

In the Matter of Merchant Mariner's Document No. Z-70606-D6  
Issued to: JACOB LEVINSKY

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

535

JACOB LEVINSKY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 31 July, 1951, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-70606-D6 issued to Jacob Levinsky upon finding him guilty of misconduct based upon six specifications alleging in substance that while serving as wiper on board the American SS FLYING CLOUD under authority of the document above described between 10 March and 1 May, 1950, inclusive he did or was:

"First Specification: . . . . on or about 10 March, 1950, while said vessel was in the port of Fusan, Korea, absent from your vessel and duties without authority.

"Second Specification: . . . . on or about 12 March, 1950, while the said vessel was in the port of Fusan, Korea, unable to perform your duties due to intoxication.

"Third Specification: . . . . on or about 12 March, 1950, while the said vessel was leaving the dock at Fusan, Korea,

wrongfully attempt to leave the said vessel by the use of a rope which you had lowered over the side.

"Fourth Specification: . . . . on or about 17 March, 1950, while the said vessel was in the port of Hong Kong, China, unable to perform your duties due to intoxication.

"Fifth Specification: . . . . on or about 3 April, 1950, while said vessel was in the port of Tsingtao, China, absent from your vessel without proper authority within 24 hours of the vessel's sailing time, and as a result of the aforesaid unauthorized absence the sailing of the ship was delayed.

"Sixth Specification: . . . . on or about 1 May, 1950, wrongfully fail to join said vessel when she sailed from the port of Los Angeles, California."

The order was also based upon a charge of incompetence supported by a specification alleging that while Appellant was serving as wiper on board the FLYING CLOUD, under authority of his document, during the period from 29 January, 1950 to 1 May, 1950, he was, and is on this day, "mentally incapable of performing your duties due to a psychotic condition." The Examiner concluded that the charge of incompetence was proved and that the specification was proved except that portion alleging the incapacity to be solely due to a psychotic condition.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection or by a Coast Guard officer, Appellant voluntarily elected to waive that right and act as his own counsel. After several adjournments, the hearing proceeded "in absentia" when Appellant failed to appear after having been informed of the hearing date by the Investigating Officer two days prior to reconvening. A plea of "not guilty" to the charges and each specification was entered by the Examiner on behalf of Appellant and in his absence.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Master of the FLYING CLOUD and Doctor Vernam T. Davis, Medical Director and

Chief of the Psychiatry and Neurology Section of the United States Public Health Service at the U. S. Marine Hospital, Stapleton, Staten Island, New York, where Appellant was hospitalized for examination and treatment in September, 1950, and was re-examined on 1 November, 1950. In connection with the latter's testimony, there was received in evidence a copy of the official hospital analysis and diagnoses of Appellant's psychiatric condition. There were also received in evidence certified copies of numerous extracts from the official Log Book of the ship.

At the conclusion of the hearing, having given the Investigating Officer an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charges had been proved by proof of the respective specifications and entered the order revoking Appellant's Merchant Mariner's Document No. Z-70606-D6 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

This appeal is a plea for clemency based on the claim that the decision is too harsh and not warranted by the circumstances. It is stated that, at most, a suspension on probation should have been ordered.

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

#### *FINDINGS OF FACT*

On a foreign voyage from 9 January to 17 May, 1950, Appellant was serving as a wiper on board the American SS FLYING CLOUD until 1 May, 1950, and acting under authority of his Merchant Mariner's Document No. Z-70606-D6 while said vessel was in the various ports specified herein.

On 29 January, 1950, while the vessel was at Algiers, Algeria, Appellant injured the little finger of his left hand while ashore. He was given first aid treatment but he pulled the bandage and splint off his hand later the same day. At subsequent times up to 15 February, 1950, Appellant was unable to work because he was under the influence of liquor or he refused to work claiming that his finger hurt. On 15 February, 1950, at Karachi, Pakistan, a

doctor examined Appellant's finger and decided that it would be necessary to hospitalize Appellant in order to reset the dislocated joint. Appellant was sent to the hospital but he remained on the shipping articles and was flown to Manila on 3 March, 1950, to rejoin the ship. He did not return a board of his own accord but was brought aboard in an intoxicated condition on 4 March, 1950, through the combined efforts of the ship's agent and the police in searching for and finding Appellant on this date.

On 10 March, 1950, while the vessel was in the port of Fusan, Korea, Appellant was absent from the ship and his duties, without authority, during the working hours from 0800 to 1700. He came aboard at 1615 in an intoxicated condition and threatened the Chief Engineer with bodily harm. The Master reprimanded Appellant and he later went to the Master and cried like a child while telling the Master that the Chief Engineer did not like Appellant.

On 12 March, 1950, while the FLYING CLOUD was docked at Fusan, Korea, Appellant went ashore without permission. The Master requested the ship's agent to get the local police to find Appellant. The police brought Appellant aboard in an intoxicated condition at 1020 and he was unable to perform his duties during the regular working hours due to this condition. A short time later when the lines were being cast off to get underway from the dock, Appellant threw a line over the side and was attempting to lower himself on the line when the Master sent the Junior Third Officer to detain him. Appellant was locked in his room until 1145 when the ship was at sea. Inspection of Appellant's room disclosed that all the linen and blankets were missing from his bunk. Appellant refused to work on the following day claiming that his finger was paining him again.

On 17 March, 1950, while the ship was in the port of Hong Kong, Appellant was lying in his bunk under the influence of liquor and he could not be aroused to perform his duties. Appellant was in the same intoxicated condition on 20 March and when taken before the Master on 21 March, he claimed that he was sick. On subsequent dates up to 1 April, Appellant refused to turn to stating that he was sick and could not work because of the injury to his little finger. On 31 March, an x-ray of Appellant's little finger was taken and it was determined that no treatment was required.

On 3 April, 1950, while the vessel was in the port of Tsingtao, China, the sailing time of 0800 was posted and the ship was ready to get underway at this time except for the presence of a pilot aboard. Local regulations prohibited vessels from sailing between the hours of 1000 to 1500 and 1800 to 0700. Also due to local regulations, vessels were not permitted to get underway until all members of the crew were aboard. Appellant and another crew member left the ship without permission at 0815. The pilot came aboard at 0930 and remained until 1003. The ship's agent located the two men and escorted them to the dock gate at 1100 when it was too late to sail. Appellant returned aboard but left again and did not return again until 1545, thus contributing to the delay of the vessel for more than six hours. Since the other member of the crew who had gone ashore with Appellant was not on board before 1800, the ship could not sail until the next morning.

Since Appellant insisted upon having medical attention, the Master sent him to a hospital for observation on 7 April, 1950, while the ship was at Kobe, Japan. Appellant left the hospital without permission and was picked up by the Military Police. While in the custody of the police, Appellant attempted to commit suicide. Upon being returned to the ship, Appellant told the Master that they didn't know what they were doing at the hospital because he needed an operation on his little finger and the doctors refused to operate. Consequently, Appellant still refused to work and said he did not intend to do any more work on this vessel.

On 1 May, 1950, when the ship departed from the port of Los Angeles, California, Appellant failed to join. The departure time of 2000 had been posted on the sailing board and also on the dock near the ship.

On numerous occasions in addition to those specified above, Appellant was in an intoxicated condition and did not perform his duties aboard the ship. He did not do one full day's work after injuring his finger and he would not let the finger heal properly. He consistently placed the blame for all the trouble on his finger injury and subsequent abuse by the Master. Appellant often went to the Master crying and talking about his troubles as though he had the mental capacity of a seven or eight year old child.

Before the hearing on these charges was commenced on 28

September, 1950, Appellant was sent to the United States Marine Hospital on Staten Island for psychiatric observation and treatment. He remained hospitalized from 19 September, 1950, to 28 September, 1950. The above recited events, as contained in the ship's log, were reviewed in the course of the examination of Appellant. During his stay at the hospital, Appellant stated that he was not an alcoholic but drank as much whiskey as he could obtain; that his bad record was a result of his injured finger; that the Master had treated him unfairly; and that he was not crazy then but he might be in a couple of years. Appellant displayed a defiant, hostile, irritable and, at times a depressed and remorseful attitude while in the hospital. On 28 September, he left the hospital on a pass and demanded the hearing which was begun on this date. The determination of Appellant's psychiatric condition at this time was that he was unfit to stand trial or for sea duty although not legally committable for insanity. The diagnoses were that Appellant was a psychopathic personality with pathologic emotionality, a schizoid personality, a paranoid personality and that he was emotionally unstable.

A re-examination of Appellant on 1 November, 1950, led to the determination that Appellant's emotional state during the voyage in question was not such as to render him irresponsible for his behavior at that time. The conclusion was reached by the previously mentioned Doctor Vernam T. Davis that the prior analysis and diagnoses were correct but that Appellant's condition as of 1 November, 1950, was mildly improved. Dr. Davis recommended that Appellant be declared fit for sea duty and fit to stand trial as of 1 November, 1950.

Appellant is forty-three years of age and has been going to sea for more than twenty years. His prior disciplinary record consists of a three months' suspension on six months' probation in 1943 for being absent without leave and failing to perform his duties; and a three months' suspension in 1944 for failure to join.

#### *OPINION*

In view of the foregoing, I find no merit in any of the reasons assigned by Appellant as grounds for my modification of the Examiner's Order dated at New York on 31 July, 1951, and that Order is AFFIRMED.

A. C. Richmond  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 10th day of December, 1951.

\*\*\*\*\* END OF DECISION NO. 535 \*\*\*\*\*

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