the written decision without success. Every indication is that he acted in good faith and that the delay in service was not his fault. Consequently, he should not be required to suffer because the service of the decision was delayed almost three years during which time he was not found guilty of any offense. Also, the Chief Engineer of the POTOMAC testified that, at sea, Appellant is a very competent and dependable seaman.

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 15 November 1963, is modified to provide for a suspension of four (4) months on twelve (12) months' probation. The period of probation shall commence when this appeal decision is served on Appellant.

If Appellant is found guilty by an Examiner of an offense committed within the probationary period, the probation is revoked and the four months' suspension shall become effective to the extent directed by the Examiner in his order.

G. A. Knudsen
Rear Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 14th day of April, 1964.

***** END OF DECISION NO. 1450 *****

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