

In the Matter of License No. 122522
Issued to: FREDERICK P. DIETRICH

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

549

FREDERICK P. DIETRICH

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 19 October, 1951, an Examiner of the United States Coast Guard rendered his decision of a hearing conducted at Honolulu, T. H., and revoked License No. 122522 issued to Frederick P. Dietrich upon finding him guilty of negligence based upon four specifications alleging in substance that while serving as Master on board the American SS ANDREA F. LUCKENBACH under authority of the document above described, on or about 11 March, 1951, while navigating said vessel in the vicinity of the Island of Kauai, T. H., under conditions of poor visibility, he contributed to the grounding of the ship by setting a course too close to shore; failing to establish the vessel's position by proper bearings; failing to reduce speed and proceed with caution; and failing to obtain and properly use information available from the vessel's radio direction finder.

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. Appellant was represented by

an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements and a stipulation was entered into whereby certain portions of the record of the Marine Board of Investigation convened at Lihue, Kauai, T.H., were received in evidence. The Investigating Officer than rested his case.

Counsel moved to dismiss the charge and specifications on the ground that they had not been proven by the evidence. This motion was denied by the Examiner and the defense rested its case.

On 9 June, 1951, having heard the arguments of the Investigating Officer and Appellant's counsel and informed both parties of their right to submit proposed findings and conclusions, the Examiner agreed to allow counsel a period of three weeks in which to submit findings of fact and conclusions of law. Under date of 29 June, 1951, counsel for Appellant submitted proposed findings and conclusions. The Investigating Officer also submitted proposed findings and conclusions.

On 19 October, 1951, the Examiner announced his decision concluding that the charge had been proved by proof of the above four specifications and entered the order revoking Appellant's License No. 122522 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority. The decision contains no specific reference to the findings and conclusions proposed by counsel for Appellant or the Investigating Officer.

From that order, this appeal has been taken, and it is contended, *inter alia*, that the Examiner erred in failing to rule upon the proposed findings of fact and conclusions of law submitted on behalf of Appellant. Because of the immediate disposition to be made of this case, it is not necessary, at this time, to relate the additional grounds raised on appeal; and it would be inappropriate, under the circumstances, for me to make any findings of fact.

APPEARANCES: Messrs. Robertson, Castle and Anthony, of Honolulu, Hawaii, by William F. Quinn, Esquire, of counsel.

OPINION

Both the Administrative Procedure Act (Sec. 8(b) and the Coast Guard regulations (46 C.F.R. 137.09-60) require that the parties shall be afforded a reasonable opportunity to submit proposed findings and conclusions with supporting reasons; and that "the record shall show the ruling of the Examiner upon each such finding and conclusion presented."

Insofar as the record in this case discloses, none of the findings and conclusions submitted were considered by the Examiner, prior to the rendering of his decision, as is required by 46 C.F.R. 137.09-75.

This constitutes reversible error.

ORDER

The Order of the Examiner, dated 19 October, 1951, at Seattle, Washington, is SET ASIDE, REVERSED and REMANDED for further action not inconsistent with this decision.

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

Dated at Washington, D. C., this 9th day of January, 1952.

***** END OF DECISION NO. 549 *****

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