

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

UNITED STATES COAST GUARD,

Complainant,

vs.

KENNETH JAMES JACOBS, JR.,

Respondent.

Docket Number 2023-0346
Enforcement Activity No. 7757296

DEFAULT ORDER

Issued By: Honorable George J. Jordan, Administrative Law Judge

Issued: January 9, 2024

Appearances:

CWO Wesley Johnson
Marine Safety Unit Houma
For the Coast Guard

Kenneth James Jacobs, Jr., *Pro se*
For Respondent

This matter comes before me on the United States Coast Guard's (Coast Guard) Motion for Default Order. As of the date of this order, Kenneth James Jacobs, Jr. (Respondent) has not responded to the Complaint or the Motion for Default. Upon review of the record and pertinent authority, the Coast Guard's Motion for Default is **GRANTED**.

Background

On October 3, 2023, the Coast Guard filed a Complaint against Respondent alleging Misconduct as established by 46 U.S.C. § 7704(b). The jurisdictional allegations in the Complaint indicate Respondent is the holder of Merchant Mariner Credentials (MMC) 000496408. The Express Courier Service receipt, filed by the Coast Guard with Complaint, indicates the Complaint was delivered to Respondent's residence by Express Courier Service and signed for by a person of suitable age and discretion residing at the individual's residence on October 6, 2023.

On November 7, 2023, the Coast Guard filed a Motion for Default Order, explaining Respondent failed to file an Answer and the response time had passed. See 33 C.F.R. § 20.308. The Return of Service for Motion for Default Order indicates the Motion was delivered to Respondent's residence by Express Courier Service and signed for by a person of suitable age and discretion residing at the individual's residence on November 15, 2023. The Chief Administrative Law Judge assigned the matter to the undersigned Administrative Law Judge (ALJ) on December 19, 2023.

Discussion

The regulations require a respondent to "file a written answer to the complaint 20 days or less after service of the complaint." 33 C.F.R. § 20.308(a). 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). Default constitutes an admission of all facts alleged in a complaint and a waiver of a respondent's right

to a hearing on those facts. 33 C.F.R. § 20.310(c). See Appeal Decision 2682 (REEVES) (2008).

The Complaint filed by the Coast Guard and properly served on Respondent contained instructions that clearly stated, “YOU MUST RESPOND TO THIS COMPLAINT WITHIN 20 DAYS” and provided the applicable regulatory provision, 33 C.F.R. § 20.308. The instructions also informed Respondent he could request an extension of time “within 20 days” of receipt. Respondent failed to respond to the Complaint or request an extension of time. Similarly, Respondent failed to respond to the properly served Motion for Default Order.

Here, the record shows Respondent did not file an Answer and has made no attempt to provide good cause for not doing so. Furthermore, nothing in the record indicates Respondent asked for an extension of time.

Title 33 C.F.R. § 20.310 provides “the respondent alleged to be in default shall file a reply to the motion 20 days or less after service of the motion.” Respondent’s reply was due no later than December 5, 2023. To date, Respondent has not filed a reply.

Accordingly, I find Respondent is in **DEFAULT** pursuant to 33 C.F.R. § 20.310(a). Default constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. 33 C.F.R. § 20.310(c). See Appeal Decision 2682 (REEVES) (2008).

As to the charge of Use of Dangerous Drugs, the Complaint alleges on April 7, 2022, Respondent took a required random test pursuant to 46 C.F.R. Part 16. A urine specimen was collected from Respondent by Darin Lewis of Galliano Marine Service, LLC of Cut Off, LA in accordance with C.F.R. Part 40. Respondent signed a Federal Drug Testing Custody and Control Form for providing urine specimen ID # 8167479. Urine specimen ID # 8167479 was received by and subsequently analyzed pursuant to 49 C.F.R. Part 40 by Quest Diagnostics in Lenexa, KS, a SAMHSA certified laboratory. On April 13, 2022, urine specimen ID # 8167479 tested positive for Marijuana Metabolites, as reported by Quest Diagnostics. On April 14, 2022, Dr.

James Patterson, the Medical Review Officer, determined that Respondent failed a chemical test for dangerous drugs, raising the presumption of use established by 46 C.F.R. § 16.201(b). Respondent has been the user of a dangerous drug, as described by 46 U.S.C. § 7704(b).

Accordingly, the deemed admitted facts are sufficient to find Respondent to have been a user of a dangerous drug as described by 46 U.S.C. § 7704(b) and therefore, I find the Complaint **PROVED**. The underlying statute mandates revocation unless the MMC holder provides satisfactory proof that the holder is cured. 46 U.S.C. § 7704(b). Accordingly, I also find the facts alleged in the Complaint sufficient to warrant the sanction of **REVOCATION**. See 46 C.F.R. § 5.569.

WHEREFORE,

ORDER

Upon consideration of the record, I find Respondent in **DEFAULT**.

IT IS HEREBY ORDERED, in accordance with 33 C.F.R. § 20.310, I find the allegations set forth in the Complaint **PROVED**.

IT IS FURTHER ORDERED, all of Respondent's Coast Guard issued credentials, including Respondent's Merchant Mariner Credential (MMC), is **REVOKED**.

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: CWO Wesley Johnson, U.S. Coast Guard, Marine Safety Unit Houma, 423 Lafayette Street, Houma, LA 70360. 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).

SO ORDERED.

Done and dated this January 9, 2024, at
Seattle, Washington

A handwritten signature in blue ink, appearing to read "G. Jordan", is written over a horizontal line within a rectangular box.

George J. Jordan
Administrative Law Judge
United States Coast Guard