

In the Matter of Merchant Mariner's Document No. Z-813712-D4 and
all other Seaman Documents
Issued to: ARTHUR W. MADSEN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1355

ARTHUR W. MADSEN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 14 February 1962, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman documents upon finding him mentally incompetent. The specification found proved alleges that while serving as an ordinary seaman on board the United States SS MAXTON under authority of the document above described, on or about 11 January 1962 to on or about 1 February 1962, Appellant was and still is mentally unfit for sea duty by reason of chronic schizophrenia, paranoid type.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a report from the U. S. Public Health Service Hospital, Seattle, Washington, containing a certification that Appellant had been examined on 14

December 1961 and found to be a chronic paranoid schizophrenic and not fit for sea duty. This diagnosis had been introduced into evidence at a Coast Guard hearing which had been instituted against Appellant by the Coast Guard at Long Beach, California. This case, however, was dismissed without prejudice to be reinstated against Appellant on the east coast where the SS MAXTON in which Appellant was serving as expected to arrive.

During the course of the hearing from which the appeal is taken, on application of the Government and in accordance with 46 CFR 137.05-5(a)(4), the Examiner entered an order, on 1 February 1962, requiring Appellant to submit to mental examination, on 2 February 1962, by the U. S. Public Health Service Hospital; Stapleton, Staten Island, New York. Appellant failed to take this examination and also failed to appear when the hearing was reconvened. At this time the Government submitted that Appellant was in Houston, Texas. The Senior Investigating Officer at New York took the stand and testified to a telephone conversation he had with a Cost Guard officer in Houston, Texas. It was ascertained that Appellant had not intention of returning for the hearing, but insisted that the matter be transferred to Texas where he could undergo psychiatric examination.

In defense, Appellant offered no evidence.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged by Appellant that the decision of the Examiner is based on insufficient evidence.

OPINION

Appellant is charged by the Government with incompetence by reason of "chronic schizophrenia" (schizophrenia has been defined as a psychosis characterized by various degrees of withdrawal from

reality, autistic thinking, delusion formation, bizarre behavior, and or hallucinations. See Davidson, Forensic Psychiatry 334, *Becker v. Becker*, 138 N.Y.S. 2d 397.), paranoid type (organized delusional thinking, Davidson *supra* at 329). To support this charge the Government introduced into evidence a medical report from the U. S. Public Health Service Hospital, in Seattle, Washington, which report contained a certification that Appellant had been examined and found as above specified. Since the report does not contain independent facts (or symptoms) on which the medical conclusion (or diagnosis) and the opinion that Appellant was not fit for sea duty were based, it would normally not carry the burden for the Government. The Government usually would have to introduce additional evidence to prove incompetence.

Commandant's Appeal Decisions Nos. [825](#), [1169](#). However, the situation in the case before me is an exception to this rule because this particular medical report constituted "good cause" for the Examiner to order a psychiatric examination of Appellant in New York, pursuant to 46 CFR 137.05-5(a)(4). Appellant's failure to comply with the Examiner's order, for no apparent reason, brought into play the last sentence of subparagraph 4 which states that if the person charged "fails or refuses to submit to such duly ordered examination, the claim shall be taken to be established for the purposes of the action". In view of this, the Hearing Examiner's decision is affirmed.

ORDER

The order of the Examiner dated at New York, New York, on 14 February 1962, is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 6th day of December 1962.

***** END OF DECISION NO. 1355 *****

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