

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

UNITED STATES COAST GUARD

Complainant

vs.

BRYAN CHRISTOPHER SHEPLER

Respondent

**Docket Number: 2023-0212
Enforcement Activity Number: 7683914**

**ORDER GRANTING COAST GUARD’S MOTION FOR DEFAULT AND
MEMORIALIZING PRE-HEARING CONFERENCE**

This matter comes before me on the United States Coast Guard’s (Coast Guard) Motion for Default Order (Motion), filed on July 10, 2023. As of the date of this Order, Bryan Christopher Shepler (Respondent) has not responded to the Complaint or the Motion. Upon review of the record and pertinent authority, the Coast Guard’s Motion is **GRANTED**.

I. BACKGROUND

The Coast Guard initiated this proceeding by filing a Complaint with the Administrative Law Judge (ALJ) Docketing Center by email and serving Respondent personally in St. Augustine, Florida, on June 14, 2023. Respondent did not file an answer to the Complaint, and on July 10, 2023, the Coast Guard filed the Motion. The Certificate of Service (COS) indicated the Coast Guard sent the Motion to an address in Hastings, Florida. Notably, this address differs from the address listed in the Complaint and the address at which Respondent was personally served.

On July 13, 2023, the Coast Guard filed a Return of Service (ROS) for the Motion, stating it was delivered to “Respondent’s residence and signed for by a person of suitable age and discretion residing at the residence” on July 11, 2023. The attachment to the ROS, however, indicated the Motion was delivered to an address in St. Augustine, Florida, and signed for by “M.REED.”¹ That same day, the Coast Guard also filed an Amendment to Motion for Default Order (Amended Motion), which amended the Certificate of Service for the Motion filed on July 10, 2023. The Amended Motion also stated an additional Motion was served upon Respondent at his “last known residence.” Finally, attached to the Amended Motion was a copy of the initial Motion² and a Certificate of Service stating the Amended Motion was served on Respondent via express courier at the St. Augustine, Florida, address.

Together, the filings of July 13, 2023, contained ambiguous and conflicting information regarding service of the Motion. Accordingly, on October 19, 2023, I convened a telephonic conference to address these issues. LT Amanda Barnett and LCDR Lynn Buchanan appeared on behalf of the Coast Guard. Respondent did not appear. I directed my staff to call Respondent at the phone number listed on the Complaint. They made two attempts but were unsuccessful. Having determined that Respondent received proper notification, I proceeded with the conference.

I first reviewed the procedural history of the case. The Coast Guard confirmed they personally served the Complaint on Respondent at the St. Augustine, Florida, address. I then addressed the ambiguities regarding the various addresses listed in the Complaint, Motion COS,

¹ During the pre-hearing conference, the Coast Guard confirmed the signature was that of Mike Reed, the harbor master at the St. Augustine, Florida, marina where Respondent was residing, and the location at which the Coast Guard personally served Respondent with the Complaint.

² The attached motion was titled “Amended Motion for Default Order.” Apart from this title, however, the body of the Amended Motion for Default Order is identical to the Motion filed on July 10, 2023. As there is no substantive change, I will consider the Amended Motion for Default Order to be the same as the Motion.

Motion ROS, and Amended Motion. The Coast Guard explained that it learned of the St. Augustine, Florida address from Respondent's previous employer. The Coast Guard confirmed this address as his residence when it personally served Respondent with the Complaint on June 14, 2023.

The Coast Guard further clarified that, after Respondent failed to file an answer, it attempted to serve the Motion on Respondent at the Hastings, Florida, address. The Coast Guard obtained this address from Mike Reed, the harbor master at the St. Augustine, Florida marina where Respondent was personally served the Complaint. Assuming this to be Respondent's most recent address, the Coast Guard made several attempts to serve the Motion on Respondent by express courier at the Hastings, Florida, address. These attempts were unsuccessful, as the envelope went unclaimed. The Coast Guard then served the Motion upon Respondent at the St. Augustine, Florida address, known as Respondent's last known residence. This Motion was served on July 11, 2023, by express courier service upon a person of suitable age and discretion, *i.e.*, Mike Reed, the harbor master. Finally, the Coast Guard stated it filed the Amended Motion to correct the Motion COS to reflect service of the Motion on Respondent at the St. Augustine, Florida, address.

II. 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 the respondent's right to a hearing on those facts. 33 C.F.R. § 20.310(c); Appeal Decision 2682 (REEVES) (2008), 2008 WL 5765851, at *1.

Here, the Coast Guard properly served the Complaint on Respondent by personal service on June 14, 2023. Contained within the Complaint are 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 an extension of time could be requested “within 20 days” of receipt of the Complaint. Respondent failed to file an answer and has made no attempt to provide good cause for not doing so. Similarly, based on information provided at the pre-hearing conference, I find that the Coast Guard properly served the Motion on July 11, 2023, at Respondent’s last known residence. As of the date of issuance of this Order, Respondent has failed to file a response. 33 C.F.R. § 20.310(b) (“[t]he respondent alleged to be in default shall file a reply to the motion 20 days or less after service of the motion.”). Accordingly, I find Respondent in default, and his failure to file an answer 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).

Regarding the substance of the allegations, I find the facts alleged are sufficient to prove Respondent committed misconduct, as described by 46 U.S.C. § 7703(1)(B) and defined by 46 C.F.R § 5.27. Misconduct is behavior that violates a formal, duly established rule, found in such places as statutes, regulations, the common law, general maritime law, a ship’s regulation or order, shipping articles, and similar sources. 46 C.F.R. § 5.27. On April 12, 2023, Respondent reported to Quest Diagnostics for a random drug test pursuant to 46 C.F.R Part 16. Respondent failed to remain at the urine collection site and provide a second sample after the first sample was not accepted for being outside of the acceptable temperature range. See 49 C.F.R. § 40.65(b). By failing to remain at the site and provide a second sample, Respondent failed to complete the testing process, which constitutes a refusal to take a required drug test, as described by 49 C.F.R § 40.191(a)(2). Refusal to take a required drug test is misconduct, as it is an act that

violates duly established drug testing regulations. See 46 C.F.R § 5.27; 46 C.F.R. Part 16; 49 C.F.R. § 40.191; see also Appeal Decision 2675 (MILLS) (2008), 2008 WL 918525, at *1; Appeal Decision 2578 (CALLAHAN) (1996), 1996 WL 33408499, at *1. Therefore, the charge is **PROVED**.

The Coast Guard proposes the sanction of revocation of Respondent's merchant mariner credential (MMC). "The selection of an appropriate sanction is the responsibility of the Administrative Law Judge," after consideration of any applicable factors, such as remedial actions undertaken by the respondent, the respondent's prior record, and evidence of mitigation or aggravation. 46 C.F.R. § 5.569(a),(b). The regulations provide a suggested sanction of 12 to 24 months suspension for "refusal to take chemical drug test." 46 C.F.R. § 5.569 at Table 5.569. In accordance with decisions of the National Transportation Safety Board, an ALJ may impose a sanction that deviates upward from the suggested penalty where aggravating circumstances are present. Commandant v. Moore, NTSB Order No. EM-201 (2005), 2005 WL 2119329, at *6; Commandant v. Ailsworth, NTSB Order No. EM-211 (2011), 2011 WL 7141395, at *6.

In its Complaint, the Coast Guard alleges aggravation. Specifically, Respondent attempted to "deceive the marine employer regarding the circumstances of the drug test refusal," which constituted a "deliberate attempt to circumvent the drug testing program and undermine marine safety." Through his admissions by default, Respondent admits he refused to take a required drug test and then attempted to deceive his marine employer to circumvent the drug testing program. These actions call into question Respondent's ability to maintain security and safety while performing merchant mariner duties. There being an aggravating circumstance in this case, I find the facts alleged in the Complaint sufficient to warrant the sanction of **REVOCATION**.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED, the Coast Guard's Motion for Default Order filed on July 10, 2023, is **GRANTED**.

IT IS FURTHER ORDERED, in accordance with 33 C.F.R. § 20.310, I find the charge alleged in the Complaint is **PROVED**.

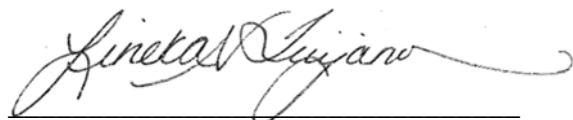
IT IS FURTHER ORDERED, Respondent's MMC and all other Coast Guard-issued credentials are **REVOKED**.

IT IS FURTHER ORDERED, Respondent shall immediately deliver the MMC and all other Coast Guard-issued credentials by mail, courier service, or in-person to: LT Amanda Barnett, Sector Jacksonville, 10426 Alta Drive, Jacksonville, FL 32226. If Respondent knowingly continues to use the MMC, or other Coast Guard-issued credentials, Respondent may be subject to criminal prosecution. See 18 U.S.C. § 2197.

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 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, this Default Order serves as notice of the appeal rights set forth in 33 C.F.R. § 20.1001-20.1004 (**Attachment A**).

Done and dated November 14, 2023
Baltimore, Maryland



Hon. Lineka N. Quijano
Administrative Law Judge
United States Coast Guard