

In the Matter of Merchant Mariner's Document No. Z-62741-D1 and all
other Seaman Documents
Issued to: LUCIANO N. FERNANDEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1021

LUCIANO N. FERNANDEZ

The 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 14 October 1957, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as saloonman on board the American SS EXOCHORDA under authority of the document above described, on or about 1 and 12 August 1957, Appellant was wrongfully absent from his station and duties at Beirut, Lebanon, and Genoa, Italy, respectively.

On 3 September 1957, Appellant was served with the charge and two specifications and ordered to appear at a hearing on 26 September 1957. Appellant failed to appear, having previously notified the Investigating Officer of his anticipated absence. The hearing on that day was conducted *in absentia*, and the Examiner entered a plea of "not guilty" to the charge and specifications on behalf of Appellant.

The Investigating Officer made his opening statement and introduced in evidence a certified copy of extracts from the Shipping Articles and photostatic copies of entries of 1 and 12 August 1957 from the Official Logbook of the SS EXOCHORDA. The Government rested and the hearing was continued for decision only.

Prior to rendition of decision, Appellant, through counsel, requested and was granted reopening of the hearing. Appellant and his counsel were present at the reopening on 1 October 1957. 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.

In defense, Appellant offered in evidence his own testimony and received permission to submit a letter in mitigation from a previous employer.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and both specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of 18 months - 10 months' outright suspension and 8 months on 12 months' probation. Eight of the 10 months' outright suspension were the result of a previous probationary suspension for similar offenses.

The decision was served on 17 October 1957. Appeal was timely filed on 2 November 1957.

FINDINGS OF FACT

On 1 and 12 August 1957, Appellant was serving as saloonman on the American SS EXOCHORDA and acting under authority of his Merchant Mariner's Document No. Z-62741-D1.

On 1 August 1957 while the ship was in the port of Beirut, Lebanon, Appellant was absent from the vessel and his duties without permission from 0800 to 1030 and also later in the day.

On 12 August 1957 while the ship was in the port of Genoa, Italy, Appellant was absent from his station and duties without permission for the entire day.

Appellant's prior disciplinary record discloses two prior suspensions for offenses involving desertion, absence without leave, refusal to turn to, and failure to report for duty.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant bases his appeal on the grounds that the order is unduly severe and that news of personal difficulties at the time contributed to his delinquency

OPINION

Though Appellant's appeal alludes to news of personal difficulties which contributed to his delinquency, no material to substantiate such a statement appears in the record or on appeal. In view of Appellant's apparent addiction to the commission of offenses of this nature, as evidenced by his disciplinary record, and the fact that prior outright suspensions for shorter periods of time have failed to impress upon him the seriousness of these breaches of duty, the order of the Examiner is not considered to be excessive.

ORDER

The order of the Examiner dated at New York, New York, on 14 October 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 14th day of April, 1958.

***** END OF DECISION NO. 1021 *****

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