

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-445319-D4 AND
ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Donald F. O'Leary

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1766

Donald F. O'Leary

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 9 January 1969, an Examiner of the United States Coast Guard at Seattle, Washington, suspended Appellant's seaman's documents for six months, plus nine months on eighteen months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an AB seaman on board SS CHILORE under authority of the document above captioned, Appellant:

- (1) on 2 December 1968, at Pusan, Korea, failed to stand an assigned gangway watch;
- (2) on 9 December 1968, at Pusan, Korea, failed to perform duties aboard the ship;
- (3) on 21 December 1968, at Pusan, Korea, created a disturbance aboard the vessel while intoxicated.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and each specification.

The Investigating Officer introduced no evidence.

In defense, Appellant made a statement in mitigation.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specifications had been proved by plea. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months plus nine months on eighteen months' probations.

The entire decision was served on 27 January 1969. Appeal was timely filed on 23 January 1969 (the written order having already been served earlier). Appeal was perfected on 22 April 1969.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an AB seaman on board SS CHILORE and acting under authority of his document. In view of the basis of appeal, further findings of fact are made by reference to the decision of the Examiner.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order is excessive.

APPEARANCE: Vance, Davies, Roberts & Bettis, of Seattle, Washington, by Thomas M. Giesness, Esquire.

OPINION

Appellant, both by his pleas at hearing and in his appellate documents, admits to the misconduct asserted in this case. On appeal, he claims only that the order is too severe for the offenses found proved in this case.

If an admonition issued in Baltimore in 196 in 1961, for two offenses, is overlooked, it can be seen that between 19 July 1966 and the date of the first offense specified in the instant case, Appellant had weathered six other experiences under the suspension and revocation proceedings provided for under R.S. 4450 (46 U.S.C. 239) for twenty four offenses committed aboard eight different ships with only three months' suspension ordered.

In the instant case, the Examiner discovered that the misconduct which he had found proved violated an order of six months' suspension on a year's probation. Thus he was required to make effective the six months' suspension previously ordered. For the instant misconduct the Examiner added no further outright suspension, only suspension on probation.

Brief reference to the Table at 46 C.F.R. 137.20-165 will show that Appellant's record in the last three years well merited affirmance of an order of revocation a long time back if one had been ordered.

It is obvious that Appellant's claim that the order in this case is excessive is absolutely without merit. Under the circumstances of the prior record, and in view of the minimum suspension that could have been ordered, the order in this case can be approved only as extremely lenient.

ORDER

The order of the Examiner dated at Seattle, Washington, on 9 January 1969, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 20 day of MAY 1969.

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