

In the Matter of Merchant Mariner's Document No. Z-866409 and all
other Seaman Documents
Issued to: MARSHAL MORRIS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1028

MARSHAL MORRIS

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 6 March 1957, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as a cook on board the USNS SEAFORT under authority of the document above described, on or about 31 October 1953, Appellant wrongfully used morphine while the ship was in the port of Yokohama, Japan.

Appellant was not represented by counsel at the hearing. He entered a plea of not guilty to the charge and specification. The Investigating Officer introduced in evidence documents purporting to show that Appellant was convicted of the above offense by a U. S. Navy general court-martial in 1954. Appellant objected to this evidence. The Examiner then interrogated Appellant without participation by the Investigating Officer. Although Appellant denied knowledge of having used a narcotic drug, the Examiner treated Appellant's words as merely a statement in mitigation and

said that he had no alternative but to find that the specification had been proved. An order was entered revoking all documents issued to Appellant.

The decision was served on 12 March 1957. Appeal was timely failed on 29 March 1957.

OPINION

The finding that Appellant was guilty as alleged will be reversed and the order of revocation vacated in view of the accumulation of errors in the record.

There was no competent evidence introduced by the Investigating Officer to show that Appellant was "acting under the authority of his document" while serving on this M.S.T.S (USNS) ship. There is some vague evidence to this effect contained in the statement of Appellant but this was elicited by the Examiner when he assumed the role of prosecutor and proceeded to question Appellant without even first determining whether he desired to testify. The results of such clearly improper procedure should not be considered to Appellant's detriment.

The document in evidence certified under the Navy Department seal relates to the general court-martial conviction of another seaman for wrongful use of morphine on 31 October 1953. Appellant's similar conviction is supported only by a mimeographed sheet so alleging and certified to be a true copy by a signature which is not in any manner identified as to authority, rank, title, spelling of name, et cetera. The quality of such a certification is obviously inadequate to make out a prima facie case on the basis of that which is certified to be true. In addition, there is some indication from the Criminal Investigating Division Report in evidence that the date of 31 October 1953 in the court-martial document pertaining to Appellant is not correct.

Finally, the Examiner did not make any findings as to credibility with respect to Appellant's testimony. The record creates a strong impression that the Examiner treated the evidence of a court-martial conviction as res judicata within the meaning of 46 CFR 137.15-5(a). A court-martial record may make out a prima facie case but it is not res judicata. See *Commandant's Appeal*

Nos. 798, 800. Although the Examiner refers, in his decision, to such evidence as making out a prima facie case, he stated at the hearing that Appellant's vehement denials of guilt would be considered as a plea in mitigation and that there was no alternative to finding the specification proved. Under these circumstances, the absence of any specific finding of credibility as to Appellant's testimony is clearly erroneous.

On the basis of the present record, the only findings of fact, relating to the specification, which are justified are that Appellant was serving as a cook on board the USNS SEAPORT, on 31 October 1953, while the ship was at Yokohama, Japan.

It is questionable whether these errors could be corrected within a reasonable length of time if this case were remanded for further hearing. In view of this doubt and the long delay already encountered since the date of the alleged offense, it is my opinion that the fairest disposition at this time is to reverse the findings of the Examiner and set aside the order of revocation.

ORDER

The charge and specification are dismissed. The order of the Examiner dated at Philadelphia, Pennsylvania, on 6 March 1957, is hereby VACATED.

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

Dated at Washington, D. C., this 18th day of April, 1958.

***** END OF DECISION NO. 1028 *****

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