

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

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**UNITED STATES COAST GUARD,**

**Complainant,**

**vs.**

**JAMES CHANDLER LEE,**

**Respondent.**

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**Docket Number 2023-0294  
Enforcement Activity Number 7751934**

**DEFAULT DECISION**

**Issued: May 30, 2024**

**By: George J. Jordan, Administrative Law Judge**

**Appearances:**

**LTJG Francesca Farlow  
For the Coast Guard**

**James Chandler Lee, *Pro se*  
For the Respondent**

This matter comes before me based on the United States Coast Guard's (Coast Guard) Motion for Default Order (Motion for Default). As of the date of this order, James Chandler Lee (Respondent) has not replied to the Complaint nor the Motion for Default. Upon review of the record and pertinent authority, the allegations in the Complaint are **PROVED**.

On July 31, 2023, the Coast Guard issued a Complaint against Respondent seeking to revoke his Merchant Mariner Credential (MMC) for violating a regulation intended to promote marine safety as described in 46 U.S.C. § 7703(1)(A). Specifically, the Coast Guard alleges Respondent was intoxicated while a crewmember onboard a vessel inspected under 46 U.S.C. Chapter 33 in violation of 33 C.F.R. § 95.045(b).

The Coast Guard served the Complaint on Respondent via certified mail return receipt requested on August 16, 2023, and Respondent never filed an answer. On October 3, 2023, the Coast Guard filed a Motion for Default serving Respondent again by certified mail return receipt requested. To date, more than twenty days have passed from service of the Motion for Default and Respondent has neither filed an answer nor requested an extension of time to file an answer. 33 C.F.R. § 20.308(a).

As Respondent has not filed an answer nor asserted good cause for failing to do so, I find Respondent in **DEFAULT**. 33 C.F.R. § 20.310(a); Appeal Decision 2700 (THOMAS) (2012). A default constitutes an admission of all facts alleged in the Complaint and waiver of the right to hearing on those facts. 33 C.F.R. § 20.310(c). I find the following factual allegations in the Complaint **ADMITTED**:

1. The ODYSSEA KNIGHT (O.N. 1179244) is a United States flagged vessel, inspected under 46 U.S.C. Chapter 33.
2. On June 3, 2023, Respondent was a crewmember operating the ODYSSEA KNIGHT, as described in 33 C.F.R. § 95.015(b).

3. On June 3, 2023, at approximately 1445, while on board the ODYSSEA KNIGHT, Respondent was observed by Kennard Leroy as smelling of alcohol when talking with the crew in the galley.
4. At approximately 1500, on June 3, 2023, aboard the ODYSSEA KNIGHT Respondent was also observed by the Master, Joseph Brown, as having breath that smelled of alcohol.
5. Based on the observations of Kennard Leroy and Joseph Brown the Respondent was in violation of the standard in 33 C.F.R. § 95.020(c).
6. Respondent was directed by the marine employer, Odyssea Marine, to undergo a chemical test based on reasonable cause pursuant to 33 C.F.R. § 95.035(a)(2).
7. At approximately 1802, Respondent underwent a reasonable cause chemical test administered by Hailey Angelette of Complete Occupational Health Services resulting in a Blood Alcohol Concentration level (BAC) greater than 0.04.
8. Respondent was in violation of 33 C.F.R. § 95.020(b).
9. On June 3, 2023, Respondent was under the influence of alcohol, as defined by 33 C.F.R. § 95.010, while onboard the ODYSSEA KNIGHT in violation of 33 C.F.R. § 95.045(b).
10. Violation of 33 C.F.R. § 95.045(b) is a violation of a regulation as described in 46 U.S.C. § 7703(1)(A) and 46 C.F.R. § 5.33.

Upon finding Respondent in default, I must now issue a decision against him. 33 C.F.R. § 20.310(d). In reviewing the record, I find that the facts deemed admitted are sufficient to establish that Respondent, while acting under the authority of his MMC, violated a regulation proscribed by 46 U.S.C. § 7703(1)(A) and 46 C.F.R. § 5.33. Accordingly, I find Respondent violated a regulation intended to promote marine safety.

### **SANCTION**

Having found Respondent in default and all allegations in the Complaint proved, I now must determine the appropriate sanction. 33 C.F.R. § 20.902(a)(2). While it is within the sole discretion of the Administrative Law Judge (ALJ) to determine the appropriate sanction at the conclusion of a case. Appeal Decision 2362 (ARNOLD) (1984). Title 49 C.F.R. § 5.569

contains the Table of Suggested Range of Appropriate Orders (Table) for various offenses. The purpose of this Table is to provide guidance to the ALJ and promote uniformity in orders rendered. Appeal Decision 2628 (VILAS) (2022), aff'd NTSB Order No. ME-174. A sanction ordered within the range specified in the Table is not excessive. 46 C.F.R. § 5.569(d). However, this Table is not binding on an ALJ and either aggravating or mitigating circumstances may support a sanction different from the Table. 46 C.F.R. § 5.569(b)(3).

The Coast Guard proved Respondent committed misconduct by violating a regulation. The Table lists sanctions for violation of regulations. 46 C.F.R. § 5.569 tbl. 5.569. However, the sanctions in the Table are specifically for violations of regulations concerning refusal of a drug or alcohol test. Id. Since no specific sanction exists in the Table for contravening a general operating rule outlined in 33 C.F.R. § 95.045, I use the sanction ranges for refusal of a drug or alcohol test as the range of the sanction contemplated in this case. Those ranges are both 12 to 24 months outright suspension. Id.

In this case, the Coast Guard is seeking a sanction of 12 months outright suspension. Because the Coast Guard's requested sanction is within the guidance set forth in the Table consideration of aggravating factors is not necessary. Appeal Decision 2455 (WARDELL) (1987), aff'd, NTSB Order No. EM-149 (1988); Appeal Decision 2702 (CARROLL) (2013) (quoting Commandant v. Moore, NTSB Order No. EM-201 (2005)). Additionally, since Respondent did not reply to the Motion for Default there are no mitigating factors in the record to consider either.

Here since the requested sanction falls within what I consider the permissible limits of the sanction range for the violation proved, I find a 12-month outright suspension appropriate.

**WHEREFORE,**

## **ORDER**

**IT IS HEREBY ORDERED**, all of Respondent's Coast Guard issued credentials, including Respondent's MMC, are **SUSPENDED OUTRIGHT FOR 12 MONTHS**.

**IT IS FURTHER ORDERED**, Respondent shall immediately deliver all Coast Guard issued credentials, licenses, certificates, or documents, including the MMC, by mail, courier service, or in person to: LTJG Francesca Farlow, Marine Safety Unit Savannah, 100 W. Oglethorpe Avenue, Suite 1017 Savannah, GA 31401. In accordance with 18 U.S.C. § 2197, if **Respondent knowingly continues to use the Coast Guard issued MMC, Respondent may be subject to criminal prosecution.**

**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 the U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21202-4022.

**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 (Attachment A).

**IT IS SO ORDERED.**

Done and dated, May 30, 2024,  
Seattle, Washington



George J. Jordan  
Administrative Law Judge  
United States Coast Guard