

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

UNITED STATES COAST GUARD,
Complainant

vs.

JUAN NARANJO,
Respondent.

Docket Number 2024-0184
Enforcement Activity No. 7873943

DEFAULT ORDER MEMORIALIZING PREHEARING CONFERENCE

Issued: June 27, 2024

By Administrative Law Judge: Honorable Timothy G. Stueve

Appearances:

Aaron Sala
Marine Safety Unit Port Canaveral

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

For the Coast Guard

Juan Naranjo, Pro Se

For Respondent

Background

On April 4, 2024, the Coast Guard filed a Complaint against Juan Naranjo (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 January 21, 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 Complaint further alleges on January 21, 2024, Respondent was wrongfully absent from the PRIDE OF AMERICA without authorized leave. 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 April 4, 2024 (Attachment A)¹.

On April 30, 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 Federal Express and signed for by a person of suitable age and discretion on May 16, 2024 (Attachment B)². The Chief Administrative Law Judge assigned the matter to the undersigned on June 11, 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.

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 "S. Nuranjo" signed for the document.

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

Prehearing Conference

Turning to the prehearing conference held on June 26, 2024, Aaron Sala, Investigating Officer and Erin O'Brien Anderson, Esq. appeared for the Coast Guard. Juan Naranjo (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 second sentence of the Motion indicated *revocation*, which is inconsistent with the language written on page 2 of the Complaint where the Coast Guard proposes *suspension*. Because the Coast Guard confirmed its intention was to *suspend outright* Respondent's MMC for six months, it is incorrect to state in the second sentence of the Motion that the Coast Guard is seeking revocation. Given that the Coast Guard made their intention clear at the prehearing conference, I note that sentence 2 of the Motion should read as follows:

"The Coast Guard initiated an administrative proceeding seeking a six month outright **suspension** of the Respondent's Merchant Mariner Credential (MMC), by filing a Complaint on 4/2/2024."

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 January 21, 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). As to the charge of being absent without authorized leave, the Complaint alleges on January 21, 2024, while working as a crewmember on the cruise ship PRIDE OF AMERICA, Respondent was wrongfully absent from the vessel without authorized leave.

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 six 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 six 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 Marine Safety Unit Port Canaveral, 9235 Grouper Road, Cape Canaveral, FL 32920. 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 June 27, 2024, at
Alameda, California



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