

IN THE MATTER OF LICENSE NO. 322660
ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Charles E. QUARRY BK-033881

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1947

Charles E. QUARRY

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 13 January 1972, an Administrative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's license for 3 months on 12 months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as a Pilot on board the SS ESSO GETTYSBURG under authority of the license above captioned, on or about 23 January 1971 Appellant did fail to ascertain the vessel's correct position, thus contributing to the grounding of the vessel.

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

The Investigating Officer introduced in evidence excerpts from the Ship's Official Log and Bell Book, various documentary evidence pertaining to the Main Channel, New Haven Harbor, the testimony of an officer assigned to the Coast Guard Merchant Marine Inspection

Detachment, New London, Connecticut, and the testimony of other parties aboard the vessel at the time of the grounding.

In defense, Appellant offered in evidence Coast Guard Aid to Navigation Work Reports and his own testimony.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. The Administrative Law Judge then served a written order on Appellant suspending Appellant's license for 3 months on 12 months' probation.

The entire decision was served on 28 January 1972. Appeal was timely filed on 18 February 1972.

FINDINGS OF FACT

On 23 January 1972, Appellant was serving as a Pilot on board the SS ESSO GETTYSBURG and acting under authority of his license while the ship was entering New Haven Harbor.

On that date the SS ESSO GETTYSBURG grounded on the West edge of the Main Channel after passing buoy 8. On the trip out to meet the vessel Appellant had ascertained that several channel buoys were off station, however, he considered number 8 to be essentially on station. Appellant had knowledge that there had been problems trying to keep these buoys on station recently due to ice, wind and current conditions. Appellant made the decision to bring the vessel into the harbor and at 0514, while it was still dark, he began navigating the ship toward the channel using the channel entrance range lights to maintain position. As the vessel approached bouy number 6, it was determined that that buoy was almost in mid-channel. Number 6 Was taken close aboard to starboard and the turn was made to Lighthouse Point Reach. At this point it became evident that buoy number 8 was well off station to the west of the charted position. Appellant attempted to navigate the vessel to pass number 8 as close to starboard as possible, and shortly after passing it, the vessel grounded. At no time during the period prior to grounding did Appellant use any method of navigation other than "eyeballing" his way using the buoys. The vessels had a fully operable radar and gyrocompass.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

(1) the Administrative Law Judge erred in rejecting Appellant's testimony that Buoy 8 was on station when he was on his way out to meet the SS ESSO GETTYSBURG; and

(2) the Administrative Law Judge erred in finding that Appellant should have used means other than the buoys to navigate the channel.

APPEARANCE: Stephen J. Buckley, Esq. for Appellant.

OPINION

I

Appellant's first point takes issue with the Administrative Law Judge's decision not to accept Appellant's testimony that buoy number 8 was essentially on station when Appellant "eyeballed" it on his way out to meet the SS ESSO GETTYSBURG. It is a well established principle that the trier of facts must evaluate the testimony of the witnesses and determine questions of credibility. It was perfectly proper for the Administrative Law Judge to accept some portions of Appellant's testimony and reject other portions. Additionally, his conclusion is quite reasonable when it is considered that to have accepted Appellant's testimony concerning buoy number 8, the Judge would have had to accept Appellant's initial "eyeball" position of number 8 as correct and then have had to find that in a period of 1 1/2 hours the buoy had changed position to a new location well out into the channel as a result of wind and current conditions under which, by Appellant's own testimony, number 8 was normally quite stable. Thus, it cannot be said that the Judge's evaluation of the testimony and findings based thereon are in any way unreasonable.

II

Appellant's second point is likewise not persuasive. Here we have a situation where an experienced pilot who, with knowledge (1)

that a number of buoys near the entrance to the channel were off station and (2) that there had been problems trying to keep the buoys on station due to ice, wind and current and (3) that accurate knowledge as to the exact position of those buoys was essential to successful navigation of the channel which was quite narrow and shoaled on both sides, ascertained by "seaman's eye" the position of those buoys and then relied solely upon those same buoys to navigate a large tanker up that channel.

Appellant's reliance on *Afran Transport Company v. United States*, 435 F. 2d 213, is misplaced. He cites *Afran* as stating that "in the absence of some suspicious circumstances or notices, navigators are entitled to rely upon the representations made in the Government charts relative to the location of the buoys." Even accepting this analysis, if the circumstances facing Appellant on the morning in question were not suspicious, then one would be hard put to find "suspicious circumstances." If there was ever an occasion when the counseling of 33 CFR 62.25-55 not to rely solely on buoys, but to utilize other means of positioning, was applicable, it was in this case. Faced with a determination of the position of critical buoys which could at best be described as uncertain, Appellant did not take a single added precaution to attempt to insure safe transit of a channel which must be considered both narrow and shallow for a ship the size of the ESSO GETTYSBURG. In so failing to act, Appellant failed to act as a reasonably prudent person of like station and experience under the prevailing circumstances.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 13 January 1972, is AFFIRMED.

T.R. SARGENT
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 18th day of June 1973.

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