

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

UNITED STATES COAST GUARD,

Complainant,

vs.

KRISTIAN SIMS,

Respondent.

Docket Number 2024- 0553
Enforcement Activity No. 8029396

DEFAULT ORDER

Issued: March 5, 2025

By Administrative Law Judge: Honorable Timothy G. Stueve

Appearances:

**Kimberly A. McLean
Sector Houston/Galveston
For the Coast Guard**

Kristian Sims, pro se

For Respondent

Background

On or about November 19, 2024, the Coast Guard submitted a Complaint against Kristian Sims (Respondent) for misconduct. The Coast Guard alleges the Respondent failed to appear at the collection facility within a reasonable time to a required 46 CFR Part 16 drug test on December 19, 2023. The failure to appear within a reasonable time to take a required drug test is a refusal to take a required 46 CFR Part 16 drug test as described by 49 CFR § 40.191(a)(1). Therefore, this is misconduct as described by 46 U.S.C § 7703(1)(B) and defined by 46 C.F.R § 5.27. In aggravation, on December 11, 2023, Respondent took a pre-employment drug test that was determined to be invalid due to the specimen PH out of range, and thus directed to a retest by direct observation. Based on this charge of misconduct, the Coast Guard is seeking **REVOCATION** of the Respondent's Merchant Mariner Credential (MMC). 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 November 26, 2024 (Attachment A)¹.

On January 27, 2025, 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 for Default indicates the Motion was delivered to Respondent's residence by Federal Express and signed for by a person of suitable age and discretion on February 3, 2025 (Attachment B)². The Chief Administrative Law Judge assigned the matter to the undersigned on March 4, 2025.

Discussion

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 "W. Sims" 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. Sims" signed for the document.

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 for Default Order.

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).

The undersigned finds the facts alleged in the Complaint sufficient to warrant the suggested sanction of **REVOCATION**. See 46 C.F.R. § 5.569.

WHEREFORE,

ORDER

Upon consideration of the record, the undersigned finds Respondent in **DEFAULT**.

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 **REVOKED**.

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 Houston-Galveston, Investigations Division, 13411 Hillard Street, Houston, TX 77034. 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 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).

SO ORDERED.

Done and dated March 5, 2025, at
Alameda, California



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