In the Matter of Merchant Mariner's Document No. Z-756326
Issued to: HENRY CHONG DAN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

550

HENRY CHONG DAN

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 25 July, 1951, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-756326 issued to Henry Chong Dan upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as utilityman on board the American SS ESSO ARUBA under authority of the document above described, on or about 14 June, 1951, while said vessel was at Carteret, New Jersey, he wrongfully had a quantity of opium in his possession.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the seriousness of the alleged offense, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by non-professional counsel who also acted as his interpreter. This person was voluntarily selected by Appellant to act in his behalf. Appellant entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of an employee of the Customs Agency Service in New York, Kenneth Qn Wong, who had acted as interpreter when Appellant was interrogated by Customs officials on 29 June, 1951. The Investigating Officer testified as to what Appellant had said to him on 3 July, 1951. A certified copy of an abstract from the shipping articles of the ESSO ARUBA and a certified copy of a report from the U. S. Customs Laboratory in New York City, which analyzed the substance in question as five grains of opium, were also received in evidence.

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 and entered the order revoking Appellant's Merchant Mariner's Document No. Z-756326 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:

POINT I. The record of hearing indicates that this was an unfair hearing.

POINT II. The order herein made by the hearing Examiner is too harsh and severe in view of all the circumstances and should be modified.

POINT III. The order herein should be vacated and either a new hearing should be ordered, or, in the alternative, the order should be reduced to suspension on probation or suspension but without revocation.

APPEARANCES: Morris Krauthamer, Esquire, of New York City, of Counsel.

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

FINDINGS OF FACT

On 14 June, 1951, Appellant was serving as utilityman on board the American SS ESSO ARUBA and acting under authority of his Merchant Mariner's Document No. Z-756326 while the ship was at Carteret, New Jersey.

On this date during a search of the vessel by U. S. Customs officials, a small package containing five grains of opium was discovered in the pocket of a "T" shirt which was in Appellant's locker. He had consumed some of the contents of the package at least once during the current voyage of the ESSO ARUBA. Appellant knew or had reason to believe that this package contained narcotics.

There is no record of any prior disciplinary action having been taken against Appellant during the course of his service for more than five years aboard American Merchant Marine vessels.

OPINION

After a careful review of the record, I am not disposed to grant any clemency in this case. The mere presence of narcotics aboard ships is considered to be such a serious threat to the safety of personnel and the ship that the proof of any association of seamen with narcotics must be met with the most severe order of revocation in attempting to carry out the statutory duty of the Coast Guard by eliminating this unnecessary hazard of the sea.

The claim that Appellant was not afforded a fair hearing is based partially upon the statement by the Examiner, at the beginning of the hearing, that proof of the charge and specification would result in the imposition of ". . . one of the most serious orders . . ." (R.2). This statement was in accord with the Coast Guard's policy of revocation which is generally applied in narcotics cases whether or not there are any mitigating circumstances. The only effect of this remark was to give

Appellant and his counsel the benefit of what the Examiner knew the policy to be and thereby to put the person charged on notice as to the probable result if the allegations were proved. I believe that the Examiner assisted, rather than prejudiced, Appellant's cause by making this remark.

There is no indication that the Examiner acted as a prosecutor when he questioned Mr. Wong in order to clarify his testimony. In fact, the regulations specifically permit this (46 C.F.R. 137.09-50(a)).

The Examiner afforded both parties an opportunity to submit proposed findings and conclusions before rendering his decision (R.27).

It is also contended that the order is too severe in view of Appellant's prior clear record, his status as an honorably discharged veteran of World War II, his prior service in the British Merchant Marine, his dependent wife and two children, and the fact that he is not a habitual user of narcotics. As mentioned above and in my prior decisions, such circumstances are not sufficient to merit modification of the order of revocation. The Examiner aptly stated in his decision:

> "It is unfortunate that Dan has a wife and family who are innocent victims of his misconduct. However, the much larger policy involving the public welfare cannot be surmounted merely on this ground."

This same reasoning applies equally to the other circumstances mentioned.

CONCLUSION

For these reasons, I do not feel that it would serve any useful purpose to conduct a new hearing since there is nothing in the present record which justifies reducing the order imposed by the Examiner; nor is there any indication that additional evidence favorable to Appellant would be adduced at a subsequent hearing.

ORDER

The order of the Examiner dated 25 July, 1951, should be, and it is, AFFIRMED.

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

Dated at Washington, D. C., this 19th day of March, 1952.

***** END OF DECISION NO. 550 *****

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