

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

UNITED STATES COAST GUARD,
Complainant

vs.

KAHEEM HEINEEK BREVARD,
Respondent.

Docket Number 2024-0161
Enforcement Activity No. 7868911

DEFAULT ORDER MEMORIALIZING PREHEARING CONFERENCE

Issued: September 11, 2024

By Administrative Law Judge: Honorable Timothy G. Stueve

Appearances:

Andrew Brown
USCG Marine Investigative Officer

Erin O'Brien Anderson, Esq.
USCG S&R NCOE

For the Coast Guard

Kaheem Heineek Brevard, Pro Se

For Respondent

Background

On April 12, 2024, the Coast Guard filed a Complaint against Kaheem Heineek Brevard (Respondent) alleging Respondent committed misconduct while acting under the authority of his Merchant Mariner Credential (MMC) as Crew Member aboard the vessel PRIDE OF AMERICA, as required by law or regulation. Specifically, in its Complaint the Coast Guard alleges, on February 10, 2024, Respondent violated NCL, PRIDE OF AMERICA's Drug and Alcohol Policy by being intoxicated with a blood alcohol level (BAC) greater than .04% while onboard the vessel. The Return of Service for Complaint filed by the Coast Guard indicates the Complaint was delivered to Respondent's residence by Certified Mail and signed for by a person of suitable age and discretion residing at that residence, on March 30, 2024 (Attachment A)¹.

On May 7, 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 indicates the Motion was delivered to Respondent's residence by Certified Mail and signed for by a person of suitable age and discretion on July 15, 2024 (Attachment B)². The Chief Administrative Law Judge assigned the matter to the undersigned on August 13, 2024. Upon review of the Motion, I noted a discrepancy between the sanction sought in the Complaint, and the sanction indicated in the motion for default. Due to this discrepancy, I asked my staff to schedule a prehearing conference with the parties.

Prehearing Conference

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 Certified Mail proof of service attached to the Return of Service for the Complaint shows that "an individual" signed for the document.

² The Certified Mail Proof of Service attached to the Return of Service for the Motion for Default Order indicates that "an individual" signed for the document.

Turning to the prehearing conference held on September 3, 2024, Andrew Brown, Investigating Officer and Erin O'Brien Anderson, Esq. appeared for the Coast Guard. Kaheem Brevard (Respondent) did not appear.

As stated above, the purpose of the prehearing conference is to clarify the sanction in this matter. Specifically, the sanction set forth in the Complaint seeks 4 months of outright suspension and the motion for default requested revocation. During the prehearing conference, Mr. Brown clarified that the 4 months of outright suspension requested by the Coast Guard in the Complaint was the intended sanction proposal by the Coast Guard and acknowledged the revocation originally requested in the Motion for Default as an error. Therefore, I note that the last sentence of page 1 in the Motion for Default should read as follows:

“Therefore, the Coast Guard requests the Administrative Law Judge issue a Default Order imposing a sanction of *4 months outright suspension* against Respondent’s Merchant Mariner Credential (MMC).”

With the revision stated above, I am **GRANTING** the Motion.

Discussion

Now turning to the Motion before me, 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

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.

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 being intoxicated with a blood alcohol level (BAC) greater than .04% while onboard the vessel, the Complaint alleges on February 10, 2024, Respondent took a required breath alcohol test pursuant to 46 C.F.R. § 5.27 with a read result above .04% BAC, in violation of NCL, PRIDE OF AMERICA’s Drug and Alcohol policy. See 46 U.S.C. § 7703(1)(B).

The factual allegations in the pleadings are legally sufficient to find the charges of intoxication onboard a vessel with a blood alcohol content (BAC) greater than 0.04% and absence from the vessel without authorized leave **PROVED. Id.**

The undersigned finds the facts alleged in the Complaint sufficient to warrant the suggested sanction of four months’ outright **SUSPENSION.** See 46 C.F.R. § 5.569.

WHEREFORE,

ORDER

Upon consideration of the record, the undersigned finds Respondent in **DEFAULT**, and the Motion as revised above is **APPROVED** in full and incorporated herein by reference.

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 **SUSPENDED OUTRIGHT** for four 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: U.S. Coast Guard Sector Charleston, 1050 Register Street, North Charleston, SC 29405. In accordance with 18 U.S.C. § 2197, if **Respondent knowingly continues to use the Coast Guard issued MMC prior to the completion of the suspension, 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). This Default Order shall constitute full, final, and complete adjudication of this proceeding.

SO ORDERED.

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



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