

In the Matter of Merchant Mariner's Document No. Z-596362-D1
Issued to: MIGUEL ANGEL PENA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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MIGUEL ANGEL PENA

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 23 January, 1952, an Examiner of the United States Coast Guard at Baltimore, Maryland, revoked Merchant Mariner's Document No. Z-596362-D1 issued to Miguel Angel Pena upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as messman on board the American SS HIBUERAS under authority of the document above described, on or about 30 December, 1951, while said vessel was in the port of Baltimore, Maryland, he wrongfully had eighteen marijuana cigarettes in his possession which weighed 118.7 grains.

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 a Coast Guard officer who also acted as his interpreter. Appellant entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of Port Patrol Sergeant Frederick C. Schmidt who had apprehended Appellant with the eighteen marijuana cigarettes. The Investigating Officer also offered in evidence the U. S. Customs Laboratory Report on the marijuana cigarettes and the U. S. Customs Report of Seizure by

Sergeant Schmidt.

In defense, Appellant testified under oath in his own behalf. He stated that he had never seen marijuana before; that he had left his clothes on his bunk while taking a shower and had felt only the handkerchief in the back pocket of his trousers when he put his clothes on again; and that the person previously occupying his quarters had been arrested on 7 December for possession of marijuana.

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 specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-596362-D1 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:

1. The Hearing Examiner failed to properly appraise the evidence presented.
2. The substance seized remained in the custody of an individual for approximately a four (4) day period, during which time, it could have been unintentionally confused with material of a similar nature.
3. The "Rule of Misconduct" was incorrectly applied in this instance, in that the defendant, a family man, would have taken cognizance of his marital status before departing the vessel in the visible face of a customs search in progress, had he knowingly possessed same seized substance.
4. The defendant voluntarily offered to be cross-examined by the Investigating Officer relative to his conduct aboard the vessel.
5. No proof was offered that proved that such seized substance was in the voluntary possession of the accused while aboard the vessel.
6. The clothes worn by the accused were available to other persons, not in amicable friendship with the accused, for a period of time to have permitted the "planting" of such

material.

7. The accused requested the Customs Officer to permit him to see the material seized from his person, which request was denied.
8. The position of the seized material in the clothing of the accused was one in which he could have gone for hours without investigating, but which position would have been a likely one in which to have placed such "planted" seized material.
9. The accused has no Coast Guard record of previous citation.
10. The accused, a married man, with a wife and two small children, is being denied his sole means of employment and family support by the Hearing Examiner with an unjust and exceeding severe penalty on evidence with which the United States Attorney refused to prosecute.

APPEARANCES: Lt. Arthur H. Sheppard, USCG, of Counsel

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

FINDINGS OF FACT

On 30 December, 1951, Appellant was serving as messman on board the American SS HIBUERAS and acting under authority of his Merchant Mariner's Document No. Z-596362-D1 while the ship was docked at Baltimore, Maryland.

On this date, Sergeant Frederick C. Schmidt was the Customs Guard in Charge and he was patrolling the docks. At about 1230, he
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