

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Edward L. HAYNIE, Z-850936

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

9

Edward L. HAYNIE

This review is had under the provisions of 46 CFR 137.35.

On 19 April 1966, an Examiner at San Francisco, Calif., entered an order, after a hearing in absentia, suspending all documents of the Person Charged for a period of two months. The suspension was not to be effective "provided no charge under Title 46 U. S. Code, Section 239, as amended, is proved against him for acts committed within six (6) months from the date of service upon him of this Decision and Order."

This Decision was served on the Person Charged on 14 December 1967.

On 18 December 1967, a hearing was commenced at Portsmouth, Virginia, the basis for which was an act committed on 1 November 1967. On 18 December the Portsmouth Examiner entered an order suspending the documents of the Person Charged for four months. The suspension for the first two months was made effective immediately. The last two months were not to be effective "provided no charge under R.S. 4450, as amended (46 U. S. Code 239), is proved against Edward L. HAYNIE for acts committed during the foregoing period of outright suspension or for acts committed within six (6) months from the date of termination of the said foregoing outright suspension."

The Examiner specifically stated that he considered that there had been a violation of the earlier-ordered probation, and that the two months' outright suspension which he ordered was the suspension imposed by the earlier Examiner.

The Person Charged surrendered his seaman's document on 18 December 1967 in compliance with the order.

OPINION

I

The misconduct committed on 1 November 1967 was not an act "committed within six (6) months from the date of service upon him of this [the first] Decision and Order." Such service was not achieved until 14 December 1967, and the probationary period did not commence until that date.

It is not a violation of the probation ordered in this case to have a charge "proved" against one within the specified time. In fact, the actual finding of proved might come some time after the period of probation had ended. The essence of violation is the performance of an act of misconduct.

II

There are several ways in which the Portsmouth Examiner could have taken the earlier order into consideration. Since the only outright suspension came as a result of a supposed violation of probation which had not occurred, the entire suspension must be placed on probation.

ORDER

The order of the Examiner entered at Portsmouth, Va., on 18 December 1967 is SET ASIDE and this new Order is substituted therefor;

The Merchant Mariner's Document and all other seaman's documents issued to Edward L. Haynie, Z-850937-D1, be suspended for a period of four months; the suspension ordered shall not be effective provided that no charge under R.S. 4450 be proved against him for acts committed within eight months of 18 December 1967;

should such acts be proved, the four months' suspension ordered pursuant to this order shall be lessened by the amount of time that his Merchant Mariner's Document shall have remained in the custody of the Coast Guard as a result of the original order in this case.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 1st day of February 1968.

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PROBATION

act committed before service of decision not a violation of

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