

In the Matter of Merchant Mariner's Document No. Z-428908  
Issued to: ROBERT M. PEEL

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

661

ROBERT M. PEEL

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 30 January, 1953, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-428908 issued to Robert M. Peel upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as Crew Cook on board the American SS ALCOA CLIPPER under authority of the document above described, on or about 18 December, 1952, while said vessel was in the port of New Orleans, Louisiana, he wrongfully had in his possession certain narcotics; to wit, a quantity of marijuana.

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. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigation Officer made his opening statement and introduced in evidence the testimony of four U. S. Customs employees who had participated in the seizure and analysis of the marijuana in question.

In defense, Appellant offered in evidence the testimony of two character witnesses as well as testifying under oath in his own behalf. It was stipulated that additional witnesses would have testified to Appellant's good character and ability.

At the conclusion of the hearing, having heard the argument of the Investigating Officer 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 specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-428908 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 has no knowledge as to how the marijuana got in his clothing; it could have been placed there by someone and not noticed by Appellant because it was such a small amount; Appellant has never used narcotics in any form but he cannot explain how it got in his clothing; he has had no trouble before and has been going to sea since 1943; the support of his wife and two children depends upon his livelihood of going to sea; and a probationary order should be imposed since Appellant is not able to offer proof that he did not have the marijuana wrongfully in his possession.

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

#### *FINDINGS OF FACT*

On 18 December, 1951, Appellant was serving as Crew Cook on board the American SS ALCOA CLIPPER and acting under authority of his Merchant Mariner's Document No. Z-428908 while the ship was at New Orleans, Louisiana.

During a search of Appellant's personal belongings on this date, Port Patrol Officer Clesi found a substance which he thought was marijuana in the pockets of two pairs of trousers which were hanging outside of Appellant's locker in his quarters aboard the ship. He admitted ownership of these trousers.

Appellant was taken to the Customhouse where five separate samples were taken from the two pairs of trousers found on the locker and the trousers which Appellant was wearing at the time. These five samples were placed in separate sheets of white paper and turned over to Customs Chemist McCombs for analysis. It was found that one sample from each of the three pairs of trousers contained fragments of marijuana leaves and stems; and that a marijuana seed which was contained in one of the five samples was incapable of germination. The total weight of the five samples was four grains.

Upon being questioned by Customs Agent Crawford, Appellant stated that he had never used marijuana but that he could not explain how it got in his three pairs of trousers; and that he had not loaned the trousers to anyone.

Appellant is 31 years of age and there is no record of prior disciplinary action having been taken against his document during his more than nine years at sea.

#### *OPINION*

As stated by the Examiner, a prima facie case has been made out against Appellant by the rebuttable presumption of guilt which arises from proof of possession of the marijuana. The degree of proof required is that there must be substantial evidence; and this is generally defined as such relevant evidence as a reasonable man might accept as adequate to support a conclusion. Undoubtedly, this test is met by the fact that marijuana was found in three separate pieces of clothing which belonged to Appellant. The prima facie case was not overcome because the Examiner held that the possession was wrongful and rejected Appellant's testimony that he had no knowledge as to how the marijuana got in his clothing. The Examiner is the best judge as to the credibility of witnesses whom he heard and observed; and he rejected Appellant's testimony

despite the favorable testimony of two character witnesses.

The amount of marijuana was small - but still there was an unsatisfactorily explained possession of a narcotic. The seriousness of the offense requires that the order of revocation be sustained despite Appellant's personal hardship and his previous clear record.

*ORDER*

The Order of the Examiner dated at New Orleans, Louisiana, on 30 January, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this 1st day of June, 1953.

\*\*\*\*\* END OF DECISION NO. 661 \*\*\*\*\*

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