In the Matter of Merchant Mariner's No. Z-483800-D1 and all other Seaman Documents
Issued to: see WAYNE MILTON BANKS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNTIED STATES COAST GUARD

1001

WAYNE MILTON BANKS

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

By order dated 2 May 1957, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman document upon finding him guilty of misconduct. The specification alleges that while serving as Second Cook on board the American SS NORWALK VICTORY under authority of the document above described, on or about 12 December 1956, Appellant wrongfully had marijuana in his possession.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the two possible results of the hearing - revocation or dismissal of the charge and specification. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of not guilty to the charge and specification.

The Investigating Officer and Appellant made their opening statements. The Investigating Officer introduced in evidence several documentary exhibits including the testimony of two U. S. Customs Officers at Norfolk, Virginia, which was taken by written interrogatories. Appellant and did not desire to submit any cross-interrogatories.

In defense, Appellant offered in evidence his sworn testimony. Appellant testified that a girl in Casablanca gave him something which he put in his top jacket pocket and forgot. Appellant admitted having been convicted between 1939 and 1941 in a Federal court for violation of a narcotic law but he denied ever having smoked marijuana and that he told the Customs Officers that he and thrown a quantity of marijuana overboard.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant were heard. The Examiner then announced the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

The decision was served on 2 May 1957 and Appellant's document has forwarded to Coast Guard Headquarters. Appeal as timely fined on 15 May 1957. In October 1957, Appellant stated that he did not intend to submit a brief in support of his appeal.

FINDINGS OF FACT

On 12 December 1956, Appellant was serving as Second Cook and Baker on board the American SS NORWALK VICTORY and acting under authority of his Merchant Mariner's Document No. Z-483800-D1 while the ship was in the port of Norfolk, Virginia.

On this date, Custom personnel conducted a routine search of the ship for contraband. They fund particles of what they suspected was marijuana in a picket of a jacket in Appellant's locker after had unlocked the locker for their inspection. Appellant admitted ownership of the jacket. When questioned about the suspected substance, Appellant admitted that he had obtained some marijuana at Casablanca on the recent voyage and had thrown most of it overboard, but forgot about the marijuana in the pocket of his jacket. Appellant also admitted that he was a user of

marijuana. No other traces of marijuana were found in Appellant's quarters of personal effects. Analysis at the U. S. Customs Laboratory in Baltimore, Maryland, disclosed that the substance fund in the pocket of Appellant's jacket consisted of 11.1 grains of crushed marijuana leaves, seed pods and stems. No criminal action was taken against Appellant.

About 1941, Appellant was convicted in a Federal court for violation of a narcotics law.

Appellant has no prior disciplinary record with the Coast Guard.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant denies that he knowingly took any narcotics on board the ship or that he told the Customs Officers that he threw a quantity of marijuana overboard. If Appellant had told this to either of the Customs Officers (whose depositions are in evidence), they would have arrested him. Appellant had recently purchased the jacket from another seaman and did not know there was marijuana in one of the pockets. Appellant had a prior clear record during 13 years at sea and he needs work in order to support his family.

OPINION

The Examiner accepted the mutually corroborative statements *in* the depositions of the two Customs Officers that they found what was later determined to be 11.1 grains of marijuana a Appellant's jacket and that, at the time of the seizure, Appellant made the following admissions: he obtained possession of marijuana in Casablanca; he forgot about the marijuana in his jacket; he threw the balance of it overboard on the return voyage to the United States; and he was a user of marijuana (R. 15, 19). Appellant agreed with the first two of these four admissions when he testified that a girl in Casablanca gave him a "small bit" of a substance which he thought "was opium or something like that" and that he "put it in my top jacket pocket. . . . It slipped my mind." R. 22-3. Since Appellant partially admitted the truth of the testimony of the two Customs Officers, there is no reason why

their testimony should not have been accepted in *toto* as done by the Examiner.

This position is strengthened by the fact that, on appeal, Appellant has substantially contradicted his prior testimony by denying having had any knowledge that there was marijuana or other narcotics in his jacket on board the ship. This inconsistency weakens Appellant's reiterated denials of the alleged admissions that he was a marijuana user and that he had thrown a quantity of marijuana overboard. In addition, Appellant's prior conviction for a narcotics crime not only reflects upon his claim of innocence but it also impeaches generally his credibility as a witness. See *Wigmore on Evidence*, 3d Ed., secs. 890, 891.

In view of the above, I think it is firmly established by the evidence that a sample of 11.1 grains of marijuana was found in a pocket of Appellant's jacket and that Appellant had knowledge of his physical possession of this substance regardless of whether he forget about it after placing it in the pocket.

The remaining factor to consider is whether this amount of marijuana constituted "wrongful possession" in that it was either sufficient in itself to present a hazard *per se* to others or there was valid contributory evidence that it was the remain of a larger quantity of marijuana once in the possession of the Appellant. As to the later proposition, it is my opinion that Appellant's alleged admission of having thrown the balance of the marijuana overboard constitutes the necessary valid contributory evidence to sustain the allegation of "wrongful possession." The fact that no criminal action was taken against Appellant does not persuade me to reject the testimony as to such an admission by Appellant in the face of the much stronger indications, stated above, that Appellant's denial of the admission should be rejected.

Primarily, I have resolved the issue of "wrongful possession" based on the conclusion that the presence of 11.1 grains of marijuana was a hazard *per se* because it constituted a usable amount of marijuana. The smoking of this quantity of marijuana by one seaman could have resulted in immediate danger to others. In the class of cases which have been reversed in these appeals because of the minute quantities of marijuana involved, the largest total amount specified in any one case has been 3 grains.

See Commandant's Appeal No. 748. On the other hand, it has been found that 9 grains of marijuana was enough to make a three-inch long cigarette without any contention being raised that the 9 grains was not a usuable amount (Commandant's Appeal No. 827); 17.5 grains was an adequate amount for 2 marijuana cigarettes (Commandant's Appeal No. 998); one-half of a partially smoked marijuana cigarette consisted of 8 grains which could be consumed by relighting it (Commandant's Appeal No. 810). One the basis of these three appeals in which orders of revocation were affirmed, there is every reason to believe that the 11.1 grains of marijuana in Appellant's possession should be considered to have been a usable quantity. Although not wrapped in the form of a cigarette, it was easily accessible in one pocket of the jacket. It could have been readily made into a cigarette by Appellant or someone else. Generally, it is considered that approximately 10 grains of marijuana ?? ???? ?? ?????? ??? cigarette.

In view of the consistent policy with respect to narcotics offenders, the order of revocation will be upheld despite Appellant's prior clear record for 13 years and the personal hardship caused by this order.

ORDER

The order of the Examiner dated at New York, 2 May, 1958 is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 20th day of January, 1958.

***** END OF DECISION NO. 1001 *****

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