

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

UNITED STATES COAST GUARD)	
Complainant)	
)	Docket Number: 2024-0054
vs.)	
)	MISLE Activity ID: 7831811
DEREK ANDREW REYNOLDS)	
Respondent.)	

**ORDER GRANTING COAST GUARD’S MOTION FOR SUMMARY DECISION
AND DENYING RESPONDENT’S MOTION TO STAY**

This matter comes before me on the United States Coast Guard’s (Coast Guard) Motion for Summary Decision. The Coast Guard requests I enter judgment in its favor as a matter of law because there exists no genuine issue of material fact regarding the Transportation Security Administration’s (TSA) revocation of Derek Reynolds’s (Respondent) Transportation Worker Identification Card (TWIC). The Coast Guard argues, due to the revocation of Respondent’s TWIC, Respondent is ineligible to hold a Merchant Mariner Credential (MMC), and his MMC must be revoked. Respondent also filed a response to the Coast Guard’s Motion which requests I defer ruling in this matter until the criminal action against him is concluded.

For the reasons set forth below, I **GRANT** the Coast Guard’s Motion for Summary Decision and, construing Respondent’s request to defer my ruling as a motion to stay the proceedings, I **DENY** Respondent’s request.

I. Factual and Procedural History

On January 29, 2024, the Coast Guard filed a Complaint seeking revocation of Respondent’s MMC based on his ineligibility to hold a TWIC. Specifically, the Complaint alleged because TSA revoked Respondent’s TWIC, Respondent is therefore “a security risk as

described by 46 U.S.C. § 7703(5).” The Complaint was served on Respondent by certified mail on May 17, 2024.

On May 19, 2024, Respondent filed an Answer in this matter which failed to admit or deny the jurisdictional and factual allegations contained in the Complaint. However, Respondent asserted expiration of the time limitation for service of the Complaint (46 C.F.R. § 5.55) as an affirmative defense.

I subsequently held a pre-hearing conference in this matter on July 11, 2024. Respondent did not attend the pre-hearing conference as he was incarcerated at the Indian River County Jail in Vero Beach, FL, awaiting trial on charges of capital sexual battery.

Following, the Coast Guard filed this Motion for Summary Decision requesting Respondent’s MMC be revoked.

In response to the Coast Guard’s Motion, on August 5, 2024, Respondent submitted correspondence to my office (Letter) which did not address the substance of the Coast Guard’s motion and instead requested I defer ruling in this matter until after the criminal proceeding against Respondent was concluded.

The Coast Guard filed a response to the Letter, arguing the Letter, if construed as an opposition to the Coast Guard’s Motion for Summary Decision, was untimely filed and did not set forth any evidence creating a genuine issue of material fact which precluded summary decision herein. Alternatively, the Coast Guard argued, if the motion was to be construed as an “extension for time,” such an extension was not proper and would unreasonably delay these proceedings.

II. Discussion

1. Motion for Summary Decision

The Coast Guard's Motion for Summary Decision seeks revocation of Respondent's MMC based upon TSA's revocation of Respondent's TWIC. The Coast Guard argues TSA revoked Respondent's TWIC because Respondent was charged with a potentially disqualifying criminal offense under 49 C.F.R. § 1572.103. Accordingly, TSA based its determination that Respondent posed a security threat because of the as-charged disqualifying criminal offense. Further, the Coast Guard argued, as Respondent has not shown that 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.

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 July 31, 2024, for a non-administrative reason. In reference to Respondent's Letter, to the extent it is to be construed as an opposition to the Coast Guard's Motion for Summary

Decision, Respondent failed to provide any evidence showing that his TWIC has not been revoked or has been reinstated. Accordingly, the Coast Guard 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.

Further, Respondent's Answer failed to admit or deny the factual and jurisdictional allegations set forth in the Complaint. Pursuant to 33 C.F.R. § 20.308(c), an answer is required to either admit or deny each numbered paragraph of the Complaint. If the answer fails to admit or deny a specific paragraph, the paragraph is to be considered admitted. *Id.* As such, Respondent's Answer shall be construed as an admission of all jurisdictional and factual allegations. Therefore, I find Respondent's TWIC is revoked and **GRANT** the Coast Guard's Motion for Summary Decision.

2. Affirmative Defenses

I turn now to Respondent's affirmative defense as articulated in his Answer. Specifically, Respondent pleaded "expiration of time limitation for service of complaint (46 CFR 5.55)" as an affirmative defense. Pursuant to 46 C.F.R. § 20.702, Respondent will bear the burden in proving his affirmative defenses.

The Coast Guard must serve a suspension and revocation action on a mariner within the limitations period prescribed by 46 C.F.R. § 5.55, which varies depending on the charged offense. If the Coast Guard fails to serve the mariner within the limitations period, it is barred from bringing the Complaint. See Appeal Decision 2608 (SHEPHERD) (1999) at *3-4.

For a charge based on conviction of a dangerous drug law or based on use of a dangerous drug, the respondent must be served with a complaint within ten years of the conviction or the use of a dangerous drug. 46 C.F.R. § 5.55(a)(1). For a charge of misconduct for an offense listed in 46 C.F.R. §§ 5.59(a) or 5.61(a), the Coast Guard must serve the respondent within five years of the alleged commission of the offense. 46 C.F.R. § 5.55(a)(2). For all other offenses, the Coast

Guard must serve the mariner within three years of the alleged prohibited act.

46 C.F.R. § 5.55(a)(3).

Here, Respondent falls under the “all other offenses” provision of 46 C.F.R. § 5.55(a)(3), which provides for a three-year time limitation from the prohibited act. In this case, the “act” was revocation of Respondent’s TWIC which occurred on July 31, 2023. The Coast Guard served the Complaint on Respondent on May 17, 2024, well within the three-year governing time limitation. Accordingly, Respondent’s affirmative defense is meritless and does not preclude summary decision herein.

3. Respondent’s Motion to Stay the Proceedings

In addressing Respondent’s Letter, I will construe it as a motion to stay these proceedings until the criminal case against Respondent is concluded. As discussed in further detail below, when a mariner’s TWIC is revoked for a non-administrative reason, revocation of his MMC is mandated under 46 C.F.R. § 10.235(h). Here, Respondent’s request for a stay appears focused on the pending status of the criminal case against him, as he requested I defer ruling in this matter until the criminal case against him he concluded.

However, the status of the criminal case against Respondent is irrelevant for the purposes of this proceeding because revocation herein is not discretionary. TSA’s decision to revoke Respondent’s TWIC due to the pending criminal charges disqualifies him under 49 C.F.R. § 1572.103 until his indictment for sexual assault is dismissed. According to the Letter, Respondent is currently incarcerated and awaiting trial on capital sexual battery, which TSA deemed a disqualifying criminal offense under 49 C.F.R. § 1572.103. Whether Respondent may request TSA reinstate his TWIC in the event the indictment is dismissed has no bearing on the current status of his TWIC. TSA’s revocation of Respondent’s TWIC is determinative in this matter. Therefore, I **DENY** Respondent’s Motion to Stay.

4. Sanction

Having determined that summary decision is appropriate in this case and having denied Respondent's request for a stay, I turn now to the appropriate sanction in this case. Title 46 U.S.C. §7703(5) provides 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 that 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.

Further, Title 46 C.F.R. § 10.235(i) states "[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 permit suspension and revocation actions against MMCs if the TSA advises the Coast Guard 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 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 was revoked. 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, Respondent's Merchant Mariner Credential 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,
at New Orleans, Louisiana

A handwritten signature in black ink, appearing to read "B. Curley", with a stylized flourish at the end.

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