In the Matter of Certificate of Service No. E-513127
Issued to: BASCOM PATTERSON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

401

BASCOM PATTERSON

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 26 September, 1949, an Examiner of the United States Coast Guard at New York City, New York, revoked Certificate of Service No. E-513127 issued to Bascom Patterson upon finding him guilty of "misconduct" based upon a specification alleging in substance that while serving on board the American SS PIONEER MAIL as utilityman, under authority of the document above described, on or about 23 June, 1949, he had in his possession certain narcotics, to wit: marijuana, contrary to law, while said vessel was at Yonkers, New York.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Appellant was represented by counsel of his own selection. He entered a plea of "not guilty" to the charge and specification.

After the Investigating Officer and Appellant had presented their opening statements, certain stipulations were entered into. It was stipulated that on 23 June, 1949, Appellant was serving as

utilityman on board the PIONEER MAIL, under authority of his duly issued certificate; that on 23 June, 1949, Appellant had marijuana in his possession while the ship was at Yonkers, New York; and that Appellant did not have a license from any competent authority to have marijuana in his possession.

At this point, the Investigating Officer rested his case, and the Examiner stated that a prima facie case had been made out.

In defense, Appellant testified, under oath, in his own behalf. The Investigating Officer then introduced in evidence the testimony of a rebuttal witness.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner made findings of fact and found the charge "proved" by proof of the specification. He entered an order revoking Appellant's Certificate of Service No. E-513127 and all other valid licenses, certificates and documents held by him.

From that order, this appeal has been taken, and it is urged that Appellant had no knowledge that the substance in his possession was in fact marijuana; that the United States District Court for the Southern District of New York dismissed the charges against him for this offense; that criminal knowledge or criminal intent is a necessary requisite to overcome the presumption of innocence; and that it was conclusively demonstrated without contradiction that Appellant did not have criminal intent or criminal knowledge or scienter that the "tobacco" possessed by him was actually marijuana.

APPEARANCES: Selig Lenefsky, New York City, New York.

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

FINDINGS OF FACT

On 23 June, 1949, Appellant was serving as a member of the crew in the capacity of utilityman on board the American SS PIONEER

MAIL, under authority of Certificate of Service No. 513127, while the said ship was at Yonkers, New York, after the completion of a foreign voyage.

On this date, Customs Officers came on board the ship to conduct a routine investigation. Appellant had previously declared several articles in a Custom's Declaration but had failed to follow this procedure with respect to a small package of "tobacco." When Appellant was leaving the ship on this date, he was approached by one of the Customs Officers who asked Appellant if he "had anything." Upon receiving a negative reply, the officer searched Appellant and found an envelope, containing approximately 52 grains of marijuana, in his blouse pocket. The officer asked Appellant what it was and he replied, "Marijuana." Appellant admitted that he knew it was unlawful to have marijuana in his possession since he had no license to possess it nor had any transfer tax been paid on it.

Subsequently, a complaint against Appellant was filed in the United States District Court for the Southern District of New York. The complaint was dismissed on motion of the United States Attorney. The reasons for that action are not reported in this Record.

Appellant testified that he had purchased the "tobacco" from a vendor who came aboard the ship in Manila during the month of April, 1949. This peddler sold various articles and souvenirs to the members of the crew. Appellant stated that he bought the marijuana since he was told by the vendor that it was a very mild, imported Turkish tobacco. Appellant paid two pesos for the small package of marijuana and he also bought a blouse, slippers and a straw hat. The marijuana was in an envelope which had no name on it. The vendor had referred to this "tobacco" by a name beginning with the letter "C." Following the instructions of the vendor, Appellant mixed some of the marijuana with his regular tobacco and smoked two pipe fulls of this mixture while in Manila. It had a dry taste and a very peculiar odor but Appellant stated that it did not have any unusual effect on him.

Appellant is 26 years of age, and is single. He stated that he supports his brother who is in medical school and his father who is a preacher. He also said that he had never before in his life

been arrested.

There is no record of any prior disciplinary action having been taken against Appellant. It is established that he has been going to sea as a merchant seaman for approximately six and a half years. A letter from the Executive Officer on the PIONEER MAIL states that Appellant was an efficient, responsible and well-behaved worker; that he had not previously broken any of the ship's rules or regulations; and that he would gladly reemploy Appellant if able to do so.

OPINION

As has been repeatedly stated in many other marijuana cases, the policy of revocation has been consistently adhered to when any seaman is found to have been associated with narcotics in any manner. This position is necessary in order to comply with the statutory mandate which makes it the duty of the Coast Guard to protect American crews and ships from any danger caused by the abuse of documents, certificates of service and licenses issued to seamen by the Coast Guard. Mere possession of marijuana is a potential danger since it might be used by its owner or other members of the crew at any time. Consequently, possession alone is considered to be a serious offense because of potential hazards on shipboard resulting from its use by the possessor or by others.

Appellant admits that he had marijuana in his possession aboard the ship but denies that he knew what it was until the Customs Officer told him. On the basis of this denial at the hearing, Appellant contends that it was conclusively shown without contradiction that he had no knowledge that the "tobacco" was in fact marijuana. But this contention does not take into consideration the testimony of the reporter who recorded Appellant's interrogation before the Customs Agent. This reporter testified that both her shorthand notes and the transcript made from her notes definitely establish that Appellant himself stated during the course of the interrogation by the Customs Officer that the envelope contained marijuana. Since this evidence is an admission made by Appellant, it is sufficient to offset any attempt Appellant has made, by his testimony of lack of scienter, to overcome the Investigating Officer's prima facie case.

The "presumption of innocence" which originally attached to Appellant was removed by the stipulation that Appellant had marijuana in his possession without proper authority. From this point, the burden was on Appellant to satisfactorily explain the possession. As pointed out above, it is my opinion that Appellant failed in this respect.

Since this proceeding is not in the nature of a criminal prosecution, the dismissal of the charges against Appellant in the United States District Court for the Southern District of New York is not in any way conclusive as to the outcome of remedial action taken by the Coast Guard.

CONCLUSION

For these reasons, the Order of the Examiner must be sustained.

ORDER

The Order of the Examiner dated 26 September, 1949, should be, and it is, AFFIRMED.

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

Dated at Washington, D. C., this 10th day of February, 1950.

***** END OF DECISION NO. 401 *****

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