

In the Matter of Merchant Mariner's Document No. Z-514438-D1  
Issued to: ANTHONY LEE FLETCHER

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

631

ANTHONY LEE FLETCHER

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 29 October, 1952, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-514438-D1 issued to Anthony Lee Fletcher upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as saloon messman on board the American SS MAYO LYKES under authority of the document above described, on or about 27 October, 1952, while said vessel was in the port of New Orleans, Louisiana, he wrongfully had in his possession certain narcotics; to wit, marijuana.

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 an attorney of his own selection and he 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 five U. S.

Customs employees.

In defense, Appellant offered in evidence his own sworn testimony. Appellant stated that he had associated with a woman in Capetown, South Africa, who smoked marijuana cigarettes but that he had never smoked one although he was quite familiar with their appearance. Appellant also denied any knowledge about the partially smoked marijuana cigarette which had been found in his trousers.

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-514438-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 the hearing was not free from bias because the Examiner obeyed orders given to him as a Coast Guard employee. It is also contended that Appellant has been treated unfairly because he must find other employment for which he is not suitable; and that other seamen have been permitted to continue shipping after marijuana was found in their possession.

APPEARANCES: Gilbert Bernstein, Esquire, of New Orleans, of  
Counsel.

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

#### *FINDINGS OF FACT*

On 27 October, 1952, Appellant was serving as saloon messman on board the American SS MAYO LYKES and acting under authority of his Merchant Mariner's Document No. Z-514438-D1 while the ship was in the port of New Orleans, Louisiana.

In Appellant's presence and during a routine search of the ship by U. S. Customs authorities on this date, Port Patrol Officer Schorr found about one-half of a partially smoked hand-rolled cigarette in the right side pocket of a pair of trousers which were on a suitcase in the bottom of Appellant's locker. Since Officer Schorr thought that the cigarette stub contained marijuana, he questioned Appellant about it. Appellant admitted ownership of the trousers but denied any knowledge concerning the cigarette stub and stated that anybody could have put it in his trouser pocket. Officer Schorr then returned the stub to the same pocket and took the trousers and Appellant to Inspector Delarosa who was in charge of the searching party. After he inspected the cigarette stub, Inspector Delarosa replaced it and turned the trousers over to Customs Agent McClendon in the presence of Appellant and Customs Agent Crawford who had accompanied Agent McClendon to the ship after the office of the Supervising Customs Agent had been contacted by Inspector Delarosa.

The two Customs Agents questioned Appellant at the Customhouse. He stated that he did not know how the cigarette butt happened to be in the pocket of his trousers but that it might have been placed on a table with his money by a native marijuana smoker with whom he had stayed while the ship was at Capetown, South Africa, and then raked up by Appellant with his change and put in his pocket.

On 28 October, 1952, Agent McClendon delivered the trousers to the Customs Laboratory at New Orleans. Analysis by Customs Chemist Proctor disclosed that the cigarette stub and fragments from the right side pocket contained marijuana; and that separate sweepings from the left side and left hip pockets each produced approximately one grain of particles which contained marijuana. Both physical and chemical tests were applied in the analysis of these substances.

Appellant is twenty-five years of age and has been going to sea since 1945. His prior disciplinary record consists of a suspension in 1946 for assaulting another member of the crew on board ship.

#### OPINION

For the reasons aptly stated by the Examiner, I do not think that Appellant's denial of knowledge, or his explanation, was sufficient to overcome the presumption of guilt arising from the established fact that marijuana was present in at least three pockets of Appellant's trousers. In addition, Appellant denied knowledge of the cigarette butt even before it was analyzed and found to be made of marijuana; and he failed to explain how he could have taken the change out of the same pocket and not found the cigarette stub at that time.

The proof was very well made out by the testimony of the several Customs employees. On the basis of this evidence, the Examiner followed the established policy of the Coast Guard that a seaman's documents will be revoked after he has been found guilty of any offense involving narcotics. The Examiner was not biased in following this mandatory policy after the alleged offense had first been definitely proven by substantial evidence; and I perceive nothing else in the record upon which Appellant could possibly base a claim of bias on the part of the Examiner. A similar order of revocation will be imposed against the documents of all seamen who are proven guilty of offenses of this nature.

The fact that Appellant must obtain employment ashore is, naturally, of great concern to him; but it is comparatively insignificant to the additional risk to which thousands of seamen and ships would be unnecessarily subjected if known narcotics offenders were permitted to sail on American merchant vessels. One of the logical purposes of these remedial proceedings is to prevent such offenders from endangering the lives of others and impeding the progress of shipping.

*ORDER*

The Order of the Examiner dated at New Orleans, Louisiana, on 29 October, 1952, is AFFIRMED.

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

Dated at Washington, D. C., this 24th day of February, 1953.

\*\*\*\*\* END OF DECISION NO. 631 \*\*\*\*\*

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