

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD**

UNITED STATES OF AMERICA	:	DECISION OF THE
UNITED STATES COAST GUARD	:	
	:	VICE COMMANDANT
v.	:	
	:	ON APPEAL
	:	
MERCHANT MARINER CREDENTIAL	:	NO. <b>2700</b>
	:	
	:	
<u>Issued to: CORINTHIS EMILE THOMAS</u>	:	

APPEARANCES

For the Government:  
LT Lineka N. Quijano  
Gary F. Ball, Esq.  
LT Jonathan D. Shumate on appeal

Respondent *pro se*

Administrative Law Judge: Walter J. Brudzinski

This appeal is taken in accordance with 46 U.S.C. § 7701 *et seq.*, 46 C.F.R. Part 5, and the procedures in 33 C.F.R. Part 20.

By a Decision and Order (hereinafter “D&O”) dated June 2, 2011, Walter J. Brudzinski, an Administrative Law Judge (hereinafter “ALJ”) of the United States Coast Guard, revoked the Merchant Mariner credential of Mr. Corinthis Emile Thomas (hereinafter “Respondent”) upon a finding of default in a proceeding that alleged, as the basis for revocation, two counts of incompetence and one count of misconduct.

### PROCEDURAL HISTORY

This case progressed as follows:

- **January 28, 2011**—Coast Guard files Complaint against Respondent's Merchant Mariner credential alleging two counts of incompetence and one count of misconduct.
- **February 17, 2011**—Complaint received at Respondent's address of record and signed for by Respondent.
- **February 18, 2011**—Respondent files his answer in the matter wherein he denies all jurisdictional and factual allegations and agrees with the proposed hearing dates of April 19, 20, or 21, 2011, and the proposed hearing location at the Alexander Hamilton Customs House in New York, New York.
- **March 28, 2011**—ALJ issues Scheduling Order in the case setting the hearing of April 20, 2011, at the Alexander Hamilton Customs House in New York, New York.
- **April 13, 2011**—Coast Guard files a Motion for a Pre-Hearing Conference to be conducted via telephone.
- **April 14, 2011**—ALJ issues Scheduling Order – Pre-Hearing Conference granting the Coast Guard's Motion for a Pre Hearing Conference and setting a teleconference for April 18, 2011 at 3:00 p.m. EST.
- **April 18, 2011**—Pre-Hearing Conference held, Respondent does not attend; Coast Guard moves orally for default due to Respondent's failure to appear. ALJ takes motion under advisement, providing Respondent the opportunity to appear at the hearing. [Memorandum and Order of Pre-Hearing Teleconference at 1]
- **April 20, 2011**—Hearing held; Respondent does not attend and Coast Guard again moves orally for a default in the matter. [Order to Show Cause at 1-2]
- **April 20, 2011**—ALJ issues "Order to Show Cause" to Respondent, ordering that by May 20, 2011, Respondent show good cause as to why he failed to appear at the pre-hearing teleconference on April 18, 2011, and the hearing on April 20, 2011.
- **May 5, 2011**—Respondent files two hand-written documents. In the first document, Respondent states that he did not attend the pre-hearing teleconference because he was denied use of a telephone at the Seafarer Union Hall. In the second document, Respondent requests to move the hearing location to Mobile or New Orleans due to travel expense. (Respondent appears to be under the

mistaken impression that the hearing in the matter has been rescheduled for May 20, 2011.)

- **May 12, 2011**—Coast Guard files “Motion in Opposition to Respondent’s Motion to Demonstrate Good Cause and Request a Change of Venue.”
- **May 19, 2011**—Respondent files another document wherein he appears to request an extension of the May 20 date specified in the Order to Show Cause because of his incarceration in a local jail.
- **June 2, 2011**—ALJ issues D&O finding Respondent in default in the matter upon finding that Respondent failed to show good cause for his failure to appear at the Pre-Hearing Teleconference and the hearing.
- **June 14, 2011**—Respondent files a document asserting that there is good cause to support the re-opening of his case.
- **June 16, 2011**—ALJ issues “Order Denying Motion to Re-open.”
- **June 25, 2011**—Respondent files a document that can be characterized as a Notice of Appeal.
- **July 22, 2011**—Respondent files a document that can be characterized as an appeal brief.
- **July 27, 2011**—Respondent files another document in reference to his appeal.
- **August 25, 2011**—Coast Guard files its Reply to Respondent’s Appellate Brief.

This appeal is properly before me.

### FACTS

At all times relevant herein, Respondent was the holder of a Coast Guard-issued Merchant Mariner credential at issue in this proceeding.

Because a hearing on the merits never occurred in the matter, the facts supporting the ALJ’s Decision and Order revoking Respondent’s Merchant Mariner credential were developed solely via the Coast Guard Complaint. The Complaint alleges as follows:

## Factual Allegations—Incompetence

1. On or about December 6, 2007, while serving onboard the MAERSK MONTANA, the Respondent suffered from hallucinations, anxiety, and agitated behavior which rendered him unable to perform his duties as an able seaman, and was taken to his stateroom, prescribed anti-psychotic medication, and later hospitalized for a psychotic disorder.
2. On or about April 30, 2010, while onboard the HORIZON TRADER, Respondent suffered from hallucinations, schizophrenia, irrational behavior, mood changes, and paranoia and was subsequently involuntarily admitted to Trinitas Psychiatric Behavioral Health Hospital, issued anti-psychotic medications and was thus unable to perform his duties as able seaman.

## Factual Allegation—Misconduct

1. On or about February 25, 2010, while serving onboard the LTC CALVIN P. TITUS, Respondent aggressively threatened and verbally assaulted the Chief Mate while brandishing a crowbar, resulting in an Official Reprimand and termination which rendered him unable to perform his duties as an able seaman.

[Complaint at 2]

**BASES OF APPEAL**

This appeal has been taken from the ALJ's D&O finding the allegations set forth in the Complaint proved and ordering the revocation of Respondent's Merchant Mariner credential.

Respondent says that the default should be set aside because he was unable to be present at the hearing because of a lack of finances, his unexpected incarceration, and a property crisis, and because he was approximately 1800 miles away from the site of the hearing. [Respondent's Notice of Appeal at 1] Respondent asks that he be given another chance on another date so that he may defend himself against the allegations. [*Id.*] He states, with regard to the misconduct charge, that the matter should not have been presented to the Coast Guard because it was resolved within the organization. [Respondent's July 22 appellate filing at 2] Respondent says, with regard to the first allegation of incompetence, that the allegation was waived when his Merchant Mariner credential was renewed on September 15, 2009. [Respondent's July 27 appellate filing at 1] With regard to the second allegation of incompetence, Respondent says that due to New Jersey's law, he was unnecessarily hospitalized. [Respondent's July 27 appellate filing at 2]

From Respondent's story, I discern the following issue:

*Whether the ALJ was correct to conclude that Respondent had not provided good cause for his failure to appear at the scheduled hearing and teleconference.*

### OPINION

*Whether the ALJ was correct to conclude that Respondent had not provided good cause for his failure to appear at the scheduled hearing and teleconference*

When a default order is issued, the decision is reviewed for abuse of discretion. Appeal Decision 2696 (CORSE). The standard of review for abuse of discretion is highly deferential:

A reviewing court conducting review for abuse of discretion is not free to substitute its judgment for that of the trial court, and a discretionary act or ruling under review is presumptively correct, the burden being on the party seeking reversal to demonstrate an abuse of discretion . . . [A]buse of discretion occurs where a ruling is based on an error of law, or, where based on factual conclusions, is without evidentiary support.

5 Am. Jur. 2d *Appellate Review* § 695 (1997) (cited in Appeal Decision 2610 (BENNETT)).

Coast Guard regulations allow an ALJ to issue a default order when a Respondent fails to either file an Answer in a case or appear at a scheduled hearing or conference. 33 C.F.R. § 20.310(a); *see also* Appeal Decisions 2696 (CORSE), 2665 (DUBROC) and 2647 (BROWN). The regulations require the ALJ, upon finding Respondent in default, to issue a decision against Respondent. 33 C.F.R. § 20.310(d). 33 C.F.R. § 20.310(e) further provides, "Default by respondent constitutes . . . an admission of all facts alleged in the complaint and a waiver of his or her right to a hearing on those facts." 33 C.F.R. § 20.310(e) allows an ALJ to set aside a finding of default for good cause shown.

In this case, Respondent failed to appear at both a scheduled pre-hearing conference and a scheduled hearing even though the record shows that Respondent was aware that both activities had been scheduled by the ALJ. The question thus becomes whether Respondent provided good cause for his failure to appear at the scheduled conference and hearing. On appeal, Respondent

asserts that financial hardship, unexpected incarceration, a “property crisis,” and the fact that he was “approximately 1800 miles away” from the hearing location prevented him from attending the scheduled hearing and teleconference. [Respondent’s Notice of Appeal] These points are not different in substance from those he raised before the ALJ in response to the Order to Show Cause as to why he did not attend the conference and the hearing.

In these proceedings, neither incarceration nor a lack of finances provides an adequate excuse for a mariner to fail to attend a scheduled hearing when the mariner has been provided notice of the hearing and could have corresponded with the ALJ, but did not, regarding the hearing. Appeal Decisions 2564 (MANUEL) and 1323 (CUNNINGHAM).

In this case, the record shows, as the ALJ found, that Respondent was provided notice of both the pre-hearing teleconference and the hearing. Respondent had originally agreed with the proposed hearing location. He made no attempt before either the conference or the hearing to correspond with the ALJ regarding changing the location of the hearing or any perceived difficulty in attending. Instead, Respondent waited until after the pre-hearing conference and hearing dates passed to raise concerns regarding his ability to attend those sessions. Under these circumstances and in accordance with Coast Guard case law precedent, Respondent did not show good cause for his failure to attend the scheduled sessions, and the ALJ did not abuse his discretion in so concluding.

On appeal, Respondent has provided his positions on the merits of the three counts against him. Particularly with respect to the allegation of misconduct and the second allegation of incompetence, he has not raised a meritorious defense, and hence there is no basis for setting aside the ALJ’s default order. *See* Appeal Decision 2696 (CORSE).

### CONCLUSION

The ALJ’s decision to issue a Default Order was not an abuse of discretion. The sanction assessed is in accordance with applicable law and regulation. There is no reason to disturb the ALJ’s Order.

THOMAS

NO. 2700

**ORDER**

The order of the ALJ, dated June 16, 2011, is **AFFIRMED**.

*J. Currier* VICE ADMIRAL

Signed at Washington, D.C. this 13 day of JULY, 2012.