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In the Matter of Certificate of Service No. E-13360 and all other
Licenses, Certificates and Documents
Issued to: JOE WOO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

812

JOE WOO

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.

By order dated 20 December 1954, an Examiner of the United States Coast Guard at New York, New York, revoked Certificate of Service No. E-13360 issued to Joe Woo upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as a messman on board the American SS EXCELSIOR under authority of the certificate above described, on or about 30 April 1948, while said vessel was in the port of Bombay, India, he wrongfully had a narcotic substance in his possession; and that while serving as a workaway on board the American SS EXAMINER, on or about 7 November 1948, while said vessel was at Jersey City, New Jersey, he wrongfully had marijuana in his possession.

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 made his opening statement and introduced in evidence several documentary exhibits including a certified copy of Appellant's conviction before the U. S. District Court for the District of New Jersey for the unlawful possession of marijuana on 7 November 1948 as alleged in the latter of the above two specifications. The Investigating Officer then rested his case.

In defense, Appellant offered in evidence his own sworn testimony. Concerning the Bombay incident, Appellant stated that at the request of a Chinese friend, Appellant was taking what he thought was a box of candy to a person at Calcutta which was the next port of call. Appellant added that, on advice of counsel, he entered a plea of guilty before the court in India and was convicted under the Opium Act. Appellant admitted that he had used opium for 4 or 5 months in 1947 and on one U. S. merchant vessel in that year.

At the conclusion of the hearing, the Examiner heard the arguments of the Investigating Officer and Appellant's counsel and gave both parties an opportunity to submit proposed findings and conclusions. Counsel submitted a written brief in which he contends that Appellant was innocent but entered a plea of guilty in India as a matter of expediency because the circumstantial evidence against him was so strong; and that the Coast Guard retained possession of Appellant's seaman's documents for more than six years after these two alleged offenses without notifying him of a date or place of a hearing to be held against his documents. In his brief, counsel also contends that since Appellant could now apply for restoration of his documents had prompt action been taken to revoke them, justice can only be done by a suspension of Appellant's document for a period of years commencing in 1948.

After considering the points raised in Appellant's brief, the Examiner announced his findings and concluded that the charge had been proved by proof of the two specifications. He then entered the order revoking Appellant's Certificate of Service No. E-13360 and all other licenses, certificates of service 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 deprived of his rights and privileges by reason of the fact that after the service of the first specification on 6 November 1948 wherein he was "commanded to be present at a hearing * * * at a place and date to be determined by the U. S. Coast Guard," he was never notified of any date or place of hearing.

APPEARANCES: Irving Mendelson and Keal Kaufman, Esquires, of New York City of Counsel.

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

FINDINGS OF FACT

On 30 April 1948, Appellant was serving as a messman on board the American SS EXCELSIOR and acting under authority of his Certificate of Service No. E-13360 while the ship was at Bombay, India.

Appellant was returning to the ship early in the morning on this date when he was stopped and searched at the dock gate by a Customs guard. Appellant had in his possession a box which contained approximately four pounds of opium. A search of Appellant's quarters aboard the ship disclosed opium pellets and a bottle containing a mixture of opium and coffee. On the basis of these facts, Appellant was convicted by the Chief Presidency Magistrate, Esplanade Court, at Bombay, on 21 May 1948, and sentenced to three months imprisonment.

Appellant was repatriated on the American SS EXAMINER. He signed on the Shipping Articles as a workaway on 10 September 1948 and was under articles until 8 November 1948.

On 7 November 1948, Appellant was apprehended with approximately 39 grains of marijuana in his possession without having paid the transfer tax required by 26 U.S.C. 2593(a). For this offense, Appellant was convicted on his plea of guilty before the United States District Court for the District of New Jersey on 27 May 1949. He was sentenced to six months imprisonment for this offense and served an additional term for breach of probation resulting from a prior narcotics conviction in a United States

District Court.

The order of revocation must be sustained in view of Appellant's extensive history in dealing with narcotics and the potential danger resulting from the presence of such a seaman on board ship.

Since the Examiner very satisfactorily disposed of the points raised in counsel's brief, it is not necessary to discuss them in detail herein. Suffice it to say that the evidence is overwhelming that Appellant knowingly had possession of opium in Bombay; and the judgment of conviction in the Federal Court is *res judicata* as to the New Jersey incident. Either of these offenses would be sufficient to support the order of revocation.

The contentions concerning the lapse of time since the offenses are considered to be completely without merit. At the time of the original service of the first specification on 6 November 1948, Appellant surrendered his certificate of service to the Coast Guard. He then made no attempt to obtain a hearing until 27 September 1954 when he voluntarily appeared at the Coast Guard office in New York City. Therefore, this delay was due to his own choice. In addition, Appellant has shown no prejudice in the preparation of his defense through the loss of witnesses or otherwise.

In reply to Appellant's claim that he would have been eligible at a much earlier date to submit an application for a new document under the present three-year clemency regulation (46 CFR 137.03-30) if the Coast Guard had taken prompt action to revoke his document in 1948, it is pointed out that this regulation merely provides for the filing of an application. In view of Appellant's record in the field of narcotics offenses, and considering my duty to promote safety of persons and vessels at sea, it is doubtful whether such application would be approved. Thus, the date of the revocation is unlikely to have any significance detrimental to Appellant.

ORDER

The order of the Examiner dated at New York, New York, on 20 December 1954 is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 2nd day of June, 1955.

***** END OF DECISION NO. 812 *****

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