

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

UNITED STATES COAST GUARD

Complainant

vs.

MICHAEL W. JORDAN

Respondent

Docket Number CG S&R 03-0491
CG Activity No. 1881676

ORDER GRANTING COAST GUARD'S
MOTION FOR DEFAULT
AND
ORDER OF REVOCATION

Issued : MARCH 2ND, 2004

Issued by: JOSEPH N. INGOLIA
Chief Administrative Law Judge

Investigating Officer:

MSTCS John I. Brown, IO
MSO Houston

Respondent:

Michael W. Jordan

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MAR 2 2004
CG S&R 03-0491
CG ACTIVITY NO. 1881676

ORDER GRANTING MOTION FOR DEFAULT
AND
SANCTION OF REVOCATION

On January 29, 2004, MSO Houston filed a Motion for Default Order seeking revocation of the Respondent's Merchant Mariner's Document, which Motion is incorporated herein by reference and made a part hereof. A copy of the Motion for Default was mailed to the Respondent, via First Class Certified Mail, Return Receipt by the Investigating Officer on that date. A subsequent filing by the IO on February 18, 2004 included a Return of Service for Default Motion indicating that the Respondent was duly served his copy of the Motion for Default on February 4, 2004, along with a statement from the IO indicating that the Respondent "...called stating he received motion, but plans no actions or any other comment."

On February 26, 2004, this S&R proceeding was assigned to the undersigned Chief Administrative Law Judge for the U.S. Coast Guard for adjudication of the Motion for Default. The matter was taken under advisement and a complete review of this case was made. According to the case file, a copy of the original Complaint, dated August 25, 2004, was duly served upon the Respondent, by First Class Certified Mail, Return Receipt Requested. The Complaint was served on the Respondent on August 28, 2003. Respondent was charged with Misconduct for refusal to take a pre-employment drug test (46 USC 7703). It is noted that the Complaint correctly stated the statutory authority and regulatory authority for the charge of Misconduct. However, the factual allegations on Page Two of the Complaint mistakenly referred to Use of a Dangerous Drug, instead of the correct allegation of Misconduct. This clerical mistake does not affect the legality of the Complaint as the statutory and regulatory authorities cited are correct.

To date, Respondent has neither filed an Answer as required by 33 CFR 20.301(b), nor a response to the Motion for Default as required by 33 CFR 20.310(b), other than he verbally

advised the IO of his intent not to take any action or make any comments relating to the Motion for Default.

Upon consideration of the present record, the Motion for Default is **GRANTED**. A default constitutes an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to a hearing. (33 CFR § 20.310(c)).

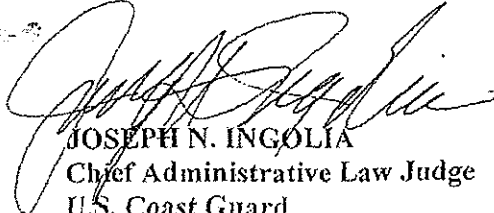
Further, I find that the proposed sanction is appropriate under the provisions of 46 CFR § 5.569. Wherefore, it is

SANCTION

ORDERED that your Merchant Mariner's Document is hereby **REVOKED**. You must surrender your document to the Coast Guard. If you knowingly continue to use your document, you may be subject to criminal prosecution.

Under 33 CFR 20.310(e) for good cause shown, an Administrative Law Judge may set aside this finding of Default. You may file a motion to set aside the finding with the ALJ Docketing Center, Baltimore.

Service of this Order of Revocation upon you serves to notify you of your right to appeal as set forth in 33 CFR Subpart J, Section 20.1001. (Attachment A).


JOSEPH N. INGOLIA
Chief Administrative Law Judge
U.S. Coast Guard

Dated: March 2, 2004
Baltimore, MD

Copy:
MSO Houston, Attn: MSTCS John I. Brown, IO
Michael W. Jordan, Respondent

Certificate of Service

I hereby certify that I have this day served the foregoing document(s) upon the following parties and limited participants (or designated representatives) in this proceeding at the address indicated by Facsimile:

Commanding Officer
MSO Houston, Attn: MSTCS John I. Brown, IO
9640 Clinton Drive, P.O. Box 446
Galena Park, TX 77029-4328
(Fax #) 713-671-5185

I hereby certify that I have this day served the foregoing document(s) upon the following parties and limited participants (or designated representatives) in this proceeding at the address indicated by First Class Mail:

Michael W. Jordan
[REDACTED]
[REDACTED]

Dated at Baltimore, MD this 2nd day of March 2004.



VERONICA A. DICKEY

Paralegal Specialist/Legal Assistant to
Chief Judge Joseph N. Ingolia

33 C.F.R. PART 20
SUBPART J
APPEALS

§ 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

§ 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
 - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
 - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

§ 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.

- (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --
 - (i) Basis for the appeal;
 - (ii) Reasons supporting the appeal; and
 - (iii) Relief requested in the appeal.
 - (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
 - (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
- (c) No party may file more than one appellate brief or reply brief, unless --
- (1) The party has petitioned the Commandant in writing; and
 - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
- (d) The Commandant may accept an amicus curiae brief from any person in an appeal of an ALJ's decision.

§ 20.1004 Decisions on appeal.

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.