

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

UNITED STATES COAST GUARD,

Complainant,

vs.

NICHOLAS MCMILLIAN,

Respondent.

Docket Number 2024-0321
Enforcement Activity No. 7923537

DEFAULT ORDER

Issued: September 11, 2024

By Administrative Law Judge: Honorable Timothy G. Stueve

Appearances:

**CWO Dan Asbach
USCG Sector Upper Mississippi River**

For the Coast Guard

Nicholas McMillian, Pro se

For Respondent

Background

On or about July 9, 2024, the Coast Guard filed a Complaint against Nicholas McMillian, (Respondent) alleging one count of use of, or addiction to the use of dangerous drugs. The Return of Service for Complaint filed by the Coast Guard indicates the Complaint was delivered to Respondent's residence by Federal Express and signed for by a person of suitable age and discretion residing at that residence, on July 10, 2024 (Attachment A)¹.

On August 12, 2024, the Coast Guard filed a Motion for Default Order (Motion), explaining Respondent failed to file an Answer, and the response time has passed. See 33 C.F.R. § 20.308. The Return of Service for Motion for Default indicates the Motion was delivered to Respondent's residence by Federal Express and signed for by a person of suitable age and discretion on August 14, 2024 (Attachment B)². The Chief Administrative Law Judge assigned the matter to the undersigned on September 9, 2024.

Discussion

The applicable 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 administrative law judge (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 respondent's right to a hearing on those facts. 33 C.F.R. § 20.310(c).

¹ The Coast Guard's Return of Service for the Complaint does not indicate the person that signed for receipt of the document. However, the Fedex proof of service attached to the Return of Service for the Complaint shows that "M. Mcmillian" signed for the document.

² The Fedex Proof of Service attached to the Return of Service for the Motion for Default Order indicates that "M. Mcmillian" signed for the document.

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 an extension of time could be requested “within 20 days” of receipt. Respondent failed to respond to the Complaint or the Motion for Default Order.

Accordingly, the undersigned finds Respondent 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, or addiction to the use of dangerous drugs, the Complaint alleges on April 29, 2024, Respondent was directed to the administration office of the National Maintenance and Repair company and admitted to use of marijuana to the company’s Human Resource Manager. See 46 U.S.C. § 7704(b).

The factual allegations in the pleadings are legally sufficient to find the charge of use of, or addiction to the use of dangerous drugs **PROVED**. Id.

The undersigned finds the facts alleged in the Complaint sufficient to warrant the suggested sanction of **REVOCATION**. See 46 C.F.R. § 5.569.

WHEREFORE,

ORDER

Upon consideration of the record, the undersigned finds Respondent in **DEFAULT**.

IT IS HEREBY ORDERED, in accordance with 33 C.F.R. § 20.310, the undersigned finds 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: U.S. Coast Guard Sector Upper Mississippi River, 1222 Spruce Street, Suite 7.103, Saint Louis, MO 63103-2846. 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 21201-4022.

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 C).

SO ORDERED.



Honorable Timothy G. Stueve
Administrative Law Judge
U.S. Coast Guard

Done and dated September 11, 2024, at
Alameda, California