

In the Matter of License No. 50550
Issued to: MANUEL R. MARQUES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

809

MANUEL R. MARQUES

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 February 1954, an Examiner of the United States Coast Guard at Boston, Massachusetts, revoked License No. 50550 issued to Manuel R. Marques upon finding him guilty of misconduct and negligence based upon two specifications alleging in substance that while serving as Master on board an American fishing vessel of more than 200 gross tons, the OCEANLIFE, and acting under authority of the license above described between 2 October and 9 October 1953, he acted under authority of a license which he had obtained by falsely swearing that: "I have not made application to the Officer in Charge, Marine Inspection, of any other district and been rejected within twelve (12) months of the date of this application" (misconduct); and that while serving as above, he permitted said vessel to sail while unlicensed persons served on board as Mate and Assistant Engineer (negligence).

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

nonprofessional counsel of his own selection. Appellant entered a plea of "not guilty" to the misconduct charge and specification; and "guilty" to the negligence charge and specification.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements. The Investigating Officer introduced in evidence several documentary exhibits and the testimony of one witness.

In defense, Appellant offered in evidence his own sworn testimony as well as the testimony of the owner of the OCEANLIFE who was acting as counsel for Appellant at the hearing.

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 charges had been proved by plea to the negligence specification and proved by proof of the misconduct specification. He then entered the order revoking Appellant's License No. 50550 with the recommendation that Appellant be permitted to take an examination for a license two months after surrender of his license. Appellant has held a temporary license at all times since 8 February 1954.

From that order, this appeal has been taken, and it is urged that Appellant did not willfully make a false statement in obtaining his Master's license; the statement sworn to by Appellant was ambiguous rather than false since Boston and Portland are in the same Coast Guard District; this is conceded by the subsequent change of the word "district" to "port" on the application form; Appellant did not apply for the same grade license at Portland as at Boston; and the negligence specification is defective since the allegations do not constitute an offense. Because of the disposition to be made of this case, it is not necessary to mention the additional contentions raised on appeal.

APPEARANCES: Messrs. Slater and Goldman of Boston,
Massachusetts, for Appellant.

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

FINDINGS OF FACT

On 21 June 1951, Appellant filed with the Officer in Charge, Marine Inspection, at Boston, Massachusetts, an application for a license as "mate of fishing vessels." On that same day and on the following day, Appellant was examined orally and by written questions. Appellant failed this examination and was told that he could come back in a month and take the examination again; but it does not appear that he was officially notified of this rejection by a statement setting forth the cause of the denial of a mate's license.

Appellant and the owner of the fishing vessel OCEANLIFE proceeded to Portland, Maine, which is another port in the First Coast Guard District. On 3 July 1951, Appellant filed with the Officer in Charge, Marine inspection, at Portland, Maine, an application for a license as "Master of uninspected fishing vessels up to 500 gross tons." This application clearly stated that Appellant did not have any license at that time. Immediately above Appellant's signature on the application, there is the following statement which is part of the application form: "I have not made application to the Officer in Charge, Marine Inspection, of any other district and been rejected within twelve (12) months of the date of this application." Appellant's signature was subscribed and sworn to before a Marine Inspection Officer as required by 46 U.S.C. 231. On the same day, Appellant was given an exclusively oral examination which he passed. As a result, Appellant was issued License No. 50550.

Between 2 October and 19 October 1953, Appellant was serving as Master on board the American F/V OCEANLIFE, a vessel of 372 gross tons, and acting under authority of his License No. 50550 while said vessel was engaged on a fishing trip on the high seas. The Mate and Assistant Engineer were not licensed, in accordance with the regulations of the Commandant of the Coast Guard, to perform their respective duties.

The charge and specification sheet alleging offenses based on the above facts was served on Appellant on 18 January 1954.

OPINION

Since the OCEANLIFE was a vessel of more than 200 gross tons, she was required to have licensed personnel in the capacity of Master, Mate, Chief Engineer and Assistant Engineer while navigating on the high seas. 46 U.S.C. 224a.

The misconduct specification alleges that Appellant was guilty of serving under License No. 50550 which he had obtained by "falsely swearing" that he had not made application in any other "district" and been "rejected" within twelve months of his second application.

False swearing is commonly defined as intentionally swearing to what a person knows to be untrue as distinguished from being merely innocently mistaken. *Palace Cafe v. Hartford Fire Ins. Co.* (C.C.A. 7, 1938), 97 F.2d 766, 769; *United States v. Howard* (D.C.W.D. Tenn., 1904), 132 Fed. 325; 48 *Corpus Juris* 821. It has been stated that false swearing is synonymous with both fraud (26 *Corpus Juris* 1059-60) and with perjury (48 *Corpus Juris* 821). A false statement is fraudulently made if there is either actual or constructive knowledge that the representation is false. 26 *Corpus Juris* 1105-09. The equivalent of actual knowledge is present when a representation is made without belief in its truth or in reckless disregard of its truth or falsity; and there is also constructive knowledge if the person knew, or had reason to know, that the representation was false. *Cooper v. Schlesinger* (1884), 111 U.S. 148; *Kimber v. Young* (C.C.A. 8, 1905), 137 Fed. 744, 748; *Hindman v. First National Bank of Louisville et al.* (C.C.A. 6, 1902), 112 Fed. 931, 944. In brief, the offense depends upon proof that a false representation has been made without an honest belief in its truth.

In order to comply with the above, two things must be proved to support the offense alleged in the misconduct specification: (1) that Appellant swore to a false statement; and (2) that Appellant had actual or constructive knowledge that the statement was false.

Whether the statement was false depends largely upon the meaning of the word "district" on the application form. The regulations indicate that the word "district" was intended to refer to a marine inspection zone. 46 CFR 10.02-19(b), 24.10-21. Boston

and Portland are in separate marine inspection zones. But there is no evidence in the record that Appellant had actual knowledge of this meaning as distinguished from a Coast Guard District. As contended by Appellant, it is true that the word "district" has been changed to "port" on the application form.

It may be said that Appellant had constructive knowledge of the meaning of the word "district" in that it was his duty to know the meaning as indicated by the regulations published in the Federal Register. But if Appellant is bound by this technicality, then the Coast Guard is equally bound by the requirement that the first examination must have been given in accordance with the law and regulations; and that the application must have been "rejected" as provided for in the regulations.

The examinations given to Appellant should have been oral since they were given for a license limited to fishing vessels. 46 U.S.C. 224a(2); 46 CFR 10.15-31(a). Appellant testified that the examination which he was given at Boston was not completely oral.

Title 46 CFR 10.02-19(c) requires that when an application for a license is refused, the Officer in Charge, Marine Inspection, shall give the applicant a statement setting forth the cause for the refusal. Since the record does not show that such a statement was given to Appellant, there is no evidence that his application at Boston was properly "rejected."

Consequently, Appellant cannot be found to have had constructive knowledge of the meaning of the word "district" since the record does not show that the Coast Guard complied with the regulations in giving the first examination and in notifying Appellant of his failure to pass the examination.

On a practical level and without regard to the technicalities of the regulations, there was considerable room for doubt as to the meaning of the word "district" on the old application forms. It is also conceded that the statement in question is ambiguous because of the additional reason that it does not state whether it is intended to apply only to the same grade license of the same type, all licenses of the same type, or all licenses regardless of the type. Where there is a question of interpretation of a representation involved, all doubts should be resolved in favor of

good faith (*26 Corpus Juris 1098-1100*).

For these reasons, I concur with the Examiner's conclusion that Appellant did not fraudulently obtain his Master's license by "knowingly" swearing to a false statement in his application. Therefore, Appellant was not guilty of misconduct for acting under the authority of this license between 2 October and 19 October 1953. Despite the fact that Appellant did not have the required one year sea service as a licensed mate when he obtained his Master's license for uninspected vessels (46 CFR 10.15-29(a), presumably he has had more than the equivalent of such service since he was issued the Master's license in July 1951. Consequently, it would serve no apparent purpose, in the interest of protecting the safety of lives and property at sea, to deprive Appellant of the use of his license at this late date. The misconduct specification is hereby reversed and dismissed.

As to the negligence specification, Appellant voluntarily entered a plea of "guilty". As Master of the OCEANLIFE, it was Appellant's responsibility to see that she did not sail while undermanned with respect to the licensed personnel required by the law as set forth in 46 U.S.C. 224a. Hence, there is no doubt that this specification alleges an offense and that Appellant was personally guilty of this negligent conduct despite the fact that the owner of the OCEANLIFE was the person who actually employed the unlicensed Mate and Assistant Engineer. It is my opinion that the fairest disposition of this case is to admonish Appellant for his negligence.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 5 February 1954 is hereby modified to directing an admonition against Appellant. In accordance with 46 CFR 137.09-75(d), Appellant is notified that this admonition will be made a matter of official record.

As so MODIFIED, said order is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 19th day of May, 1955.

***** END OF DECISION NO. 809 *****

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