

In the Matter of Merchant Mariner's Document No. Z-661352
Issued to: FERDRAN G. SMALL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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FERDRAN G. SMALL

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 29 May, 1953, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document No. Z-661352 issued to Ferdran G. Small upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as an oiler on board the American SS MORMACLAND under authority of the document above described, on or about 27 April, 1953, he had marijuana in his possession; and during a voyage from 13 February, 1953, to 29 April, 1953, he used marijuana.

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 by both the Investigating Officer and the Examiner of his right to be represented by counsel of his own choice, Appellant repeatedly and voluntarily declined to exercise that right and he acted as his own counsel. Appellant entered a plea of "guilty" to the charge and both of the specifications proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence, without objection, a sworn statement by Appellant in which he outlined the circumstances of his purchase and use of marijuana.

Testifying under oath, Appellant stated that he had disposed of all the bulk marijuana before he was apprehended and, therefore, only "traces" or "residue" was found in his pockets - "just what fell out [of the package of marijuana]." Appellant admitted having smoked two cigarettes made from the marijuana in question and that he had smoked marijuana while serving on two other ships. Appellant also stated that he had smelled marijuana on board the MORMACLAND and had observed the effect of it on the MORMACRAE when a marijuana smoker swung a fire axe at another member of the crew.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by plea. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-661352 and all other licenses and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that Appellant was not given a fair and full hearing since he did not understand his right to counsel and he was misinformed as to the nature of the proceedings; and the policy of revocation for the use of narcotics should be applied in this case because since Appellant smoked the marijuana ashore and it did not affect his work on the ship, there was no direct relationship between Appellant's conduct and the protection of life and property at sea. In view of Appellant's prior clear record, it is requested that the order be mitigated to something less than revocation.

APPEARANCES: Jack H. Werchick, Esquire, of San Francisco, of Counsel.

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

FINDINGS OF FACT

On a voyage from 13 February, 1953, to 29 April, 1953, Appellant was in the service of the American SS MORMACLAND and acting as an oiler under authority of his Merchant Mariner's Document No. Z-661352.

On this voyage, Appellant purchased a package of marijuana from a native while Appellant was ashore at Santos, Brazil. Appellant smoked some of this marijuana and took the remainder aboard the ship on which he was serving. Appellant disposed of the bulk marijuana at sea on the return voyage but he was apprehended by the U. S. Customs authorities at Long Beach, California, and traces of marijuana were found in some of the pockets of Appellant's clothing.

There is no prior record of disciplinary action having been taken against Appellant during approximately six or seven years at sea. Appellant is single and 26 years of age.

OPINION

The record discloses that Appellant was afforded a full and fair hearing. He had ample opportunity to make known his desire for counsel and the nature of the proceedings was fully stated by the Examiner in Appellant's presence. After every formality was complied with, Appellant voluntarily entered pleas of "guilty" to each specification before testifying, in a remarkably forthright manner, as to his possession and use of marijuana. The finding of "traces" and "residue" of marijuana in Appellant's clothing follows the pattern of many other narcotics cases - except that the persons charged are seldom honest enough to admit the prior acquisition and use of marijuana which was the source of the dregs and traces later found in their clothing or other personal belongings.

Appellant's testimony about the use of a fire axe by a marijuana user is a prime example of the great danger of narcotics. It is considered that the statutory duty of the Coast Guard is to protect lives and property against potential as well as actual danger - and the presence of any narcotics aboard ship or otherwise in the possession of a member of the crew is a very real potential danger to the safety of personnel and the operation of the ship. Therefore, the policy of revocation in all narcotics cases shall be

applied by the Examiners regardless of the seamen's prior record, and irrespective of possession without proof of use or any other mitigating circumstances. This policy also applies in cases of isolated association with narcotics; and when use of the narcotic has had no visible effect on the appearance, conduct, or work of the offender.

A letter dated 29 August, 1953, from Appellant's mother, Mrs. R. J. McQuage, recites briefly Appellant's background and requests that the order be mitigated to impose a probationary status; and, in the alternative, that either a rehearing before the Examiner be granted or that an opportunity be afforded to submit further proof as to Appellant's stability and good character. For the reasons stated above in my opinion, the order imposed by the Examiner was required in accordance with the strict policy of the Commandant in all narcotics cases. Therefore, the order of revocation will be sustained. This result would not be altered by the testimony of character witnesses on behalf of Appellant; nor could a rehearing serve any proper purpose in view of Appellant's plea of guilty and the absence of any indication that there is evidence to prove that he was, in fact, not guilty of the alleged offenses. In addition, it is noted that Appellant testified that he had smoked marijuana while employed on two other ships prior to the time of this incident. Since the conduct under consideration herein does not represent Appellant's first experience with narcotics, this incident was not the result of his initial curiosity concerning marijuana as was indicated in Mrs. McQuage's letter.

It is unfortunate that this policy often causes the individual seaman and his family to suffer hardships. However, in the interest of safety at sea no alternative exists.

ORDER

The Order of the Examiner dated at San Francisco, California, on 29 May, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this 16th day of September, 1953.

***** END OF DECISION NO. 697 *****

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