

In the Matter of License No. 98903 Merchant Mariner's
Document No. Z-485794
Issued to: ISSIDOROS G. KYRIAKOS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ISSIDOROS G. KYRIAKOS

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.

By decision dated 25 May, 1953, an Examiner of the United States Coast Guard at New York, New York, suspended License No. 98903 and Merchant Mariner's Document No. Z-485794 issued to Issidoros G. Kyriakos upon finding him guilty of negligence based upon three specifications alleging in substance that while serving as Chief Mate on board the American SS QUARTETTE under authority of the license above described, on or about 21 December, 1952, while said vessel was at sea, he contributed to the stranding of said vessel on Pearl and Hermes Reef, which occurred when Appellant was the Officer of the Watch.

At the conclusion of the hearing, the Examiner entered his decision and imposed an order suspending Appellant's License No. 98903, and all other licenses, certificates of service and documents issued to the Appellant by the United States Coast Guard or its predecessor authority, for a period of three months outright and an additional three months on probation for a period of twelve months after the termination of the outright suspension.

This appeal has been taken from the decision of the Examiner

only insofar as the order imposed was founded upon the fact that Appellant was admonished at Philadelphia, Pennsylvania, on 21 March, 1947, for inattention to duty. It is contended that this admonition was never conveyed to Appellant, either in writing or orally, and the first time he heard about the admonition was at the conclusion of the hearing in this case. The appeal specifically states that this is the sole basis of the appeal; Appellant does not take exception to any of the findings made by the Examiner; and Appellant waives the receipt of a transcript of the hearing record.

APPEARANCES: Messrs. Zock and Petrie of New York City by Anthony N. Zock, Esquire, of Counsel.

FINDINGS OF FACT

On 21 December, 1952, Appellant was serving as Chief Mate on board the American SS QUARTETTE and acting under authority of his License No. 98903 while the ship was underway bound in the direction of Osumi Straits.

Appellant was the Watch Officer on the 0400 to 0800 watch when the ship ran aground on Pearl and Hermes Reef at 0710 on 21 December, 1952. Appellant took no action to change the course or speed of the ship (approximately ten knots) at any time after the lookout reported a "white line" up ahead at least five minutes before, and not less than one mile from, the point of the stranding. Cautious navigation was required particularly because the position of the ship had not been accurately established since sometime prior to noon on the preceding day and it was known that a chain of reefs extended along the port side of the intended course of the ship.

The above findings are adopted from the decision of the Examiner. Since Appellant does not question the findings of Examiner, I hereby incorporate, by reference, any additional findings of the Examiner which are material to this decision on appeal. I also take official notice of the fact that the damage resulting from the grounding was extensive - ship and cargo were constructive total losses. This fact is established by the official records of the United States Coast Guard.

OPINION

This appeal is from any portion of the order which is based upon the following statement contained in the decision of the Examiner:

"In entering my order, I am considering . . . the fact that this man has had an admonition at Philadelphia on 21 March, 1947, for inattention to duty."

Appellant has neglected to state that the Examiner included, in the above partially quoted sentence, four other facts taken into consideration which were favorable to Appellant's cause. This indicates that the Examiner weighed all the mitigating circumstances involved before imposing the order. In view of the extent of the damage incurred, it appears from the leniency of the order that the maximum weight was given to such mitigating circumstances by the Examiner. Hence, I think the order was fair on the merits of the case.

"Where the judgment is clearly correct upon the merits, intervening errors will not operate to reverse the judgment." 4 *Corpus Juris* 908.

For these reasons, and also because it is impossible to determine what portion of the order, if any, was the direct result of the admonition in 1947, the order of the Examiner will be upheld.

ORDER

The order of the Examiner dated at New York, New York, on 25 May, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this 17th day of July, 1953.

***** END OF DECISION NO. 690 *****

