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

UNITED STATES COAST GUARD,

Complainant,

vs.

DAVID KIOMASA BUEKIS,

Respondent,

Docket Number 2023-0436
Enforcement Activity Number 7821693

DEFAULT DECISION

Issued: May 3, 2024

By: George J. Jordan, Administrative Law Judge

Appearances:

CWO4 Daniel Hager
Sector Honolulu
For the Coast Guard

David Kiomasa Buekis, *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, David Kiomasa Buekis (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 January 18, 2024, the Coast Guard issued a Complaint against Respondent seeking to revoke his Merchant Mariner Credential (MMC) for being a user of dangerous drug, as described by 46 U.S.C. § 7704(b).

The Coast Guard served the Complaint on Respondent via certified mail and Respondent never filed an answer. On February 15, 2024, the Coast Guard then filed a Motion for Default serving Respondent again by certified mail. 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. On July 24, 2023, Respondent took a required Random drug test pursuant to 46 C.F.R. Part 16.

2. A urine specimen was collected from Respondent by Ma Vidal of Diagnostic Laboratory Services, Saipan, Northern Mariana Islands, in accordance with 49 C.F.R. Part 40.

3. Respondent signed a Federal Drug Testing Custody and Control Form for providing urine specimen ID# 0570348.

4. Urine specimen ID# 0570348 was received by and subsequently analyzed pursuant to 49 C.F.R. Part 40 by Quest Diagnostics, Lenexa, KS, a SAMHSA certified laboratory.

5. On August 3, 2023, urine specimen ID# 0570348 tested positive for Amphetamines/ Methamphetamine, as reported by Quest Diagnostics.

6. On August 14, 2023, Dr. Hyrum Bronson, 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).

7. Respondent has been the user of a dangerous drug, as described by 46 U.S.C. § 7704(b).

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 is a user of a dangerous drug as outlined in 46 U.S.C. § 7704(b), 46 C.F.R. § 16.201(b), Appeal Decision 2603 (HACKSTAFF) (1998), and Appeal Decision 2704 (FRANKS) (2014). Accordingly, I find Respondent is a user of a dangerous drug.

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). A proved allegation that a mariner is a of user of a dangerous drug carries a mandatory sanction of revocation of their MMC unless they can prove cure. 46 U.S.C. § 7704(b). The Coast Guard proved Respondent is a user of dangerous drug, thus the only sanction to levy is revocation. Id.

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), are **REVOKED**.

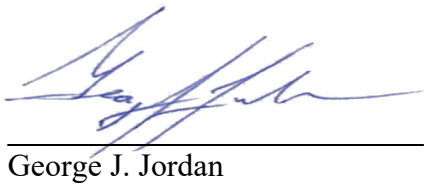
IT IS FURTHER ORDERED, Respondent shall immediately deliver all Coast Guard issued credentials, licenses, certificates, or documents, including the MMC, by mail, courier service, or in person to: CWO4 Daniel Hager, Sector Honolulu, 433 Ala Moana Blvd, Pier 4, Honolulu, HI 96813. In accordance with 18 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, May 3, 2024,
Seattle, Washington



George J. Jordan
Administrative Law Judge
United States Coast Guard