

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD
Complainant

vs.

JAMES WILLIAM SWEAT
Respondent

Docket Number 2019-0357
Enforcement Activity No. 5770763

DEFAULT ORDER

Background

On September 12, 2019, the United States Coast Guard (Coast Guard) issued a Complaint against James W. Sweat (Respondent), and on September 20, 2019, the Coast Guard filed an Amended Complaint. The Complaint was served on Respondent via express courier service, and the Amended Complaint was served on Respondent via electronic mail.¹ The Amended Complaint contains two charges of violation of law or regulation and one charge of misconduct. The Coast Guard seeks revocation of Respondent's Merchant Mariner Credential (MMC) in accordance with 46 U.S.C. § 7703(1)(A) and 46 U.S.C. § 7704(b). Respondent provided an oral answer to the Amended Complaint on September 23, 2019.

Discussion

On September 16, 2019, the Administrative Law Judge (ALJ) Docketing Center assigned this matter to the undersigned for review and adjudication. On September 20, 2019, the undersigned held a pre-hearing conference, and with the agreement of both parties, scheduled a hearing for October 9, 2019 in New Orleans, Louisiana. On September 23, 2019, the

¹ The parties agreed to electronic service of all pleadings during the September 20, 2019 pre-hearing conference.

undersigned held an additional pre-hearing conference during which Respondent stated he would like to proceed with the hearing on October 9, 2019. On October 9, 2019, the Coast Guard's representatives were present and prepared to proceed with the hearing. However, Respondent was not present. Therefore, Respondent failed to appear. Based on Respondent's failure to appear, the Coast Guard made an Oral Motion for Default on the record pursuant to 33 C.F.R. § 20.310.

On October 10, 2019, the undersigned issued an Order to Show Cause instructing Respondent to show good cause for his failure to appear at the hearing on October 9, 2019. Respondent's reply to the Order to Show Cause was due no later than November 11, 2019. The Order to Show Cause explained "[i]f Respondent fails to show good cause by November 11, 2019, the undersigned may find him in Default and issue an Order Suspending or Revoking his Merchant Mariner Credential." To date, Respondent has not responded to the Order to Show Cause.

An ALJ may find a respondent in default "upon failure to file a timely answer to the complaint or, after motion, upon failure to appear at a conference or hearing without good cause shown." 33 C.F.R. § 20.310(a). Based on the facts and circumstances of this case, the undersigned finds Respondent in default. Default constitutes an admission of all facts alleged in the Amended Complaint and a waiver of the right to a hearing. 33 C.F.R. § 20.310(c); see Appeal Decision 2682 (REEVES) (2008). Based on the factual allegations in the Amended Complaint, the undersigned finds the charges in the Amended Complaint **PROVED**. Further, the facts alleged in the Amended Complaint are sufficient to warrant the suggested sanction of **REVOCATION**. See 46 C.F.R. § 5.569.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED, upon consideration of the record, the undersigned finds Respondent in **DEFAULT**.

IT IS FURTHER ORDERED, in accordance with 33 C.F.R. § 20.310, the undersigned finds the allegations set forth in the Amended Complaint **PROVED**.


IT IS FURTHER ORDERED, all of Respondent's Coast Guard issued credentials, including his Merchant Mariner Credential, are **REVOKED**.

IT IS FURTHER ORDERED, Respondent shall immediately deliver by mail or in person, his Merchant Mariner Credential and any other Coast Guard issued credentials, licenses, certificates, or documents to: U.S. Coast Guard Sector Corpus 249 Glasson Dr., Corpus Christi, TX 78406.

IT IS FURTHER ORDERED, pursuant to 33 C.F.R. § 20.310(e), for good cause shown, an ALJ may set aside a finding of default. A motion to set aside a finding of default may be filed with the ALJ Docketing Center in Baltimore. The motion may be sent to U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022.

PLEASE TAKE NOTICE service of this Default Order on the parties serves as notice of appeal rights set forth in 33 C.F.R. § 20.1001-20.1004. See Attachment A.

SO ORDERED.



Brian J. Curley
US Coast Guard
Administrative Law Judge

Date: November 18, 2019

ATTACHMENT A

33 C.F.R. § 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

33 C.F.R. § 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
 - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
 - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 C.F.R. § 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
 - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --
 - (i) Basis for the appeal;
 - (ii) Reasons supporting the appeal; and
 - (iii) Relief requested in the appeal.
 - (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
 - (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.

(b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.

(c) No party may file more than one appellate brief or reply brief, unless --

(1) The party has petitioned the Commandant in writing; and

(2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.

(d) The Commandant may accept an amicus curiae brief from any person in an appeal of an ALJ's decision.

33 C.F.R. § 20.1004 Decisions on appeal.

(a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.

(b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.