

In the Matter of Merchant Mariner's Document No. Z-852208
Issued to: HERMAN SMITH

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

712

HERMAN SMITH

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 5 August, 1953, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-852208 issued to Herman Smith upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Second Cook on board the American SS MOUNTAIN MARINER under authority of the document above described, on or about 8 July, 1953, while said vessel was in the port of San Pedro, California, he wrongfully had in his possession a narcotic substance; namely, 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 "guilty" to the charge and specification proffered against him but the Examiner changed the plea to "not guilty" after Appellant stated that he did not know how the

marijuana got into his possession.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence copies of an entry in the Official Logbook of the MOUNTAIN MARINER, the U. S. Customs analysis of the marijuana, the U. S. Customs Seizure Report, and the report of the Inspector in Charge of the searching party which found the marijuana.

In defense, Appellant testified under oath in his own behalf. He stated that he was ashore for an hour and a half; and that he had left his door and locker unlocked. When Appellant returned to the ship, the Customs authorities confronted him with evidence of marijuana found in the clothing in his locker and Appellant said he did not know how the marijuana got there.

At the conclusion of the hearing, having 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-852208 and all other licenses, certificates 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 Appellant reiterates his denial of any knowledge concerning the two marijuana cigarettes which were located in his coat pocket. Appellant also states that he is the innocent victim of a dastardly act; his livelihood is at stake and he has five children to support; and he has had no other trouble since joining the Merchant Marine service in 1946.

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

FINDINGS OF FACT

On 8 July, 1953, Appellant was serving as Second Cook on board the American SS MOUNTAIN MARINER and acting under authority of his Merchant Mariner's Document No. Z-852208 while the ship was at San Pedro, California.

During a routine search of the ship by the U. S. Customs authorities on this date, a Port Patrol officer found two marijuana cigarettes in a pocket of a blue coat in Appellant's unlocked locker. Traces of marijuana were also found in one of the pockets of a shirt in the same locker. The Chief Steward of the ship and another Port Patrol officer witnessed the finding of this marijuana. Appellant was ashore when his locker was searched. When he returned on board and was informed about the marijuana, Appellant admitted ownership of the clothing in which the marijuana was found but he denied having any knowledge as to how the marijuana got into his clothing. No additional evidence of marijuana was discovered on Appellant's person when he was searched.

There is no record or prior disciplinary action having been taken against Appellant.

OPINION

The Examiner, as the trier of the facts who heard and observed Appellant while he was testifying, was the best judge as to the credibility of Appellant's testimony. And the Examiner stated that he was not persuaded by Appellant's mere denial of any knowledge as to how the two marijuana cigarettes happened to be in his coat pocket. Under circumstances where a defendant's knowledge of the presence of the narcotic in his possession is material, the weight to be attached to the denial of a defendant is for the jury to determine. *Gee Woe v. United States (C.C.A.5, 1918)*, 250 Fed. 428, cert. den. 248 U.S. 562. Similarly, the weight to be given Appellant's denial in this administrative action is for the Examiner to determine. Consequently, the prima facie case made out by proof of physical possession of the marijuana was not overcome by Appellant.

Since the presence of narcotics on board ships is considered to be such a serious threat to lives and property, the individual hardship which results from the policy of revocation in narcotics cases is of secondary consideration and it shall not be permitted to interfere with this policy. In the absence of any proof by Appellant that he was the "victim of a dastardly act," the order of revocation will be sustained.

ORDER

The Order of the Examiner dated at New York, New York, on 5
August, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this Sixth day of November, 1953.

***** END OF DECISION NO. 712 *****

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