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

UNITED STATES COAST GUARD, Complainant,	)	
vs.	)	**Docket Number: 2024-0090**
TROY BASILIO JENKINS, Respondent.	)	

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR DEFAULT

This matter comes before me on the United States Coast Guard's (Coast Guard) Motion for Default Judgment (Motion for Default). Specifically, the Coast Guard asks me to find Troy Basilio Jenkins (Respondent) in Default for his failure to appear at the hearing on November 19, 2024, in Charleston, South Carolina.

For the reasons set forth below, the Coast Guard's Motion is **GRANTED IN PART** and **DENIED IN PART**.

I. PROCEDURAL HISTORY

On February 9, 2024, the Coast Guard filed a Complaint against Respondent alleging Respondent's rape conviction under Article 120 of the Uniform Code of Military Justice (UCMJ) on November 29, 2000, prevents the issuance or renewal of a Merchant Mariner Credential (MMC). 46 U.S.C. § 7703(2). Respondent timely filed an Answer on February 19, 2024, denying all allegations in the Complaint.

On March 7, 2024, Coast Guard filed its First Amended Complaint adding two additional charges, asserting Respondent committed sexual assault as described by 46

U.S.C. § 7704a(b).[1] The underlying factual allegations of these additional charges derived from Respondent's rape conviction under Article 120 of the UCMJ. A few days later Respondent timely submitted an Answer to the First Amended Complaint admitting the jurisdictional allegations and denying the factual allegations.

After the Chief Administrative Law Judge reassigned this matter to my docket on May 6, 2024, I scheduled a Pre-Hearing Conference for May 30, 2024. As reflected in my June 12, 2024, Order Memorializing Pre-hearing Conference, Respondent failed to appear at the conference on time, but eventually appeared after my staff contacted him by phone. During the May 30, 2024, conference call, Respondent repeatedly disrupted the proceedings. After I issued several warnings, I excluded Respondent from the conference call under my authority in 33 C.F.R. § 20.202(i). Prehearing Conference Tr. at 3:21-23, 4:3-5, 4:13-17, 7:20-8:2, 8:13-20.[2] I then proceeded with the conference in Respondent's absence wherein I set discovery and motion deadlines, and scheduled a hearing for the week of November 18, 2024, in Charleston, South Carolina.[3] Thereafter, I issued an order reflecting the schedule on June 12, 2024, and served Respondent with a copy of my order.

Approximately four months later, on October 31, 2024, the Coast Guard filed a Second Amended Complaint. The Second Amended Complaint added specific allegations in Paragraphs 2 and 3 asserting Respondent was "the subject of an official finding" under 46 U.S.C. § 7704a(c)(1)(B). But these new specifications that Respondent

[1] Although the Coast Guard's First Amended Complaint is titled Amended Complaint, for clarity and readability I will refer to that document as the "First Amended Complaint."
[2] The Transcript of the May 30, 2024, prehearing conference is Attachment 1 to the Order Memorializing Pre-Hearing Conference & Order Setting Discovery Deadlines & Notice of Hearing.
[3] As reflected in my June 12, 2024, Order, I advised the parties that further orders would set the exact date, time, and location of the hearing.

was the "subject of an official finding" were based on the same conduct already detailed in the First Amended Complaint. Furthermore, the assertion that Respondent was the subject of an official finding was implicitly alleged in Paragraphs 2, line 6 and Paragraphs 3, line 5 of the First Amended Complaint. Thus, the Second Amended Complaint is simply more precise in Paragraphs 2 and 3 but did not broaden the issues.

Conversely, unlike the amendments in Paragraph 2 and 3, the Coast Guard added totally new allegations in Paragraph 4. These new allegations assert the National Maritime Center (NMC) made an "agency finding and determination" after Respondent applied for a raise in grade to his MMC. And for the first time the Coast Guard asserted a new legal theory—the NMC's finding constituted an "agency finding" as the term is used under 46 U.S.C. § 7704a(c)(1)(A). Respondent never answered the Second Amended Complaint.

On November 12, 2024, after my staff secured a courtroom, I notified the parties the hearing would commence on November 19, 2024,[4] at 9:00 a.m. in Charleston, South Carolina, in Courtroom 4 of the United States District Courthouse. On November 19, 2024, I convened the hearing and received appearances from the Coast Guard. Administrative Hr'g Tr. at 2:2-18.[5] However, because Respondent did not appear, I briefly adjourned the hearing so that my staff could attempt to contact Respondent to determine whether he intended to attend. Administrative Hr'g Tr. at 2:19-21, 3:19-4:2. Despite several calls to Respondent's last known telephone number, Respondent did not respond to my staff. Administrative Hr'g Tr. at 4:19-5:13. I then reconvened the hearing,

[4] As noted above, Respondent was on notice since June 12, 2024, that the hearing would commence the week of November 18, 2024, and that I would issue further orders specifying the courtroom location depending on courtroom availability.
[5] The Administrative Hearing Transcript can be found as Attachment 1 to this order.

noted Respondent's absence on the record, addressed the Coast Guard's outstanding motions, and entertained the Coast Guard's oral motion for default. Administrative Hr'g Tr. at 5:5-20. After advising the Coast Guard to file the motion for default in writing and directing the motion be served on Respondent pursuant to the regulations, I closed the hearing. Administrative Hr'g Tr. at 5:21-6:3.

That same day the Coast Guard filed the Motion for Default. On November 22, 2024, I issued an Order to Show Cause requiring Respondent to explain the reasons for his failure to appear at the hearing in accordance with 33 C.F.R. § 20.705(b). I advised Respondent if he failed to do so, I could find him in default, which would result in his admitting to the factual allegations in the Complaint and a waiver of his right to a hearing. To date, Respondent has not responded to neither the Coast Guard's motion for default nor my order directing him to explain his absence.

Upon review of the record and after being otherwise sufficiently advised, I find the Coast Guard's Motion for Default is ripe for ruling.

II. SECOND AMENDED COMPLAINT

Before turning to the the Motion for Default, I find it necessary to first address an outstanding matter raised by the pleadings. As the record shows, the Coast Guard filed a Second Amended Complaint on October 31, 2024, and served Respondent on or about November 6, 2024, roughly eight days before I convened the hearing. As set forth below, because I find parts of the Second Amended Complaint unfairly broadened the issues in this case, I will disallow the addition of Paragraph 4 but will permit the remaining modifications in the Second Amended Complaint.

Pursuant to 33 C.F.R. § 20.305(a), a party must amend or supplement a filed pleading if they learn of a material change possibly affecting the outcome of the proceedings. However, no amendment may broaden the issues without an opportunity for the non-moving party to reply to the amendment and prepare for the broadened issue. Id. Amending a complaint is not permitted unless the respondent has actual notice and opportunity to litigate any broadened issues. Appeal Decision 2630 (BAARSVIK) (2002) (citing Kuhn v. Civil Aeronautics Bd., 183 F.2d 839, 841 (D.C. Cir. 1950)). However, a respondent is not required to respond to an amended complaint if the amendments do not broaden the issues, i.e., the respondent may stand on any denial made in his previous answer. Appeal Decision 2676 (PARKER) (2008)

Here, the record shows the Coast Guard filed its initial Complaint on February 9, 2024, and filed its First Amended Complaint roughly one month later on March 7, 2024. Thereafter, the parties presumably engaged in discovery after entry of my June 12, 2024, scheduling order. But for some reason the Coast Guard chose to amend the Complaint a second time, roughly three weeks before the hearing. In this new, very tardy, and last-minute filing, the Coast Guard made some technical changes to Paragraph 2 and 3, which were already referenced in the First Amended Complaint. Importantly, however, no new material facts or legal theories were inserted in these two paragraphs—nothing new in Paragraphs 2 and 3 offended 33 C.F.R. § 20.305. Not so with Paragraph 4.

In Paragraph 4, the Coast Guard added new facts by asserting Respondent made an application to the NMC for a raise in grade to his MMC, facts never before alleged in the original Complaint or the First Amended Complaint. What is more, the Coast Guard for the first time alleged a new legal theory they intended to advance at the hearing, i.e.,

the NMC's finding constituted an "agency finding" as the term is used under 46 U.S.C. § 7704a(c)(1)(A). Never before had the Coast Guard asserted in this case that the NMC's conclusion constituted an "agency finding" as defined in 46 U.S.C. § 7704a(c)(1)(A). Again, the Coast Guard had long asserted its investigation of Respondent's sexual assault satisfied this definition in 7704a(c)(1)(B), but the NMC theory was entirely new.

I find the addition of these new facts and legal theories in Paragraph 4 unfair under the circumstances, particularly given the late hour of the service of the Second Amended Complaint—a mere eight days before the hearing. Respondent was not even afforded the regulatory 20 days to respond to the Second Amended Complaint, nor was he given any opportunity for discovery. See 33 C.F.R. § 20.308. This was particularly prejudicial given the legal quagmire presented by the Coast Guard's new theory—that the NMC determination is an "agency finding" under 46 U.S.C. § 7704a(c)(1)(A). Accordingly, because I find the allegations in Paragraph 4 broadened the factual and legal issues without giving Respondent sufficient opportunity to prepare or defend against the new allegations, I will **DISMISS** that paragraph without prejudice. A ruling on the novel legal question will have to wait for another day, at least from my chambers.

III. MOTION FOR DEFAULT

Having dismissed Paragraph 4 of the Second Amended Complaint, I now turn to the Motion for Default. As set forth below, the Motion for Default is **GRANTED IN PART AND DENIED IN PART.** Specifically, because I find the Coast Guard would not have prevailed had it proven all the underlying facts in Paragraph 1, the Motion for Default as to Paragraph 1 is **DENIED** and Paragraph 1 is **DISMISSED WITHOUT PREJUDICE**. Conversely, because the Coast Guard could have prevailed had it shown

at a hearing the facts underlying Paragraphs 2 and 3, the Motion for Default as to these two paragraphs is **GRANTED**. I address each in turn, below.

A. Factual Allegation 1 of the Second Amended Complaint

In Paragraph 1 of the Second Amended Complaint, the Coast Guard alleges Respondent's rape conviction under the UCMJ on November 29, 2000, is a conviction under 46 U.S.C. § 7703(2) and as described in 46 U.S.C. § 7511(a). As discussed below, the application of 46 U.S.C. § 7703(2) to this matter is time-barred by 46 C.F.R. § 5.55(a)(3). Furthermore, a cursory reading of 46 U.S.C. § 7511(a) shows a UCMJ conviction does not come within the scope of the statute.

1. Paragraph 1 of the Second Amended Complaint is Time-Barred

Title 46 C.F.R. 5.55 sets forth three separate time limitation periods applicable to Coast Guard actions. Complaints brough under 46 U.S.C. § 7703(2) are subject to the time limitation in 46 C.F.R. § 5.55(a)(3), and the Complaint must be served within 3 years of the act or offense at issue. If the Coast Guard exceeds the timeframe specified for filing the complaint, an ALJ may dismiss the allegations in the complaint as untimely or time-barred. See generally Appeal Decision 2737 (STINZIANO) (2023).

Applying these rules here, the record shows the conviction at issue—the act or offense—was rendered more than twenty years ago, in 2000, well beyond the three-year limitation in 46 U.S.C. 5.55(a)(3). Thus, even if the Coast Guard proved all of the allegations in Paragraph 1, it would not have prevailed under 46 U.S.C. § 7703 because the action would be time-barred. Accordingly, any default where Respondent admits all facts to Paragraph 1 of the Complaint must fail.

I recognize, however, that Respondent never asserted a time limitations defense in this case. But federal courts appear to agree a trial court can *sua sponte* raise limitation defenses when the time-bar is obvious on the face of the complaint. See e.g., Simpson v. Warden of Kershaw Corr. Inst., No. 8:23-cv-03204-TMC, 2025 WL 755899, at *3 (D. S.C. Mar. 10, 2025); Ricci v. Delta Air Lines, No. 4:24-CV-40006-MRG, 2025 WL 756068, at *9 (D. Mass. Mar. 10, 2025). As explained by the United States Court of Appeals for the Second Circuit, although a defaulting party may be deemed to have admitted the factual allegations of a complaint, conclusions of law are not admitted, and so the legal sufficiency of a claim is not admitted by a default. Cement & Concrete Workers Dist. Council Welfare Fund v. Metro Found. Contractors. Inc., 699 F.3d 230 (2d Cir. 2012). A trial court therefore is "required to determine whether the facts, as alleged in well-pleaded, non-conclusory fashion, were sufficient to establish the defendant's liability as a matter of law." E.A. Sween Co. v. A & M Deli Express Inc., 787 Fed. Appx. 780, 782 (2d Cir. 2019).

Applying these rules, and after painstakingly assessing the law surrounding a case strikingly similar to the one at hand, Judge Michael Wiles flatly held "if valid statute of limitations defenses are clear from the face of the Complaint, I will apply those defenses in ruling on the motion for entry of a default judgment." In re Old DDUS Inc., 659 B.R. 810, 837 (Bankr. S.D.N.Y. 2024). I agree with Judge Wiles persuasive decision and follow suit here.[6]

[6] Though Judge Wiles' decision is well-researched and extremely thorough, I disagree with his assertion that "[t]he defense of "failure to state a claim" is another defense that is deemed to have been waived under Rule 12(h) if it has not been asserted in a pleading or in a motion." Fed. R. Civ. P. 12(h). A careful perscrutation shows that under 12(h), only defenses identified in Rule 12(b)(2)-(5) are actually waived. Failure to state a claim is safely placed in 12(b)(6), and outside the waiver clause of 12(h).

Given the foregoing, and the fact that the claims under 46 U.S.C. § 7703(2) are time limited by 46 C.F.R. § 5.55, I find the Coast Guard is not entitled to a default order as to Paragraph 1. Furthermore, because the claim is time barred, I will dismiss the claim without prejudice.[7]

2. Respondent's Court-Martial Proceeding is beyond the scope of 46 U.S.C. § 7511(a)

The Coast Guard's second legal theory in Paragraph 1 as to why Respondent's alleged court-martial merits revocation of his license stems from an application of 46 U.S.C. § 7511(a), which provides:

> (a) Sexual abuse.--A license, certificate of registry, or merchant mariner's document authorized to be issued under this part shall be denied to an individual who has been convicted of a sexual offense prohibited under—
> (1) chapter 109A of title 18, except for subsection (b) of section 2244 of title 18; or
> (2) a substantially similar offense under State, local, or Tribal law.

Again, a cursory review of the Second Amended Complaint shows Respondent is not accused of having been "convicted of a sexual offense prohibited under chapter 109A of title 18." The Coast Guard makes no allegations that such a conviction exists. Instead, the Coast Guard asserts Respondent was convicted under Article 120 of the UCMJ. Thus, the alleged conviction does not come within the ambit of 7511(a)(1) at all.[8]

As it concerns section 7511(a)(2), I find a court-martial is again outside the scope of the statute. By its plain terms, this paragraph only permits the denial of a license to an applicant that has been convicted of a sexual offense prohibited under chapter 109A of

[7] I stop short of dismissing this matter with prejudice because, theoretically, the Coast Guard could bring an action again under Paragraph 1 and assert the time period was tolled under 46 C.F.R. 5.55(b).
[8] I note the statute does not use the phrase "a substantially similar offense under Article 120 of the Uniform Code of Military Justice" but the phrase does exist in the next paragraph (2), meaning any conviction must squarely be under chapter 109A of title 18, except for subsection (b) of section 2244 of title 18 to satisfy the plain wording of the law under paragraph 1.

title 18 or "**a substantially similar offense under State, local, or Tribal law**." (emphasis added). While it is true Respondent was convicted of an offense that is "substantially similar" to 18 U.S.C. 109A, it is not true that his conviction under the UCMJ is a conviction under State, local, or tribal law. It is rudimentary that the UCMJ is federal law. 10 U.S.C. § 920 (Art. 120 Rape in the UCMJ located in the U.S. Code); United States v. Taylor, 449 F.2d 117, 118 (9th Cir. 1971). See also Burke v. Gutierrez, (D. Ariz. Mar. 21, 2023) (recognizing the UCMJ as federal law); Bryan v. Mclean, 2024 WL 809897, at *12 (D. Colo. Feb. 27, 2024) (noting the UCMJ is federal law, not state law.). Thus, while Respondent's court-martial conviction satisfies the first half of 46 U.S.C. § 7511(a)(2), it fails the latter part of the statute's description.

Given the foregoing, I find the Coast Guard would not have prevailed on any theory in Paragraph 1 as plead, even if Respondent had admitted to all the facts therein. Accordingly, the Motion for Default as to Paragraph 1 is **DENIED**.

B. Paragraphs 2 and 3 of the Second Amended Complaint

Having disposed of Paragraphs 1 and 4 of the Second Amended Complaint, I now turn to the Paragraphs 2 and 3. As set forth below, I find the Coast Guard could have prevailed on these paragraphs at a hearing if they proved all the underlying facts at issue. Accordingly, because I find Respondent in default for failing to appear at the hearing without good cause, I conclude he has admitted to all the salient facts in Paragraphs 2 and 3. Given these admissions, I find Respondent committed acts of aggravated sexual abuse on or about August 5, 2000, and that the Coast Guard made an official finding under 46 U.S.C. § 7704a(c)(1)(B) as required by 46 U.S.C. § 7704a(b).[9]

[9] Unlike Paragraph 1, the time limits in 46 C.F.R. § 5.55 do not apply to the charges in Paragraphs 2 and 3 given that the statute has a look back period of 10 years. See Appeal Decision 2678 (SAVOIE) (2008).

Pursuant to 33 C.F.R. §§ 20.310(a), and 20.705(b), when a mariner fails to appear at a Suspension and Revocation proceeding, the Coast Guard may move for a default order. If the respondent fails to show good cause for his absence, and the judge enters default, it will constitute an admission of all the facts in the Complaint, waive Respondent's right to a hearing, and a decision will be issued against the mariner.

Applying these rules here, the record shows Respondent failed to appear at the hearing on November 19, 2024, failed to respond to the Motion for Default, and failed to respond to my order directing him to explain why he did not appear at the hearing. Accordingly, I find Respondent in **DEFAULT**. Therefore, the factual allegations in Paragraphs 2 and 3 in the Second Amended Complaint are deemed admitted.

A complaint in suspension and revocation proceedings must include, among other things, pertinent facts alleged. 33 C.F.R. § 20.307(a). The complaint must put the respondent on notice of the legal and factual basis on which the Coast Guard proceeds. Appeal Decision 2655 (KILGORE) (2006). But the required specificity of the factual allegations in the complaint does not require recitation of all details surrounding the charge, only notice of the alleged offense is required. Appeal Decision 2585 (COULON) (1997); Appeal Decision 2610 (BENNETT) (1999) (pleadings in the complaint are sufficient where they provide adequate notice of the conduct to allow respondent to prepare a defense).

Here, the allegations in Paragraphs 2 and 3 were sufficient to place Respondent on notice the Coast Guard was bringing an action against his MMC and furthermore the Coast Guard would have to prove the elements in 46 U.S.C. § 7704a(b) and (c)(1)(B). Respondent has, by operation of 33 C.F.R. § 20.705(b), admitted: he was the subject of

an official finding of sexual assault; the Coast Guard made a determination after an investigation by a preponderance of the evidence; he committed sexual assault; and the investigation afforded him appropriate due process rights. Accordingly, I find the allegations in Paragraphs 2 and 3 of the Second Amended Complaint **PROVED**.

IV. SANCTION

Having found Respondent in default and the allegations in Paragraphs 2 and 3 of the Second Amended Complaint proved, I now must determine the appropriate sanction. 33 C.F.R. § 20.902(a)(2). Here, the statute provides **REVOCATION** as the only appropriate sanction where the Coast Guard proves a violation under 46 U.S.C. § 7704a(b). Accordingly, Respondent's MMC is **REVOKED**.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED, Paragraph 1 of the Second Amended Complaint is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED, Paragraph 4 of the Second Amended Complaint is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED, pursuant to my finding Respondent in **DEFAULT** as to Paragraphs 2 and 3 of the Second Amended Complaint, Respondent's credentials are **REVOKED**.

IT IS FURTHER ORDERED, Respondent shall immediately deliver all Coast Guard issued credentials, licenses, certificates, or documents, including the MMC [redacted], by mail, courier service, or in person to: Mathew Schirle, United States Coast Guard, 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 21202-4022.

PLEASE TAKE NOTICE, within three (3) years or less, Respondent may file a motion to reopen this matter and seek modification of the order of revocation upon a showing that the order of revocation is no longer valid, and the issuance of a new license, certificate, or document is compatible with the requirement of good discipline and safety at sea. See generally 33 C.F.R. § 20.904.

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).

SO ORDERED.

TOMMY CANTRELL
ADMINISTRATIVE LAW JUDGE
UNITED STATES COAST GUARD

Done and dated March 24, 2025
Houston, TX