

In the Matter of Merchant Mariner's Document No: Z-90985  
Issued to: ELGIE SPENCER SIMMS

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

462

ELGIE SPENCER SIMMS

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 21 July, 1950, an Examiner of the United States Coast Guard at New York City, revoked Merchant Mariner's Document No. Z-90985 issued to Elgie Spencer Simms upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as a messman on board the American S. S. AMERICAN PLANTER, under authority of the document above described, on or about 8 June, 1950, he wrongfully had marijuana in his possession.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification but this was later changed to a plea of "not guilty" by the Examiner.

Thereupon, the Investigating Officer and Appellant made their opening statements. The Investigating Officer then introduced in

evidence the testimony of the port patrolman who had apprehended Appellant with the marijuana and three documentary exhibits.

In defense, Appellant testified under oath in his own behalf.

At the conclusion of the hearing, the Examiner found the charge "proved" by proof of the specification and entered an order revoking Merchant Mariner's Document No. Z-90985 and all other documents, certificates and licenses issued to Appellant.

From that order, this appeal has been taken, and it is urged that the decision of the Examiner should be reversed because Appellant had no knowledge as to how he had come into possession of the marijuana. The remainder of the appeal is a request for clemency based on Appellant's unblemished record for more than twenty years and the fact that he has a wife and three children to support.

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

#### *FINDINGS OF FACT*

On 8 June, 1950, Appellant was serving as a messman on board the American S. S. AMERICAN PLANTER, under authority of his Merchant Mariner's document No. Z-90985, while said vessel was docked at a pier on the North River in the Port of New York.

On this date while Appellant was returning to his ship, he was searched by port patrol officer Bruno and some marijuana was found in an otherwise empty Camel cigarette package which was in the right rear pants pocket of Appellant's dungarees. A further search of Appellant's quarters aboard the ship failed to disclose any additional evidence of marijuana or other narcotics. At the time the marijuana was found in his possession, Appellant stated that he recognized the weeds as marijuana but he denied that he had any knowledge as to how it had gotten in his possession.

A subsequent analysis at the Customs Laboratory showed that the cigarette package had contained two grains of marijuana, Appellant was required to pay a tax of thirteen cents for this

amount of marijuana.

There is no record of any prior disciplinary action having been taken against Appellant during his more than twenty years at sea.

#### OPINION

The basic facts in this case are not disputed. Appellant admits that he was searched and that the marijuana weeds were discovered on his person by the port patrol officer. The point at issue is whether Appellant knew that he had marijuana in his possession. This defense has been raised on numerous occasions in similar marijuana cases in the past but it has been repeatedly stated that the Examiner is the best judge as to the credibility of the witnesses and his decision will not be reversed unless there is a clear lack of evidence to support his decision or he has stated that he believed the story of the person charged.

In the present case there is substantial evidence to support the Examiner's finding that Appellant had knowledge of his possession of the marijuana before he was searched by the Customs Officer. In practically all of such contested cases, the only means of overcoming Appellant's defense is by circumstantial evidence. This is supplied herein by the evidence that the package containing nothing but marijuana was in Appellant's pocket; that Appellant did not voluntarily remove the package from his pocket; and that Appellant had been in a position to have acquired a quantity of marijuana the night before when he was ashore drinking. Although Appellant testified that he smoked Camel cigarettes, there is nothing in the record to indicate that he had any other smoking material than the marijuana on his person at the time he was apprehended.

After observing the Appellant and the Customs Officer when they testified the Examiner chose to discount the testimony of the person charged and to find that he knowingly and, consequently, wrongfully possessed the marijuana. In accord with the practice of judicial appellate bodies, I am required to uphold the Examiner's decision in the absence of arbitrary or capricious findings when such findings are based on the testimony of witnesses who appeared in person before the Examiner. Therefore, the order issued by the

Examiner will be sustained.

*ORDER*

The Order of the Examiner, dated 21 July 1950, should be, and it is, AFFIRMED.

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

Dated at Washington, D. C., this 11th day of October, 1950.

\*\*\*\*\* END OF DECISION NO. 462 \*\*\*\*\*

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