

In the Matter of Certificate of Service No. E-358235
Issued to: GEORGE GABLE, JR

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

511

GEORGE GABLE, JR

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137-11-1.

On 16 March, 1951, an Examiner of the United States Coast Guard at New York City revoked Certificate of Service No. E-358235 issued to George Gable, Jr. upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as pantry utility on board the American SS HORACE LUCKENBACH under authority of the document above described on or about 9 March, 1951, while said vessel was at Brooklyn, New York, he wrongfully had marijuana in his possession (First Specification); and such marijuana was dutiable merchandise which had not been declared on the ship's manifest (Second Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and it was stipulated between the parties that Appellant had marijuana in his possession and that it was not declared on the ship's manifest. The only question remaining was whether Appellant knew what the substance was. The Investigating Officer rested his case after this stipulation had been entered into.

In defense, Appellant testified under oath in his own behalf stating that he had purchased for twenty-five cents one small package of seeds wrapped in plain white paper from a peddler aboard the ship at San Francisco on about 8 February, 1951, to give to his children in Mobile for their canaries and pigeons. Appellant claims that the vendor said it was bird seed and the person charged did not even open the package but put it on a shelf and later put it in the top of his sock when Customs officials came aboard in New York. The reason given for this concealment was that Appellant had forgotten to declare the "bird seed" and he was afraid of being fined for not having done so.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specifications and entered the order revoking Appellant's Certificate of Service No. E-358235 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that Appellant did not know the nature of this substance but stuck it in his sock through fear of some unknown penalty because it had not been declared; that the Examiner's opinion is inconsistent since he accepted Appellant's stipulation as the basis of the findings but refused to give credence to Appellant's explanation that he bought the seeds for his children; and that the opinion is also based on a misstatement of fact as to when Appellant made the purchase. It is also contended that the order imposed is out of proportion to the alleged violation and that Appellant's record and character merit consideration in mitigating the order.

APPEARANCES: Doris B. Van Aller, Esquire, of Mobile, Alabama, of

Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 9 March, 1951, Appellant was serving as pantry utility on board the American SS HORACE LUCKENBACH and acting under authority of his Certificate of Service No. E-358235 while said vessel was at Brooklyn, New York.

On this date, while Customs officials were conducting a routine search of Appellant's quarters, a small package of marijuana seeds was discovered concealed under one of the socks which Appellant was wearing. The seeds were wrapped in a plain piece of white paper in the shape of a circular package about one and a half inches long and one inch in diameter. Appellant told the Customs officer that it was bird seed but in the course of his testimony he stated that he had paid a fifteen dollar tax to the Bureau of Customs as a result of the discovery of these unmanifested marijuana seeds in his possession.

Appellant's prior record during nine years at sea consists of a three months' suspension for misconduct in 1944.

OPINION

The clerical error in the Examiner's opinion, wherein it was stated that "the person charged knew that he was purchasing a narcotic in San Francisco on or about 9 March, 1951" (when, in fact, Appellant was in New York on this date), was not prejudicial to Appellant's cause since the conclusion arrived at by the Examiner was not in any degree based upon the accuracy of the date as stated.

The prima facie case made out against Appellant was based on the fact that he had marijuana seeds of a prohibited nature in his possession and the logical inference from such possession is that Appellant had knowledge of the nature of the substance. This inference may more accurately be described as a rebuttable

presumption which had the effect of putting the burden on the Appellant of going forward with the evidence to prove that he did not know that he had marijuana in his possession. It is a known fact that the substance was marijuana seeds of a prohibited nature because of the stipulation entered into which stipulation was substantiated by the fact that Appellant paid a transfer tax of fifteen dollars which would not otherwise have been required.

The Examiner did not accept Appellant's story that he believed he was purchasing bird seeds to give to his children, at a much later date, to feed to their canaries and pigeons. The Examiner pointed out his reasons for discrediting Appellant's testimony including: the actual concealment of the package; the improbability that Appellant would not have reported his failure to manifest the package to the Master, the steward, or even the Customs officer "in view of the alleged insignificant monetary value of the substance" - if he really believed that it was bird seed; and the improbability "that a seaman should purchase a small quantity of bird seed aboard ship in the manner claimed by the person charged for his children who resided in Mobile, Alabama." I might add that any pleasure or thrill, which is normally aroused in children when receiving gifts from distant cities, could hardly be expected upon their being given a small package of bird seed in plain white paper accompanied by the explanation that it had been purchased in San Francisco.

These reasons are adequate for having rejected the testimony of Appellant. The Examiner heard and observed Appellant and, therefore, is the best judge as to his credibility and the weight to be given his testimony. It has been specifically held that the uncontradicted testimony of an interested party does not overcome a presumption if his credibility is doubted. *Rosenberg v. Baum* (1946), 153 F.2d 10. Therefore, the prima facie case against Appellant was not overcome.

CONCLUSION

I agree with the Examiner's conclusion that Appellant had "knowledge" of the nature of the substance in his possession and that, therefore, such possession was "wrongful." The seriousness of the offense necessitates that the order of the Examiner be sustained despite Appellant's good character and his dependence

upon going to sea for his livelihood.

ORDER

The order of the Examiner dated 16 March, 1951, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 2nd day of August 1951.

***** END OF DECISION NO. 511 *****

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