

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

UNITED STATES COAST GUARD

Complainant

vs.

CORINTHIS EMILE THOMAS,

Respondent

Docket Number 2011-0044
Enforcement Activity No. 3803647

DECISION AND ORDER

Issued: June 2, 2011

By Administrative Law Judge: Hon. Walter J. Brudzinski

Appearances:

For Complainant

LT Lineka N. Quijano, USCG
Investigating Officer
USCG Sector New York
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Staten Island, NY 10305

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Attorney-Advisor

USCG S&R National Center of Expertise
100 Forbes Drive
Martinsburg, WV 25404

For Respondent

Corinthis Emile Thomas, *pro se*



PRELIMINARY STATEMENT

Pursuant to 46 U.S.C. §§ 7703(4) and 7703(1)(B), and its underlying regulations at 33 C.F.R. Part 20 and 46 C.F.R. Part 5, the United States Coast Guard (Coast Guard) initiated this administrative action to revoke Corinthis E. Thomas's (Respondent) Merchant Mariner's Credential (MMC).¹

The Coast Guard issued its original Complaint on January 28, 2011, charging Respondent with two (2) counts of incompetence in violation of 46 U.S.C. § 7703(4) and 46 C.F.R. 5.31, and one (1) count of misconduct in violation of 46 U.S.C. §7703(1)(B) and 46 C.F.R. 5.27.

"Incompetence is the inability on the part of a person to perform required duties, whether due to professional deficiencies, physical disability, mental incapacity, or any combination thereof." 46 C.F.R. § 5.31. *"Misconduct* is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required." 46 C.F.R. § 5.29.

Under 46 U.S.C. § 7703(4), "[a] license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder-- . . . (4) has committed an act of incompetence relating to the operation of a vessel." Under 46 U.S.C. § 7703(1)(B), "[a] license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder—(1) when acting under the authority of his license, certificate, or document . . . (B) has committed an act of misconduct or negligence."

¹ As of March 16, 2009, Merchant Mariner's Credential (MMC) includes license, certificate of registry, or merchant mariner's document. MMC). See, 74 Fed. Reg. 11,196 (Mar.16, 2009).

On the charges of incompetence, the Coast Guard alleges that on December 6, 2007, Respondent suffered from hallucinations, anxiety, and agitated behavior rendering him unable to perform his duties as Able Seaman aboard the MAERSK MONTANA, including being prescribed anti-psychotic medication and hospitalization for a psychotic disorder.

The Coast Guard further alleges that on April 30, 2010, Respondent suffered from hallucinations, schizophrenia, irrational behavior, mood changes, and paranoia. He was admitted involuntarily to Trinitas Psychiatric Behavioral Health Hospital and issued anti-psychotic medication. As a result of his condition, he was unable to perform his duties as Able Seaman aboard the HORIZON TRADER.

Regarding the misconduct allegation, the Coast Guard alleges that on February 25, 2010, while serving onboard the LTC CALVIN P. TITUS Respondent brandished a crowbar while aggressively threatening and verbally assaulting the Chief Mate. This conduct resulted in Respondent receiving an Official Reprimand and Termination which rendered him unable to perform his duties as Able Seaman.

Pursuant to 46 C.F.R. Table 5.569, “[t]he only proper order for a charge of incompetence found proved is revocation.” Concerning a proved charge of Misconduct for violent acts against other persons (without injury), the Table suggests range from 2 to 6 months. In this case, the Coast Guard proposed Revocation of Respondent’s MMC in accordance with the Regulations.

On February 18, 2011, Respondent filed his timely Answer denying all jurisdictional and factual allegations. In his Answer, Respondent agreed with the proposed hearing dates of April 19th, 20th, or 21st, 2011 and the proposed hearing location at the Alexander Hamilton Customs House, 1 Bowling Green, Room 302, New York, NY 10004.

On March 28, 2011, the undersigned issued a Scheduling Order - Notice of Hearing setting the hearing for April 20, 2011 at the Alexander Hamilton Customs House, 1 Bowling Green, Room 302, New York, NY 10004 beginning at 9:30 a.m. The Scheduling Order also set the dates for the parties to file their respective witness and exhibit lists.

In accordance with the Scheduling Order, the Coast Guard submitted its Notice of Expected Witnesses and Exhibits on April 4, 2011. Respondent did not file a Notice of Expected Witnesses and Exhibits. On April 13, 2011, the Coast Guard filed a Motion for a Pre-Hearing Conference to be conducted via telephone. The undersigned granted the Coast Guard's Motion and scheduled a pre-hearing teleconference for April 18, 2011 at 3:00 p.m.

On April 18, 2011, the undersigned conducted a pre-hearing teleconference. Representatives from the Coast Guard called into the conference using the toll-free number pursuant to the instructions contained in the Scheduling Order – Pre-Hearing Teleconference issued on April 14, 2011. At approximately 2:30 p.m. on April 18, 2011, thirty (30) minutes before the pre-hearing conference was set to begin, the Respondent faxed several documents to the undersigned. None of these documents expressed that Respondent was unable to attend the pre-hearing teleconference on April 18, 2011 or the in-person hearing on April 20, 2011. Respondent did not call the toll free number for the pre-hearing teleconference as instructed. During the Pre-Hearing Teleconference, the Coast Guard moved for default pursuant to 33 C.F.R. § 20.310. The undersigned took the motion under advisement, providing the Respondent an opportunity to appear at the in-person hearing scheduled for April 20, 2011.

On April 20, 2011, the undersigned and Coast Guard personnel appeared at the Alexander Hamilton Customs House, 1 Bowling Green, Room 302, New York, NY 10004 at 9:30 a.m. for the in-person hearing on the above-referenced allegations against Respondent

contained in the Complaint. Respondent did not appear at 9:30. The undersigned then recessed the hearing for over an hour, providing Respondent more time to appear. After the one hour recess, Respondent still did not appear. The Coast Guard made an oral motion to find the Respondent in default for failure to appear at the pre-hearing teleconference and the in-person hearing. Pursuant to 33 C.F.R. § 20.705, the undersigned did not grant the Coast Guard's motion as the Regulation provides Respondent thirty (30) days to show "good cause" as to why he did not appear at the in-person hearing. Therefore, on April 20, 2011 the undersigned issued an Order for Respondent to Show Cause by May 20, 2011 as to why he did not attend both the pre-hearing teleconference and the in-person hearing.

On May 5, 2011, the undersigned received a facsimile from the Respondent stating that "I Corinthis E. Thomas Respondent for the telephonic testimony failed to contact Hon. Walter J. Brudzinski at 3:00 p.m. EDT. Denied the use of the telephone at the Seafarer Union Hall which is located at 1640 Dauphin Island Pkwy., Mobile, AL 36605. Port Agent Jimmy White denied the privilege of telephone. Secretary Julie assist with fax but no phone use." In a separate note from Respondent also sent on May 5, 2011, Respondent states "I'm writing to request a hearing movement due to travel expense the hearing is schedule [sic] for May 20, 2011. I'm asking for the rite [sic] to have my hearing in Mobile, AL, are [sic] New Orleans, LA." Finally, on May 19, 2011, Respondent faxed a third note to the undersigned stating "I am addressing the ALJ for good cause for my failure to appear before administrative hearing May 20, 2011. Reconizing [sic] my incarceration in a local jail and reluctant to seek legal representation. For this hearing I am addressing the ALJ for time extension once again in good cause."

After careful review of the entire record, including the applicable statutes, regulations, and case law, I find the Respondent's stated reasons for failing to appear at the in-person hearing

or the pre-hearing teleconference are insufficient to show good cause. Thus, the Coast Guard's Motion to find the Respondent in default is **GRANTED**.

Pursuant to 33 C.F.R. § 20.310 (c), default by the Respondent constitutes an admission of the facts alleged in the Complaint and a waiver of his right to a hearing on those facts. The admitted facts alleged are sufficient to prove two (2) counts of Incompetence under 46 U.S.C. § 7703(4) and 46 C.F.R. § 5.31 and sufficient to prove the one count of Misconduct under 46 U.S.C. §7703(1)(B) and 46 C.F.R § 5.29. Under 46 C.F.R. Table 5.569, "the only proper order for a charge of incompetence found proved is Revocation." Since the facts alleged in the Complaint are deemed admitted due to Respondent's default, the Respondent's MMC is hereby **REVOKED**.

FINDINGS OF FACT

The Findings of Fact are based on a thorough and careful analysis of the documentary evidence and the entire record taken as a whole.

1. Respondent, Corinthis E. Thomas, was the holder of Coast Guard Merchant Mariner Credential Document Number USA000028990 (hereinafter referred to as MMC) issued on September 15, 2009. (CG Ex. 1; Resp. Ex. 3).²
2. The Coast Guard filed the Complaint against Respondent on January 28, 2011. (ALJ Ex. 1 at 2).

² Citations referring to Administrative Law Judge Exhibits from the Record are depicted as follows: (ALJ Ex. __); Citations referring to Investigating Officer Exhibits that were supplied by the Coast Guard with the Notice of Witnesses and Exhibits List on April 4, 2011 are depicted as follows: (CG Ex. __); Citations referring to exhibits provided by the Respondent are depicted as follows: (Resp. Ex. __); Citations referencing the transcript from April 20, 2011 are depicted as follows (Tr. at __).

3. Respondent's MMC reflects his address as 635 4th Ave, Brooklyn, NY 11232. (CG Ex. 1; Resp. Ex. 3).
4. The Coast Guard first attempted to serve Respondent at his Brooklyn address. (ALJ Ex. 1 at 4).
5. The Coast Guard also attempted to serve Respondent at other addresses. (Tr. at 7:21 – 8:6).
6. The Respondent was eventually served with the Complaint at an address in Mobile, Alabama. (ALJ Ex. 2 at 4).
7. Respondent filed his timely Answer to the Complaint on February 18, 2011. (ALJ Ex. 3).
8. In his Answer, Respondent agreed to the hearing location at the Alexander Hamilton Customs House, 1 Bowling Green, Room 302, New York, New York 10004 and to the proposed, hearing dates of April 19th, 20th, or 21st of 2011. (ALJ Ex. 3).
9. On or about February 21, 2011, Respondent was arrested and/or "booked" at Mobile County Metro Jail. (Resp. Ex. 5).
10. On March 22, 2011, the undersigned Administrative Law Judge (ALJ) issued a Scheduling Order setting the hearing for April 20, 2011 at the Alexander Hamilton Customs House, 1 Bowling Green, Room 302, New York, NY 10004 starting at 9:30 AM. (ALJ Ex. 4).
11. On or about April 1, 2011 Respondent received the Scheduling Order at his Alabama address and signed for it. (Tr. at 4:22 – 5:3 and 9:6 – 10; ALJ Ex. 5 at 3).
12. Respondent provided a telephone number to the Coast Guard but it was disconnected when the Coast Guard attempted to reach Respondent at that number. (Tr. at 8:11 – 17).
13. The Coast Guard found a different phone number associated with Respondent and

provided it to the undersigned ALJ. Neither the undersigned ALJ nor the Coast Guard was able to reach Respondent at this number as it too has been disconnected.

(Tr. at 8:17 – 22 and 9:22 – 10:7).

14. On April 4, 2011, pursuant to the Scheduling Order, the Coast Guard submitted its Notice of Witnesses and Exhibits.
15. On April 14, 2011, the Coast Guard moved for a pre-hearing conference because its Notice of Witnesses and Exhibits and accompanying evidence sent to Respondent via express courier had been returned. (ALJ Ex. 6).
16. On April 15, 2011, the undersigned issued a Scheduling Order for a Pre-Hearing Conference (Teleconference) to be held on April 18, 2011 at 3:00 p.m. EST. This Scheduling Order contained a toll free 800 number for all parties to call and the code to enter the conference call. (ALJ Ex. 7).
17. Respondent received notice of the Scheduling Order of the Pre-Hearing Teleconference on April 15, 2011. (ALJ Ex. 8 at 2-4).
18. On April 18, 2011, at approximately 2:30 p.m. EDST Respondent faxed several documents from Seafarers Union International (“SIU”) to the undersigned ALJ under the subject “USCG Pre-Hearing Conference.” (Resp. Exs. 1, 2, and 3).
19. Respondent failed to appear at the pre-hearing teleconference at 3:00 p.m. EDST by failing to call the provided 800 number or otherwise. (ALJ Ex. 9; Resp. Ex. 4).
20. On April 18, 2011, the Coast Guard made an oral motion to find the Respondent in default for failure to appear at the pre-hearing teleconference pursuant to 33 C.F.R. § 20.310 which the undersigned took under advisement, providing Respondent an opportunity to appear at the in-person hearing on April 20, 2011. (ALJ Exs. 9 and 10).

21. On April 20, 2011, the undersigned and representatives of the Coast Guard appeared at the Alexander Hamilton Customs House, 1 Bowling Green, Room 302, New York, NY 10004 at 9:30 a.m. to conduct an in-person hearing on this case. (Tr. at 1:1 – 7:7).
22. Respondent failed to appear for his in-person hearing at the Alexander Hamilton Customs House on April 20, 2011 at 9:30 AM. (Tr. at 1:1 – 7:7).
23. The undersigned recessed the in-person hearing for approximately one hour to give the Respondent additional time to appear. (Tr. 6:18 – 7:15).
24. Respondent did not appear at the in-person hearing on April 20, 2011 or at any time thereafter. (Tr. at 5:4 – 21, 7:8 – 11, and 11:12 – 12:1; ALJ Ex. 11).
25. The Coast Guard once again made an oral motion to find Respondent in default for failure to appear at both the in-person hearing and the pre-hearing teleconference. (Tr. at 12:4 - 11).
26. Pursuant to 33 C.F.R. § 20.705 the undersigned issued an Order to Show Cause on April 20, 2011 directing the Respondent to show good cause by May 20, 2011 for his failure to attend the in- person hearing on April 20 and the pre-hearing teleconference on April 18. (Tr. at 12:12 – 13:9; ALJ Ex. 10).
27. On May 5, 2011, the undersigned received a facsimile from Respondent stating that he “failed to contact Hon. Walter J. Brudzinski at 3:00 p.m EDST” because he was denied the use of the telephone by port agent Jimmy White at the Seafarers Union Hall and also stating that Respondent requests a hearing in Mobile, AL or New Orleans, LA. (Resp. Ex. 4 at 3).
28. On May 19, 2011, the undersigned received another facsimile from Respondent stating he failed to appear at the in-person hearing because he was incarcerated and was reluctant to

seek legal representation for this hearing. He included a copy of an “inmate card” indicating that his “book date” at the Mobile County Metro Jail was February 21, 2011. (Resp. Ex. 5).

LAW

The purpose of Coast Guard Suspension and Revocation proceedings is to promote safety at sea. 46 U.S.C. § 7701(a). Title 46 C.F.R. § 5.19 gives Administrative Law Judges authority to suspend or revoke merchant mariner credentials for violations arising under 46 U.S.C. §§ 7703 and 7704. The Coast Guard’s procedural regulations on default are as follows:

Under 33 C.F.R. § 20.310,

- (a) The 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. **[Emphasis added].**
- (b) Each motion for default must conform to the rules of form, service, and filing of this subpart. Each motion must include a proposed decision and proof of service under section 20.304(d). The respondent alleged to be in default shall file a reply to the motion 20 days or less after service of the motion.
- (c) Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of her or his right to a hearing on those facts. **[Emphasis added].**
- (d) Upon finding a respondent in default, the ALJ shall issue a decision against her or him.
- (e) For good cause shown, the ALJ may set aside a finding of default.

33 C.F.R. § 20.310.

Under 33 C.F.R. § 20.705,

The ALJ may enter a default under 20.310 against a respondent threatening to fail, or having failed, to appear at a hearing unless, -

- (a) Before the time for the hearing, the respondent shows good cause why neither the respondent nor his or her representative can appear; or
- (b) 30 days or less after an order to show good cause, the respondent shows good cause for his or her failure to appear.

33 C.F.R. § 20.705

Black's Law Dictionary (9th ed. 2009) defines good cause as "a legally sufficient reason . . . Good cause is often the burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused." The Regulations do not further define "good cause." Prior Commandant Decisions on Appeal are guidance for what constitutes "good cause."

The Commandant has held that incarceration of a respondent subsequent to his receipt of Notice of Hearing and Charges does not constitute good cause for a failure to appear at a Suspension and Revocation proceeding. Appeal Decision 2564 (MANUAL) (1995). Also, the Commandant has upheld an ALJ's finding that ongoing cancer treatments to a respondent's father and inability to locate witnesses do not constitute "good cause" for the purpose of postponing a hearing. Appeal Decision 2645 (MIRGEAUX)(2004). Finally, the Commandant has held that lack of finances without prior notice to the Coast Guard is not good cause to fail to appear at a hearing. Appeal Decision 1323 (CUNNINGHAM)(1962).

In MANUEL, the respondent failed to appear at the scheduled hearing because he was incarcerated. Although the respondent attempted to contact a Coast Guard Marine Safety Office regarding his incarceration, he did not inform the ALJ of his incarceration or his inability to

appear at the hearing. The respondent was properly served with the Notice of Hearing and had notice of the time and place of the hearing. Moreover, the respondent had the name, address, and phone numbers for the ALJ but did not contact the ALJ by phone, mail or any other means. The ALJ found that the respondent had the ability to communicate as shown by his phone call to the Marine Safety Office and that even if the respondent were incarcerated, he could have written a letter prior to the hearing date.³

In CUNNINGHAM, the Commandant held that a mere statement that lack of finances was the reason for a failure to appear at the hearing was not acceptable where the record does not show that the respondent made the situation known to the Coast Guard to make other arrangements.

In MIRGEAUX, the Commandant upheld the ALJ's decision finding a respondent in default after he did not appear for his hearing. The respondent asked the ALJ for a postponement of the hearing prior to the scheduled hearing date because his father was undergoing cancer treatment and the respondent was having difficulty contacting two unnamed witnesses. The ALJ denied respondent's request and directed the respondent to appear at the scheduled hearing time. The respondent did not appear and the Judge held him in default for failing to appear without good cause. The Commandant upheld the ALJ's finding stating that "scheduling of hearings is solely within the discretion of the ALJ" and that the ALJ did not err in denying the request for a postponement.

³ MANUEL and CUNNINGHAM were decided under the pre-1999 rules which allowed for proceeding with the hearing without the respondent. The current rules do not allow for in-absentia proceedings, but instead have a procedure to find the respondent in default for failure to appear at the hearing.

APPLYING THE LAW TO THE FACTS

“The Respondent has a duty to provide the Coast Guard with his proper address.” Appeal Decision 2645 (MIRGEAUX)(2004) (citing Appeal Decision 1399 NOVAK). According to Respondent’s MMC (a copy of which he sent to the undersigned on April 18, 2011) Respondent’s address is 635 4th Ave, Brooklyn, NY 11232. (Resp. Ex. 3 at 2; CG. Ex. 1). Finding Respondent was not at that address, the Coast Guard Investigating Officer ascertained whether there were alternative addresses and eventually served him at an address in Mobile, Alabama in order to be absolutely sure Respondent was provided notice. (Tr. At 7:21 to 8:11). Respondent has never, and does not now, claim that he did not receive any of the Scheduling Orders or other documents sent by the undersigned or the Coast Guard. In fact, the record shows that Respondent himself signed for most of the documents served on him. (ALJ Exs. 5, 8, and 12). Therefore, Respondent had sufficient notice that the in-person hearing was scheduled for April 20, 2011 and the pre-hearing teleconference was scheduled for April 18, 2011.

As in MANUEL, Respondent, Corinthis E. Thomas, received notice of the charges against him and the date, time, and location of the hearing. Also similar to MANUEL, Respondent Corinthis E. Thomas, clearly had the ability to communicate with the ALJ prior to the scheduled hearing date of April 20, 2011. Respondent submitted documents to the ALJ on April 18, 2011 with the subject “USCG Pre-Hearing Conference” thus showing that Respondent was aware of the teleconference occurring on that date. Additionally, Respondent had the ability to communicate with the ALJ as shown by his faxing several documents to the undersigned on April 18, 2011. At no time prior to the hearing did Respondent inform the ALJ or the Coast Guard of his inability to attend the hearing in New York City of April 20, 2011.

Respondent makes two assertions in an attempt to show “good cause” for failure to appear at the in-person hearing on April 20, 2011. First, in a facsimile sent to the undersigned on May 5, 2011, Respondent claims he is financially unable to attend the hearing. (Resp. Ex. 4 at 3). Second, in a facsimile sent to the undersigned on May 19, 2011, Respondent claims he was incarcerated and thus unable to attend the hearing. (Ex. 5 at 1).

As to Respondent’s first assertion of good cause for lack of finances: the Commandant held in CUNNINGHAM, that a mere statement of lack of finances as the reason for a failure to appear at a hearing is insufficient where the respondent did not make the situation known to the Coast Guard. Similarly here, Respondent asserted that he could not afford to attend the hearing in New York as the reason he needs to have the hearing in Alabama or Louisiana. (Resp. Ex. 4 at 3). Respondent never made this situation known to the ALJ or the Coast Guard until May 5, 2011, two weeks after the scheduled hearing date. Additionally, Respondent does not provide any supporting documentation that tends to show a lack of financial means to attend the hearing. Respondent’s self-serving statement, standing alone, is insufficient to satisfy the “good cause” requirement of the Regulations.

As to Respondent second assertion of good cause, he claims that he was incarcerated and thus had good cause for his failure to attend the hearing. (Resp. Ex. 5 at 1). As the Commandant held in MANUEL, incarceration is not necessarily good cause for failing to appear at the hearing. Here, Respondent was incarcerated after he had been served with the Complaint and after he filed his Answer. (ALJ Exs. 2 and 3; Resp. Ex. 5 at 1). Further, the information Respondent provided shows only his “book date” which was February 21, 2011. (Resp. Ex. 5 at 2). Respondent’s documents shed no light on whether he was incarcerated on April 20, 2011. In fact, the record shows Respondent was not incarcerated on April 18, 2011 because he was at SIU

in Mobile, Alabama faxing documents to the ALJ (Resp. Exs. 1 and 2) and on April 21, 2011 he signed for the Order to Show Cause. (ALJ Ex. 12). Under MANUEL and the facts in this case, it would not make any difference whether Respondent were incarcerated. If Respondent needed a postponement or a change of venue for the hearing as a result of his incarceration, he could have made the situation known to the ALJ at that time. Respondent made no mention of his incarceration until May 19, 2011 almost one full month after the hearing.

Respondent's assertion of lack of finances and incarceration are untimely and insufficient to support a finding of "good cause" and without merit. Concerning Respondent's claim that he was denied use of a telephone to participate in the pre-hearing teleconference is also without merit. Respondent faxed several documents to the undersigned prior to the teleconference on April 18, 2011. The fax cover sheet and the other documents made no mention of his being refused a telephone. (Resp. Exs. 1 and 2).

In summary, the record shows Respondent failed to appear at the pre-hearing teleconference and at his in-person hearing. The record also shows he had notice of all the proceedings and had the ability to communicate with the ALJ via facsimile as well as the Postal Service. Therefore, Respondent has failed to show "good cause" for his failures to appear at the pre-hearing teleconference and at the in-person hearing.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent received sufficient notice of the pre-hearing teleconference and the in-person hearing.
2. At all relevant times, Respondent had the ability to communicate with the ALJ and the Coast Guard.

3. Respondent has not shown "good cause" for failing to appear at the pre-hearing teleconference or the in-person hearing.
4. Respondent is in DEFAULT for failing to appear at the pre-hearing teleconference on April 18, 2011 and at the in-person hearing on April 20, 2011.
5. DEFAULT constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on those facts.
6. The allegations in the Complaint are proved by admission in accordance with 33 C.F.R. § 20.310 (c).
7. Finding the Incompetence allegations proved by admission, as well as the Misconduct allegation proved by admission, Respondent's MMC must be Revoked in accordance with 46 C.F.R. Table 5.569.

DECISION

Respondent, Corinthis Emile Thomas, failed to appear at the scheduled pre-hearing teleconference and the in-person hearing and has failed to show good cause. Therefore, I find Respondent, Corinthis Emile Thomas, in **DEFAULT**. Default by Respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the Complaint and a waiver of her or his right to a hearing on those facts. The allegations in the Complaint are proved by admission in accordance with 33 C.F.R. § 20.310 (c) and Respondent's MMC must be revoked in accordance with 46 C.F.R. Table 5.569.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED that the Coast Guard's Motions for Default are **GRANTED**.

IT IS FURTHER ORDERED that Respondent, Corinthis E. Thomas's MMC and all other documents and certificates held by Respondent are **REVOKED**. Respondent is to surrender his MMC to the nearest Coast Guard facility immediately.

PLEASE TAKE NOTICE that service of this Decision on the parties and/or parties' representative(s) serves as notice of appeal rights set forth in 33 CFR 20.1001 – 20.1004.

(Attachment B).



Walter J. Brudzinski
Administrative Law Judge
United States Coast Guard

Date: June 2, 2011

ATTACHMENT A – EXHIBIT LIST

ALJ EXHIBITS:

1. U.S. Coast Guard's Complaint filed January 28, 2011 (4 pages).
2. Amended Certificate of Service of Complaint to Respondent's Alabama address and Return of Service for Complaint dated February 17, 2011 (4 pages).
3. Respondent's Answer filed February 18, 2011 (2 pages).
4. Scheduling Order - Notice of Hearing dated March 28, 2011 (2 pages).
5. Certificates of Service of Scheduling Order - Notice of hearing, indicating that C. Thomas signed for the parcel (4 pages).
6. U.S. Coast Guard's Motion for Pre-Hearing Conference dated April 13, 2011 (1 page).
7. Scheduling Order - Pre-Hearing Conference dated April 14, 2011 (2 pages).
8. Certificates of Service of Scheduling Order - Pre-Hearing Conference, indicating that C. Thomas signed for parcel (4 pages).
9. Memorandum and Order of Pre-Hearing Teleconference dated April 18, 2011 (2 pages).
10. Certificate of Service of Memorandum and Order of Pre-Hearing Teleconference (4 pages).
11. Order to Show Cause dated April 20, 2011 (3 pages).
12. Certificate of Service of Order to Show Cause, indicated that C. Thomas signed for parcel (4 pages).

RESPONDENT'S EXHIBITS:

1. Facsimile from Corinthis E. Thomas via Seafarers International Union ("SIU") regarding "Pre-Hearing Conference" - received April 18, 2011 at approximately 2:30 p.m. (2 pages).
2. Facsimile from Corinthis E. Thomas via SIU regarding "Pre-Hearing Conference" - received April 18, 2011 at approximately 2:30 p.m. (8 pages) (documents regarding medical evaluations).
3. Facsimile from Corinthis E. Thomas via SIU regarding "Pre-Hearing Conference" - received April 18, 2011 at approximately 2:30 p.m. (3 pages) (documents regarding Respondent's MMC).
4. Facsimile from Corinthis E. Thomas received May 5, 2011 (3 pages) (documents regarding the denial of phone privileges at SIU and requesting hearing in Alabama or Louisiana).
5. Facsimile from Corinthis E. Thomas received May 19, 2011 (3 pages) (documents regarding incarceration in local jail in Alabama).

COAST GUARD EXHIBITS:

1. Respondent's MMC Data printout from MISLE. (1 page).

ATTACHMENT B

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS CODE OF FEDERAL REGULATIONS

PART 20 RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR FORMAL ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD

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.
- (a) 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.
- (a) 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.
- (a) 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.
- (a) 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.
 - (1) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
 - (1) 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.
- (a) 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.
- (a) 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.
- (a) 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.