

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

UNITED STATES COAST GUARD,

Complainant,

vs.

BERNELL CARTER,

Respondent.

Docket Number 2024-0004
Enforcement Activity No. 7831792

DEFAULT ORDER

Issued: March 19, 2024

By Administrative Law Judge: Honorable Timothy G. Stueve

Appearances:

**IO Eric Bauer
USCG S&R National Center of Expertise**

For the Coast Guard

Bernell Carter, pro se

For Respondent

Background

On or about January 2, 2024, the Coast Guard filed a Complaint against Bernell Carter (Respondent). The Complaint filed by the Coast Guard¹ 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 residence on January 5, 2024 (Attachment A).

On January 31, 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 states the Motion was delivered to Respondent's residence by Federal Express and signed for by a person of suitable age and discretion residing at the residence on February 2, 2024 (Attachment B)². The Chief Administrative Law Judge assigned the matter to me on February 28, 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).

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

¹ The Coast Guard's Return of Service for the Complaint indicates that "B. Carter" signed for the document on its Fedex Proof of Service.

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

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, I find 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).

1. Security Risk that Poses a Threat

Turning to the first violation in the Complaint, the Coast Guard alleges on October 30, 2023, the Transportation Security Administration (TSA) determined Respondent does not meet the security threat assessment standards described in 49 C.F.R. § 1572.5, poses an imminent security threat in accordance with 49 C.F.R. § 1572.21(d)(3), and revoked Respondent’s TWIC in accordance with 49 C.F.R. § 1572.5(b). As a result of TSA’s actions, the Coast Guard asserts Respondent is a security risk as described by 46 U.S.C. § 7703(5).

Having concluded Respondent admitted TSA revoked his TWIC, and all other facts in the Complaint, I agree TSA’s determination that Respondent is not eligible to hold a TWIC is proof that a mariner is not eligible to hold an MMC. See 46 C.F.R. §§ 10.235(h) and 10.235(i). Based on these admissions, I find these facts as admitted are legally sufficient to find the single charge that Respondent is a security risk as described in 46 U.S.C. § 7703(5) **PROVED.** Id.

2. Holder of MMC is the Subject of an Official Finding of Sexual Assault

Turning to the second violation in the Complaint, the Coast Guard alleges Respondent is a holder of a Merchant Mariner Credential and is the subject of an official finding of sexual assault. Specifically, on January 22, 2004, February 17, 2006, and November 18, 2008, respectively, Respondent was convicted by the Eighth Judicial District Court for violating

Nevada Revised Statute § 201.300 for Pandering.³ The Coast Guard further alleges the Nevada Revised Statute § 201.300, is substantially similar to 18 U.S.C. § 2241 – Aggravated Sexual Assault and is Sexual Assault as described by 46 U.S.C. § 7704a(b) and defined by 46 U.S.C. § 2101(45). I find these facts as admitted are legally sufficient to find a charge of sexual assault **PROVED**.

3. Conviction that Would Preclude Issuance of MMC

Turning to the third violation in the Complaint, the Coast Guard alleges that on January 20, 2023, Respondent was convicted for assault causing bodily injury, a misdemeanor, a conviction that would preclude the issuance of an MMC. Specifically, on January 20, 2023, Respondent was convicted of violating Texas Penal Code, Title 5, § 22.01(a)(1) – assault causing bodily injury, a misdemeanor, by the Circuit Court of the 396th District Court in the state of Texas. Respondent’s conviction of violating Texas Penal Code, Title 5, § 22.01(a)(1), is a conviction of an offense that would prevent the issuance or renewal of a Merchant Mariner Credential, as described in 46 U.S.C. § 7703(2).

4. Conviction of Dangerous Drug Law Violation

As to the charge of use of, or addiction to the use of dangerous drugs, the Complaint alleges on January 20, 2023, Respondent was convicted by the 396 District Court in violation of the Texas Health and Safety Code, Title 6 § 481.115(b) –Possession of Substance in Penalty Group 1 Or 1-B. 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.

³ In 2004, Pandering under the Nevada Revised Statute 201.300 was a misdemeanor. In 2006 and 2008, this violation was a felony.

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, 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: USCG Suspension & Revocation National Center of Expertise, 100 Forbes Drive, Martinsburg, WV 25404. 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.



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

Done and dated March 19, 2024, at
Alameda, California