

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT No. Z-930044-D1
Issued to: Joselito ANTUNEZ

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2394

Joselito ANTUNEZ

This appeal has been taken in accordance with Title 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 27 July 1983, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, revoked Appellant's merchant mariner's document upon finding him guilty of misconduct. The specification found proved alleges that while serving aboard the SS LESLIE LYKES, under authority of his document, Appellant did, on or about 21 July 1983, while the ship was moored in Houston, Texas, wrongfully have in his possession marijuana.

The hearing was held at Houston, Texas, on 27 July 1983.

At the conclusion of the hearing, the Administrative Law Judge concluded that the charge and specification had been proved and entered an order revoking Appellant's merchant mariner's document.

The Decision and Order was served 12 September 1983. Appeal was timely filed and a copy of the transcript requested on 25 August 1983.

A transcript was not provided and cannot be prepared because the commercial court reporting service under contract to record the hearing lost the record of the hearing.

APPEARANCE: Martin F. Regan, Jr., Esq., 1559 Tulane Avenue, New Orleans, Louisiana.

OPINION

By statute and regulation Appellant is entitled to appeal from the decision of the Administrative Law Judge and to have his appeal considered on the record of the hearing including the transcript. See 46 U.S.C. 7702, 46 CFR 5.20-35(a), 46 CFR 5.30-1, 46 CFR 5.30-5. The Administrative Procedure Act, under which these proceedings are conducted, also requires that agency decisions be based on the record which includes a transcript of the hearing. 5 U.S.C. 556.

In the absence of the transcript of the hearing, there is no sufficient legal basis upon which to affirm the findings and order of the Administrative Law Judge.

CONCLUSION

The order of the Administrative Law Judge cannot be affirmed because a sufficient record of the proceeding cannot be prepared.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas, on 27 July 1983 is VACATED, the findings are SET ASIDE, and the charge and specification DISMISSED.

B. L. STABILE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D.C. this *11th* day of *July*, 1985.

***** END OF DECISION NO. 2394 *****

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