

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-502826-D8 AND
ALL OTHER SEAMAN DOCUMENTS
Issued to: Leonard Wigren

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1518

Leonard Wigren

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 16 June 1965, an Examiner of the United States Coast Guard at Portland, Oregon suspended Appellant's seaman documents for three months upon finding him guilty of two offenses of failing to perform his duties on two occasions in April 1965.

The voyage ended at Portland, Oregon on 7 June and, on 8 June, Appellant was served to appear at a hearing in Portland on 11 June. Also, on 8 June, Appellant mailed a letter to the Examiner at Portland stating that Appellant had explained that, due to the death of his mother (she lived in Oakland, California), he could not be at the hearing on 11 June. The letter also states that the reason for one of the alleged offenses is that Appellant was ashore looking for his stolen property (this agrees with a logbook entry later placed in evidence), and requests that the results of the hearing be sent to Appellant at Oakland (his mother's address). This letter was received by the Coast Guard on 9 June.

Appellant was not present at the hearing on 11 June. After referring to Appellant's letter of 8 June, the Examiner stated that he felt it was proper to proceed in the absence of Appellant in view of his requests that he be given consideration and that the results be sent to him. The Investigating Officer stated, while not under oath, that when served, Appellant had indicated he would not be at the hearing, but for reasons other than contained in his letter of 8 June. The other reasons were not stated by the Investigating Officer.

The Investigating Officer then introduced evidence including two pages in the Official Logbook for the voyage which pages are represented in the record on appeal by two uncertified, photostatic copies. These pages contain two entries which are the only evidence in the record to prove the alleged offenses.

On 16 June, the Examiner rendered the decision in which he concluded that the alleged offenses were proved by the prima facie evidence contained in the two logbook entries. He then entered the order of three months' suspension.

On appeal, Appellant again mentions that he had notified the Coast Guard of his mother's death as the reason for his absence from the hearing, states that the suspension imposed was not justified, and claims that there are statements in the Examiner's decision which are not true.

OPINION

The findings that Appellant was guilty as alleged are set aside and the case will be remanded to give Appellant a reasonable opportunity to present evidence in his defense, if necessary, after the Government has the opportunity to support the allegations with properly certified copies of the entries in the Official Logbook.

The primary reason for this action is that the Examiner conducted the hearing in absentia in the face of a letter from Appellant which states a good reason for his absence and was not refuted by any satisfactory evidence in the record. Simply because Appellant indicated he expected the hearing to proceed in his absence is not an adequate reason for doing so if Appellant's absence is justified. It is noted that the hearing was held at Portland and the address of Appellant's mother was in Oakland.

This error was not cured, as it might have been, when the Investigating Officer stated that Appellant had given reasons, other than stated in his letter, for not attending the hearing. The Investigating Officer was not under oath when he made this statement and it was not amplified by specifying what these other reasons were.

Points on appeal, other than those mentioned above, might have escaped notice since the appeal is neither typewritten or written legibly as required by the regulations. 46 CFR 138.30-1 (b)(1).

ORDER

The Order of the Examiner dated at Portland, Oregon, on 16 June 1965, is VACATED. The record is REMANDED with directions to reopen the hearing for further proceedings not inconsistent with this decision.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 9th day of September 1965.

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IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-501816-D8 AND
ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Leonard WIGREN

SUPPLEMENTAL
DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1518

Leonard WIGREN

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 28 January 1966, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for three months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as a fireman-watertender on board the United States SS GOPHER STATE under authority of the document above described, on or about 26 April and 29 April 1966, Appellant wrongfully failed to perform his duties at Kobe, Japan, and Pusan, Korea, respectively, on the first occasion the reason being intoxication.

At the hearing, Appellant elected to act as his own counsel.

In this case, Appellant had originally been charged at Portland, Oregon, on 8 June 1965 for hearing on 11 June 1965. Hearing was held *in absentia*. Since Appellant did not appear for hearing and since he had prior to the hearing date given notice that he would not appear because his mother had just died in

Oakland, California, and since his appeal from the order entered again urged that his mother's death had prevented his appearance, I directed that the matter be remanded to permit Appellant to enter a defense.

Appellant received notice to appear at Portland, Oregon, for further proceedings. When he did not appear at the time and place specified, and after motion had properly been made to proceed in *absentia*, the Examiner at Portland, *sua sponte*, transferred the case to be heard by an Examiner in San Francisco, California.

It is the decision of this Examiner at San Francisco, that is now on appeal.

At the proceedings on remand the Investigating Officer entered ship's records into evidence and Appellant gave his own testimony in defense.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and both specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of three months.

The entire decision was served on 27 January 1966. Appeal was timely filed on 2 February 1966. Appeal was perfected by Appellant's action on 13 April 1966.

FINDINGS OF FACT

On 26 and 29 April 1966, Appellant was serving as fireman-watertender on board the United States SS GOPHER STATE and acting under authority of his document.

On the first date mentioned, Appellant failed to perform his duties at Kobe, Japan, by reason of intoxication. On the second date in question, he failed to perform his duties at Pusan, Korea.

BASES OF APPEAL

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

APPEARANCE: Appellant, *pro se*

OPINION

I

Appellant's primary ground for urging clemency is that never before has he had a dismissal of charges against him.

It appears that since 1945 Appellant has been going to sea "off and on" for a total of about four years' sea time. During those four years' sea time he has achieved the following record:

- (1) suspension of six on twelve on 21 October 1957;
- (2) suspension of six on twelve on 21 August 1958 (no explanation as to why the earlier probation had not been found to have been violated);
- (3) Three months outright, plus six on twelve, 23 July 1963.

Such a record gives no cause for clemency, since it averages out to one hearing per year of sea time. The order of the Examiner in this case is one of extreme leniency.

II

This case was remanded to the Examiner who originally heard it. Notice of time and place for the rehearing was served upon Appellant by registered mail. (Although Appellant denies having received the notice under conditions which would have permitted him to attend the hearing, the record shows that a receipt signed by him had been returned by the Post Office prior to the date set for hearing). In this notice, the Examiner advised Appellant that if he wished he could apply in writing for a change of venue which would be granted.

No reply was received from Appellant and he did not appear.

On his own motion, then, the Examiner, in an excess of caution, transferred the case to an Examiner in San Francisco, over the objection of the Investigating Officer. This need not have been done.

III

There are other factors present in this case that render leniency most inappropriate. appellant's reason for not appearing at the original proceedings in Portland as written to the Examiner and as voiced on appeal was that he had to go to Oakland, California, where his mother had just died, Three other reasons for his non-appearance are now in the record.

There is also in the record an admission that his mother had not died at that time.

The earlier appeal was taken frivolously.

So too was this one, as Appellant admitted to the Examiner that it would be taken solely to postpone his suspension.

ORDER

The order of the Examiner dated at San Francisco, California, on 1966, is AFFIRMED.

W. J. Smith
Admiral, United States Coast guard
Commandant

Dated at Washington, D. C., this 11th day of August 1966.

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