

In the Matter of Merchant Mariner's Document No. Z-551543 and all
other Licenses, Certificates and Documents
Issued to: MELVIN BLOCKER

DECISION AND ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

817

MELVIN BLOCKER

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 7 January 1955, an Examiner of the United States Coast Guard at Norfolk, Virginia, revoked Merchant Mariner's Document No. Z-551543 issued to Melvin Blocker upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an able seaman on board the American SS JULES FRIBOURG under authority of the document above described, on or about 21 October 1954, while said vessel was in the port of Norfolk, Virginia, he had in his possession, contrary to law, certain narcotics; to wit, fragments of 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. Appellant was represented by an attorney of his own selection and he entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening

statement. He said that the Customs officials obtained five separate samples from Appellant's locker and five pieces of clothing belonging to Appellant; the total quantity of the particles in the five samples was about 16 grains; and analysis disclosed that the marijuana content of each sample was between one and five percent.

In mitigation of the offense, counsel for Appellant stated that an order of probation would be proper because of the infinitesimal quantity of marijuana involved and in view of the fact that Appellant had been deprived of the use of his document for a material portion of time.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by plea to the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-551543 and all other licenses, certificates 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 the quantity of marijuana, as distinguished from the other extraneous materials in the five samples, was so minute that it could not be used to present a hazard per se. Therefore, it is requested that the Commandant reverse the decision of the Examiner and dismiss the charge; or, in the alternative, remand the case for further hearing and permit Appellant to change his plea to "not guilty".

APPEARANCES: Messrs. Willcox, Cooke and Willcox of Norfolk, Virginia, by Thomas H. Willcox of Counsel.

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

FINDINGS OF FACT

On 21 October 1954, Appellant was serving as an able seaman on board the American SS JULES FRIBOURG and acting under authority of his Merchant Mariner's Document No. Z-551543 while the ship was at Norfolk, Virginia.

On this date, Appellant had fragments of marijuana in his possession.

OPINION

It is noted in the record (R. 1) that the Examiner advised Appellant of five possible results of the hearing before the plea. This may have misled Appellant and may have influenced him to enter a plea of "guilty". After the plea, the Examiner (R. 4) correctly indicated two possible results in accordance with 46 CFR 137.03-1. In the interest of assuring fair hearings, it is my opinion that Appellant should be given an opportunity to change his plea even though he could have changed his plea during this hearing and after the Examiner stated (R. 4) that the policy of the Coast Guard would call for an outright revocation.

The previous cases reversed by the Commandant involving very small quantities of narcotics may be distinguished from this case because in each of them a plea of "not guilty" was entered. The plea of "guilty" would ordinarily obviate the necessity of producing evidence. While not evidence, the Investigating Officer furnished information of the small quantity of marijuana involved which information indicated the similarity of this case to the cases reversed on appeal. On the other hand, the finding of fragments of marijuana in more than one piece of clothing or more than one place raises an inference that Appellant is no stranger to narcotics and must have at one time either used or handled marijuana.

After considering the foregoing factors, it is believed that Appellant should be given an opportunity to change his plea. If he does so, then evidence may be produced by the Investigating Officer and by Appellant. If Appellant persists in his plea of "guilty," but so explains the possession of the marijuana that the explanation is inconsistent with the plea, then the Examiner should enter a plea of "not guilty" for Appellant, and proof of the specification would be required. If Appellant persists in his plea of "guilty," and does not offer an explanation inconsistent with the plea, then the Examiner should reinstate his order of revocation.

ORDER

The order of the Examiner dated at Norfolk, Virginia, on 7 January 1955 is reversed and the record is remanded with instruction to conduct further proceedings not inconsistent with this decision.

REVERSED AND REMANDED.

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

Dated at Washington, D. C., this 16th day of June, 1955.

***** END OF DECISION NO. 817 *****

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