

In the Matter of Merchant Mariner's Document No. Z-650614  
Issued to: CALVIN GARY

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

706

CALVIN GARY

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 1 July, 1953, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document No. Z-650614 issued to Calvin Gary upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an ordinary seaman on board the American SS CREIGHTON VICTORY under authority of the document above described, on or about 18 May, 1953, he wrongfully had in his possession certain narcotics; to wit, 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. Appellant was represented by an attorney of his own selection and he entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a certified copy of Appellants's conviction in the United States District Court for the

District of Hawaii on 19 May, 1953, for possession of marijuana on board the CREIGHTON VICTORY.

Appellant testified under oath as to matters in mitigation. He stated that he had been convicted for the possession of marijuana in 1946 and had only begun to occasionally use marijuana again about a year before the present hearing; he has had no previous trouble during his seven years at sea; and he promises not to cause any trouble in the future if his seaman's papers are returned to him.

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 plea. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-650614.

From that order, this appeal has been taken, and it is urged that:

("1.) I was tried before the U.S. District Court in Hawaii, which gave me straight probation, a procedure which I am told is unusual, and indicated that the Judge felt I was a fine Prospect for rehabilitation. To revoke my MMD permanently is to deprive me of a livelihood, thereby increasing the difficulty of rehabilitation and to some extent at least overriding the judgement of the Court. I feel that in this proceeding I should be given the same chance to make good that the Federal Court was willing to extend.

("2.) The Examiner in his remarks indicated that he felt my papers should be revoked but that the revocation should be suspended on probation. The law provides that this may be done, but the Coast Guard has in effect counteracted the law as a matter of policy. Admittedly, any law may be made which seems proper, and mandatory revocation could be ordered by Congress. But the law does not so provide, and the Coast Guard should not have the right to rescind a law to suit a policy program. Quasi-judicial commissions are an infringement on Constitutional

rights to begin with, and should be closely restricted to the laws creating them. When an Examiner is given discretion by law, he should be allowed to exercise such discretion without intimidation."

APPEARANCES: Francis B. Perry, Esquire, of San Francisco, of counsel.

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

#### *FINDINGS OF FACT*

On 18 May, 1953, Appellant was serving as an ordinary seaman on board the American SS CREIGHTON VICTORY and acting under authority of his Merchant Mariner's Document No. Z-650614.

On this date, Appellant was apprehended with approximately 173 grains of bulk marijuana and two marijuana cigarettes in his possession. Appellant was convicted of this offense in the United States District Court for the District of Hawaii on 19 May, 1953, and placed on probation for a period of two years.

There is no record of prior disciplinary action having been taken against Appellant during the approximately seven years he has been going to sea; but he was previously convicted for the possession of marijuana in about 1946.

#### *OPINION*

The purpose of this remedial administrative proceeding is different than the penal judicial action taken against Appellant by the Federal court for the offense. The Commandant of the Coast Guard is compelled by statutory mandate (46 U.S.C. 239) to protect lives and property at sea by suspending or revoking seamen's documents when they have committed acts which are incompatible with the safety of life and property at sea. Thus, it is obvious that the Commandant would be violating his statutory duty if he voluntarily permitted the attempted rehabilitation of seamen on board merchant vessels of the United States. It necessarily

follows that since narcotics users have been known to commit extremely serious crimes involving physical violence upon other persons as well as destruction of property, the strict policy of the Coast Guard must be to revoke the documents of a seaman who has been found guilty of a narcotics offense. In numerous of these appeal decisions, the Commandant has set forth in detail his reasons for this policy.

*CONCLUSION*

In view of this policy, it is considered that the only appropriate order is revocation of Appellant's document.

*ORDER*

The Order of the Examiner dated at San Francisco, California, on 1 July, 1953, is AFFIRMED.

Merlin O. Neill

Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D.C., this 26th day of October, 1953.

\*\*\*\*\* END OF DECISION NO. 706 \*\*\*\*\*

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