

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

UNITED STATES COAST GUARD
Complaint

v.

ABDULGABAR MOHAMED ALSINAI,
Respondent

Docket Number 2024-0013
Enforcement Activity No. 7839113

DEFAULT ORDER

Issued: August 27, 2024

By Administrative Law Judge: Honorable George J. Jordan

Appearances:

Jennifer Mehaffey, Esq.
Suspension and Revocation National Center of Expertise
and
Paul Tramm
Investigating Officer
Sector Puget Sound
For the Coast Guard

Abdulgabar Mohamed Alsinai, *Pro Se*
For the Respondent

DEFAULT ORDER

This matter comes before me to determine whether Respondent Abdulgabar Mohamed Alsinai (Respondent) should be found in default for failure to show good cause after not appearing at the Pre-Hearing Conference on June 11, 2024 pursuant to 33 C.F.R. § 20.310(a).

On June 11, 2024, I held a second prehearing conference in this matter to discuss the scheduling of the hearing as a result of Respondent's May 16, 2024, e-mail to my office purporting to request an extension of the deadline for filing his initial disclosures in this matter. In advance of the Conference, attempts to contact Respondent by my office and the U.S. Coast Guard's (Coast Guard) were unsuccessful, and noted for the record.

Based on Respondent's failure to appear, on June 18, 2024, I issued an Order to Show Cause (OSC). The OSC provided notice to Respondent of the Coast Guard's motion for default made at the conference and allowed him the opportunity to demonstrate good cause as to why I should not find him in default for failing to appear. 33 C.F.R. §§ 20.309(c), 20.310(a)-(b).

As Respondent failed to appear at the conference, nor to date replied to the OSC I find the 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 November 5, 2023, Respondent was employed by Matson Navigation and subject to Matson Navigation's policies.
2. On November 5, 2023, Matson Navigation had a policy prohibiting employees from the effect of alcohol being apparent by observation of the person's manner, disposition, speech, muscular movement, general appearance, or behavior, onboard a company vessel.

3. On November 5, 2023, Respondent was intoxicated while onboard a company vessel, in violation of section 4.1.B. of Matson Navigation's I—02—111, Rev. 0 Alcohol Intoxication and Reasonable Cause Testing Procedure.
4. Respondent's violation of Matson Navigation's Alcohol Intoxication and Reasonable Cause Testing Procedure is Misconduct as described by 46 U.S.C. § 7703(1)(B) and defined in 46 C.F.R. § 5.27.

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 the facts deemed admitted are sufficient to establish that Respondent committed misconduct as outlined in 46 U.S.C. § 7703(1)(B) and defined by 46 C.F.R. § 5.27, Appeal Decision 1567 (CASTRO) (1966), and Commandant v. Bourdeaux, EM-222 (NTSB 2022). Accordingly, I find Respondent committed misconduct.

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). Title 49 C.F.R. § 5.569 contains the Table of Suggested Range of Appropriate Orders (Table) for various offenses. The purpose of this Table is to provide guidance to the ALJ and promote uniformity in orders rendered. Appeal Decision 2628 (VILAS) (2022), aff'd NTSB Order No. ME-174. A sanction ordered within the range specified in the Table is not excessive. 46 C.F.R. § 5.569(d). However, this Table is not binding on an ALJ and either aggravating or mitigating circumstances may support a sanction different from the Table. 46 C.F.R. § 5.569(b)(3).

The Coast Guard proved Respondent committed misconduct by violating a company policy. The Table does not expressly specify a sanction for the violation of a company policy. 46 C.F.R. § 5.569 tbl. 5.569. Violations of company policy have been analogized to failure to

obey a lawful order of a master in some cases. Appeal Decision 2723 (BOUDREAUX) (2019); Appeal Decision 1567 (CASTRO). Therefore, the most applicable sanction range in the Table for violation of Matson Navigation's Alcohol Intoxication and Reasonable Cause Testing Procedure, is "Failure to obey [the] master's/ship officer's order." 46 C.F.R. § 5.569 tbl. 5.569. This specifies a sanction range of one to three months outright suspension. Id.

In this case, the Coast Guard proposed a sanction of 12 months outright suspension in the Complaint. However, the Coast guard did not allege in the Complaint nor otherwise submit into the record any aggravating circumstances. Similarly, Respondent did not reply to the Motion for Default, thus there are no mitigating factors in the record to consider either. Without clearly articulated aggravating, and, or mitigating factors a sanction outside the range specified in the Table runs the risk of being disturbed by reviewing authorities. Appeal Decision 2702 (CARROLL) (2013) (quoting Commandant v. Moore, NTSB Order No. EM-201 (2005)); Appeal Decision 2455 (WARDELL) (1987), aff'd, NTSB Order No. EM-149 (1988). Nevertheless, I consider Respondent's failure to both appear at the pre-hearing conference and reply to the OSC sufficiently aggravating to merit ordering the maximum sanction specified in the Table corresponding to Respondent's violation. Therefore, I find a sanction of three months outright suspension appropriate in this case.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED, all of Respondent's Coast Guard issued credentials, including Respondent's MMC, are **SUSPENDED OUTRIGHT FOR THREE (3) MONTHS**.

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: Mr. Paul Tramm, Sector Puget Sound, 1519 Alaskan Way S., Seattle, WA 98134. 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).

IT IS SO ORDERED.

Done and dated, August 27, 2024,
Seattle, Washington



George J. Jordan
Administrative Law Judge
United States Coast Guard

ATTACHMENT A
TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CODE OF FEDERAL REGULATIONS

**PART 20 RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR FORMAL
ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD**

SUBPART J - APPEALS

33 C.F.R. § 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

33 C.F.R. § 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
 - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
 - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 C.F.R. § 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.

(1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --

- (i) Basis for the appeal;
- (ii) Reasons supporting the appeal; and
- (iii) Relief requested in the appeal.

(2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.

(3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.

(b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.

(c) No party may file more than one appellate brief or reply brief, unless --

- (1) The party has petitioned the Commandant in writing; and
- (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.

(d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

33 C.F.R. § 20.1004 Decisions on appeal.

(a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.

(b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.

UNITED STATES OF AMERICA U.S. DEPARTMENT OF HOMELAND SECURITY UNITED STATES COAST GUARD	
THE HONORABLE GEORGE J. JORDAN Office of the Administrative Law Judge Henry M. Jackson Federal Building 915 Second Avenue, Room 2609 (26th Floor) Seattle, WA 98174-1067 (206) 836-3371 / (206) 220-7105	FOR DOCKETING CENTER USE ONLY
COMPLAINANT: UNITED STATES COAST GUARD	DOCKET NUMBER: 2024-0013
RESPONDENT: ABDULGABAR MOHAMED ALSINAI	COAST GUARD ENFORCEMENT ACTIVITY NUMBER: 7839113

CERTIFICATE OF SERVICE FOR ORDER

I hereby certify that I have served the foregoing document upon the following parties (or their designated representatives) to this proceeding at the addresses indicated below.


ALJ Docketing Center
USCG ALJ Docketing Clerk
Attn: Enforcement Docket Clerk
40 S. Gay Street, Room 412
Baltimore, MD 21202-4022
Email: aljdocketcenter@uscg.mil
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Olympia, WA 98502
Email: alsinai.abdu@gmail.com
Sent via Email

Done and dated August 27, 2024,
Seattle, Washington



Melissa Eldredge
Paralegal Specialist to the
Administrative Law Judge