

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

UNITED STATES COAST GUARD
Complainant

vs.

SETH HARDESTY
Respondent

Docket Number 2023-0470
Enforcement Activity No. 7352979

ORDER GRANTING UNITED STATES COAST GUARD’S
MOTION FOR SUMMARY DECISION

This matter comes before me on the United States Coast Guard’s (Coast Guard) Motion for Summary Decision (Motion), requesting I enter judgment in its favor as a matter of law because there exists no genuine issue of material fact. Specifically, the Coast Guard asserts the Transportation Security Administration (TSA) revoked Seth Hardesty’s (Respondent) Transportation Worker Identification Card (TWIC), and therefore, Respondent is ineligible to hold a Merchant Mariner Credential (MMC). 33 C.F.R. § 20.901. To date, Respondent has not filed a response to the Motion.

For the reasons set forth below, I **GRANT** the Coast Guard’s Motion for Summary Decision.

I. Procedural History

On December 13, 2023, the Coast Guard filed a Complaint against Respondent seeking to revoke his MMC based upon TSA’s determination Respondent is ineligible to hold a TWIC.

Specifically, the Complaint alleged because TSA revoked Respondent's TWIC, Respondent "is a security risk as described by 46 U.S.C. § 7703(5). The Coast Guard served the Complaint on Respondent by Federal Express on January 15, 2024.

On March 22, 2024, Respondent filed an Answer admitting the jurisdictional allegations contained in the Complaint, and denying the factual allegations set forth in the Complaint. Further, Respondent asserted as an affirmative defense that he was not convicted of a criminal offense that would warrant suspension under 46 U.S.C. §7703. *See Answer at ¶¶ 1-3.*

I subsequently held a pre-hearing conference in this matter on May 13, 2024. During the pre-hearing conference, Counsel for Respondent noted that Respondent was in the process of having his TWIC reissued, which, if so, could render these proceedings moot. Accordingly, I continued the pre-hearing conference for thirty (30) days to provide Respondent with additional time to pursue reapplication for his TWIC.

Thereafter, on June 5, 2024, Respondent's counsel informed the Coast Guard that Respondent had made an appointment with TSA and that his TWIC was "current," and was "not revoked." *See Exhibit 4 to Coast Guard Motion for Summary Decision.* Counsel for the Coast Guard then contacted the Redress Branch of the TSA to verify Respondent counsel's statements and was informed that TSA had no record of Respondent having reapplied for a TWIC. TSA further informed the Coast Guard that Respondent's TWIC remained revoked as of September 22, 2021. *See Exhibit 5 to Coast Guard Motion for Summary Decision.*

Thereafter, the Coast Guard filed its Motion for Summary Decision. Respondent did to file a response to the Coast Guard's Motion.

Having discussed the procedural history in this case, I now turn to the specifics of the Coast Guard's Motion.

II. Discussion

The Coast Guard asserts TSA revoked Respondent's TWIC on the basis that Respondent was charged with a potentially disqualifying criminal offense under 49 C.F.R. § 1572.103. Accordingly, TSA's revocation of the TWIC was based upon its determination Respondent posed a security threat as a result of the as- charged disqualifying criminal offense. The Coast Guard further argued as Respondent has not shown his TWIC has been reinstated or reissued, he is not eligible to hold an MMC under 46 C.F.R. § 10.235(h), requiring revocation of Respondent's MMC. Thus, the Coast Guard argues I must grant summary decision in its favor.

Pursuant to 33 C.F.R. § 20.901(a), a party may seek summary decision on that the grounds that there is no genuine issue of material fact, and the party is entitled to a decision as a matter of law. Under subsection (b), the ALJ may grant summary decision if the filed affidavits, filed documents, material obtained by discovery, or matters officially noted show that there is no genuine issue of material fact and judgment for the movant is warranted as a matter of law. A party arguing against a motion for summary decision cannot rest upon the mere allegations or denials of fact contained in her/her own pleadings. 33 C.F.R. § 20.901(c). To establish a genuine issue of material fact the opponent must instead set forth a "specific basis" by affidavit or otherwise to show that a genuine issue of material fact exists. *Id.* A dispute over a material fact is "genuine" if the evidence is such that a reasonable fact finder could render a ruling in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

As evidenced by Exhibit 1 to the Coast Guard's Motion, TSA revoked Respondent's MMC as of September 11, 2021, for a non-administrative reason. Further, the correspondence between the Coast Guard and TSA's Redress Office, attached as Exhibit 5 to the Coast Guard's Motion, establishes Respondent's TWIC is currently revoked and has not been reinstated. Accordingly, the

Coast Guard's has established the undisputed facts in this case: 1) TSA revoked Respondent's TWIC for a non-administrative reason; and 2) Respondent's TWIC has not been reinstated.

In contrast, Respondent failed to submit any evidence in opposition to the Coast Guard's Motion that would create a genuine issue of material fact. While Respondent's Answer denied the factual allegations set forth in the Complaint, Respondent did not oppose the Coast Guard's Motion. As noted above, Respondent, as the non-movant, may not merely rely on the denials asserted in his Answer and must set forth evidence of a genuine issue of material fact to defeat summary decision herein. Here, Respondent failed to provide any evidence contradicting the undisputed facts as set forth in the Coast Guard's Motion for Summary Decision. Accordingly, summary decision is **GRANTED** on the Coast Guard's claim that Respondent's TWIC is revoked and has not been reinstated.

IV. Affirmative Defenses

I turn now to Respondent's affirmative defense as articulated in his Answer. Specifically, Respondent's Answer asserted he "was not convicted of an offense that would warrant suspension or revocation under 46 U.S.C. 7703." Pursuant to 33 C.F.R. § 20.702, Respondent will bear the burden in proving his affirmative defenses. Here, as noted above, Respondent failed to submit any evidence in support of his proffered affirmative defense, as he has not responded to the Coast Guard's Motion. Accordingly, Respondent has not met his burden in providing evidence showing a genuine issue of material fact that would preclude summary decision in this matter.

III. Sanction

Having determined that summary decision is appropriate, I turn now to the appropriate sanction in this case. Title 46 U.S.C. § 7703(5) provides that an MCC may be suspended or revoked if the holder is a security risk that poses a threat to the safety or security of a vessel, or a

public or commercial structure located within or adjacent to a marine environment. Under 49 C.F.R. § 1572.5, TSA determines an applicant for a TWIC poses a security threat if the applicant has committed a disqualifying criminal offense as described in 49 C.F.R. § 1572.103.

Under 46 C.F.R. § 10.235(i), “[a] mariner that has either been denied issuance of a TWIC or whose TWIC has been revoked for a reason other than administrative reasons (e.g. being lost or stolen, not functioning, or having a misspelling) will be deemed **ineligible** for an MMC, license, MMC, or COR.” (emphasis added). Coast Guard regulations further permit suspension and revocation actions against MMCs if the TSA advises the Coast Guard that a mariner has been denied a TWIC or the TWIC has been revoked. Indeed, 46 C.F.R. § 10.235(h) provides:

If the Coast Guard is advised by the Transportation Security Administration (TSA) that a mariner has either been denied a TWIC or their TWIC has been revoked, the Coast Guard may initiate suspension and revocation action against the mariner's MMC, license, MMD, and COR under 46 U.S.C. 7702 and 7703. During the subsequent suspension and revocation proceeding, **the TSA decision to deny issuance of, or to revoke, a mariner's TWIC will not be subject to review**, and the mariner's failure to hold a TWIC will be treated by the Coast Guard as proof that the mariner is not eligible for an MMC, license, MMD or COR.

(emphasis added). Accordingly, when the Coast Guard seeks to revoke a mariner’s MMC on the basis of his or her ineligibility to hold a TWIC, such revocation is not discretionary, as the TSA’s decision to revoke the TWIC is not “subject to review.”

Here, the Coast Guard initiated this suspension and revocation action seeking to revoke Respondent’s MMC on the basis that he is a security risk. The action is premised upon TSA’s revocation of Respondent’s TWIC. Under 46 C.F.R. § 10.235(i), Respondent is not eligible to hold an MMC, because his TWIC has been revoked for a non-administrative reason. Therefore, revocation of Respondent’s MMC is mandated. Accordingly, as I have found summary decision

in this matter to be appropriate, the only permissible sanction in this matter is revocation of Respondent's MMC.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED, the Merchant Mariner Credential of Respondent is **REVOKED**.

IT IS FURTHER ORDERED, upon service of this Order, Respondent shall immediately surrender his credentials and all other valid licenses, documents, and endorsements issued by the Coast Guard to the United States Coast Guard, Mr. Eric Bauer, 100 Forbes Drive, Martinsburg, West Virginia, 25404.

PLEASE TAKE FURTHER NOTICE, pursuant to 33 C.F.R. § 20.904 and/or 46 C.F.R. § 5.901, Respondent may file a motion to reopen this matter. The filing of a motion to reopen the record of a proceeding does not affect any period for appeals.

PLEASE TAKE FURTHER NOTICE, service of this Order on the parties and/or parties' representative(s) serves as notice of appeal rights set forth in 33 C.F.R. §§ 20.1001 - 20.1004 (Attachment A).

Done and dated this 8th day of October, 2024
New Orleans, Louisiana



THE HON. BRIAN J. CURLEY
UNITED STATES COAST GUARD
ADMINISTRATIVE LAW JUDGE