

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-712991-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Charles D. MOORE,

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1971

Charles D. MOORE

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

By order dated 17 July 1972, an Administrative Law Judge of the United States Coast Guard at San Francisco, California revoked Appellant's seaman's documents upon finding him guilty of "conviction for a narcotic drug law violation." The specification found proved alleges that on or about 31 March 1972, Appellant was convicted of the Narcotic Drug Laws of the State of California.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a certified copy of the court conviction.

In defense, Appellant offered evidence in mitigation.

At the end of the hearing, the Administrative Law Judge

rendered an oral decision in which he concluded that the charge and specification had been proved. He then entered an order revoking all documents issued to Appellant.

The entire decision was served on 19 July 1972. Appeal was timely filed on 16 August 1972.

FINDINGS OF FACT

On 31 March 1972 Appellant was convicted by a California court of record for unlawfully transporting, selling, furnishing and giving away marijuana, a violation of California narcotics drug law.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

(1) the Secretary of Transportation is authorized to personally exercise discretion in deciding whether or not to uphold pursuant to 46 U.S.C. 239b; and

(2) to allow the Administrative Law Judge to exercise discretion in entering an order under 46 U.S.C. 239(b) and 46CFR 137.03-4, while allowing only the Secretary, who has not heard the testimony or observed the parties, to exercise discretion under 46 U.S.C. 239b and 46 CFR 137.03-10, violates Appellant's constitutional right of equal protection.

APPEARANCE: Milton E. Franke, Esq., of Hayward, California.

OPINION

I

At the outset it is deemed appropriate to go into some depth on the background of 46 U.S.C. 239(b) and 46 U.S.C. 239b and the regulations issued pursuant to each. I find this necessary since Appellant's arguments reveal some basic misconceptions interpreting

these sections and relating them to each other.

II

These two statutory provisions, Sections 239(b) and 239b, are wholly independent of each other. Section 239(b) authorizes the Commandant to promulgate regulations for the investigation of acts of misconduct and gives him broad authority to define misconduct. Section 239(g) provides for suspension or revocation of license or documents upon proof of misconduct at a Coast Guard hearing. Therefore, the Commandant has the responsibility to issue regulations defining misconduct, and he has discretion to decide whether revocation or suspension is appropriate in a given type of case. Under this authority the Commandant published regulations, 46 CFR S 137.03-3 and 137.03-4, in which he defined possession of narcotics, including marijuana, as misconduct and determined that mandatory revocation was appropriate upon proof of possession. In his discretion the Commandant has seen fit to allow less than revocation in those misconduct cases where mere experimentation with marijuana is satisfactorily demonstrated to the Administrative Law Judge.

III

Section 239b deals specifically with court convictions for narcotics drug law violations as opposed to misconduct. It mandates that in cases where a seaman has been convicted in a Federal or State court of record for a violation of a narcotics drug law, as defined in Sections 239a and 239b, and proof of such conviction is submitted at a Coast Guard hearing, the seaman's documents shall be revoked. Appellant erroneously assumes that the Secretary can change the Administrative Law Judge's order of revocation if he finds that extenuating circumstances warrant such action; this not the case. The only discretion authorized under Section 239b is on the part of the Secretary deciding whether or not to bring charges in the first instance. the responsibility for making this determination has been delegated to the Coast Guard Investigating Officer, who must decide, based upon his investigation and evaluation of the facts and supporting evidence, whether or not charges should be placed. Once the charge of conviction for violation of a narcotics drug law has been brought and proof of the conviction has been submitted at a hearing, there

is no one, not even the Secretary or the Commandant, who can exercise discretion and do less than revoke the seaman's document. This interpretation is borne out by the legislative history of Section 239b. throughout the hearings held on the bill containing Section 239b and throughout the House and Senate Reports, the only words used when discussing the appropriate order following proof of conviction are "deny" and "revoke". It is readily apparent that "deny" applies to initial issuance of a document to one previously convicted of a narcotics offense under Section 239b(a), and that "revoke" applies to taking away the document of one already holding it under Section 239b(b). Congress did not intend to distinguish between different types of convictions; so long as the conviction was for violation of a narcotics drug law, they intended mandatory revocation. See Hearings before the Senate Subcommittee on Interstate and Foreign Commerce on H.R. 8538 held June 16, 1954; House Report No. 1559 of May 5, 1954; and Senate Report No. 1648 of June 28, 1954.

IV

Although it is somewhat unclear, it appears that it is Appellant's contention that his equal protection right has been violated by allowing the Administrative Law Judge to exercise discretion when dealing with a drug offense under Section 239(b), but allowing only the Secretary to exercise discretion under Section 239b without having personally heard all of the testimony and observed the parties. It is assumed that Appellant intends to raise a due process argument rather than an equal protection argument since the latter is only provided for in the 14th Amendment and protects the individual only from state government action and not Federal Government action. In any case this argument misses the mark, for, as pointed out above, under Section 239b, once charges are brought, no one has discretion to do anything other than enter a mandatory revocation order following proof of conviction.

V

On the other hand, if it is Appellant's contention that the mere fact that the Administrative Law Judge has discretion in a Section 239(b) case, but not in a Section 239b case violates his due process and equal protection rights, this also is in error. As

pointed out above, the statutory authority for each of these is completely different. Also the basis for the actions is different. When an action is brought for misconduct for possession of marihuana under 239(b), it is up to the Coast Guard to prove all elements of the case. When an action is brought under 239b, there is already been a conviction in a Federal or State court of record for violation of a narcotics drug law. Equal protection, as applied through the due process clause of the 5th amendment, does not mean that there can be no discrimination between groups of similarly situated individuals, but rather means that where there is discrimination it must not be invidious or wholly unreasonable. When an action is brought based upon a valid court conviction where a higher standard of proof and more stringent rules of evidence are applied, there is a reasonable basis for requiring an order based upon that conviction to be more strict than an order which follows a charge proved in the first instance at an administrative hearing.

CONCLUSION

46 U.S.C. 239b mandates the revocation of a seaman's documents by the Administrative Law Judge upon proof of conviction for violation of a narcotics drug law. The statute does not authorize any subsequent reviewing authority to change that revocation order once it is found that the record reflects proper proof of the conviction.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California on 17 July 1972, is AFFIRMED.

T. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 5th day of July 1973.

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