

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

UNITED STATES COAST GUARD

Complainant

vs.

JONAS MILLER

Respondent

Docket Number 2017-0343
Enforcement Activity No. 5744413

DEFAULT ORDER

Issued: April 10, 2018

By Administrative Law Judge: Honorable Michael J. Devine

Appearances:

**CWO Ryan D. Sinclair
LT Kristen R. Bradley
Sector Delaware Bay
and
Lineka Quijano, Esq.,
Suspension and Revocation National Center of Expertise**

For the Coast Guard

JONAS MILLER, Pro se

For the Respondent

TABLE OF CONTENTS

I. PROCEDURAL BACKGROUND PRIOR TO HEARING 3

II. HEARING PROCEEDINGS ON FEBRUARY 28, 2018..... 4

III. POST HEARING PROCEDURE AND MOTION FOR DEFAULT ORDER.. 5

IV. DISCUSSION..... 5

V. ORDER..... 6

VI. SANCTION 6

Attachment A 9

I. PROCEDURAL BACKGROUND PRIOR TO HEARING

The United States Coast Guard (USCG or Coast Guard) initiated this administrative action seeking revocation of the Merchant Mariner's Credential (MMC) issued to Jonas Miller (Respondent). On January 10, 2018, the undersigned Administrative Law Judge (ALJ) conducted the first telephone scheduling conference in this matter with the parties. The Court advised Respondent of the general procedural requirements of the regulations contained in 33 C.F.R. Part 20 and of the rights listed on the Complaint, including the exchange of information in discovery and the opportunity for Respondent to obtain *pro bono* counsel.¹

During the conference the parties agreed to complete discovery and exchange witness and exhibit lists by January 30, 2018, to submit prehearing motions by February 6, 2018, and to a hearing date on February 27, 2018; February 28, 2018; or March 14, 2018, depending on courtroom availability. The Court also provided copies of the applicable Coast Guard regulations in 33 C.F.R. Part 20 and 46 C.F.R. Part 5 were provided to Respondent with the Scheduling Order issued on January 10, 2018.

The Court issued a separate order on January 11, 2018, setting the location of the hearing at the United States Custom House, 200 Chestnut Street, Courtroom 300, Philadelphia, PA, 19106, on February 28, 2018.

On February 9, 2018, the ALJ held a second prehearing telephone conference to discuss pending motions and a recent amendment of the Complaint by the Coast Guard and address deadlines for responses to motions and for discovery. 33 C.F.R. §§ 20.601-20.609. The Court explained to Respondent his obligation to answer the Amended

¹ The Order of January 4, 2018, scheduling the initial telephone conference had an attachment listing potential *pro bono* attorneys.

Complaint within twenty (20) days and inquired on his understanding of the need to respond to the pending motions within ten (10) days. It appeared Respondent had not understood the pending motions or the impact of the change in the charge from the Amended Compliant regarding company policy. After discussion of all of the pending matters including the change in the Complaint, the Court directed the Coast Guard to provide Respondent paper copies of its motions by expeditious means. Respondent requested additional time to provide a witness and exhibit list and the Court granted an extension to Wednesday, February 14, 2018. The Court inquired whether Respondent was requesting a delay or would proceed with the scheduled hearing date of February 28, 2018. Respondent indicated he was not requesting a delay. The ALJ also allowed Respondent until the close of business on February 16, 2018, to file a response to the Coast Guard's motion. As of February 22, 2018, Respondent did not submit any witness or exhibit lists or motions.

II. HEARING PROCEEDINGS ON FEBRUARY 28, 2018

At the beginning of the hearing on February 28, 2018, Agency Counsel and the Investigating Officer, LT Kristen Bradley, appeared on behalf of the Coast Guard. Respondent did not appear at the scheduled time of 9:00 a.m. The undersigned initiated the administrative hearing to take appearances and to explain on the record that he would recess for an hour in order to give Respondent an opportunity to appear for the hearing. During the recess, the USCG made several calls to three phone numbers it had on file for Respondent, including his cellular phone. The USCG did not receive a return phone call from Respondent during the hour-long recess. At 10:00 a.m. the Court reconvened. The Coast Guard moved the Court for a default order, but requested the Court set a deadline of

ten (10) days for Respondent to show good cause for failing to appear at his hearing, rather than the thirty (30) days the ALJ finds applicable under 33 C.F.R. § 20.705(b).

The Court deferred ruling on the Coast Guard's Motion, but took it under advisement, noting Respondent should have an opportunity to show good cause why he failed to appear. The Coast Guard also asked the Judge to admit four exhibits showing the Coast Guard served specific documents on Respondent at his last known address. The Court admitted the exhibits and thereafter closed the hearing.

III. POST HEARING PROCEDURE AND MOTION FOR DEFAULT ORDER

On March 2, 2018, the Coast Guard filed a written motion for default pursuant to 33 C.F.R. § 20.705(b) and included proof of service showing delivery at Respondent's last known address.

On March 5, 2018, the Court issued an Order pursuant to 33 C.F.R. § 20.705, directing Respondent to submit a response in writing showing good cause why he failed to appear for his Suspension and Revocation hearing on February 28, 2018. As of the date of this Order, Respondent has not filed any response to the Court's Show Cause Order.

IV. DISCUSSION

Respondent agreed to the hearing date on January 10, 2018, and made no effort to request a modification. Respondent was fully advised of the nature and requirements of the proceedings. Respondent has failed to demonstrate "good cause" for his failure to attend the hearing. See Appeal Decision 2682 (Reeves) (2008). Respondent also failed to answer the Amended Complaint. Accordingly, I find he is in **DEFAULT**.

A default constitutes an admission of all facts alleged in the Amended Complaint and a waiver of Respondent's right to a hearing. See 33 C.F.R. §§ 20.310; 20.705.

WHEREFORE,

V. ORDER

Upon consideration of the record, I find Respondent is in **DEFAULT**. A default constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing (33 C.F.R. §§ 20.310 and 20.705). Accordingly, the alleged violations of 46 C.F.R. § 5.35 (use, use of, or addition to the use of dangerous drugs) are **PROVED**. I have carefully considered the Motion for Default, and I have reviewed the record as a whole and find the proposed sanction is appropriate under the provisions of 46 C.F.R. § 5.569.

VI. SANCTION

One of the major purposes of suspension and revocation proceedings and trial-type hearings is to protect lives and properties against actual and potential dangers. 46 U.S.C. § 7701(a). Congress enacted 46 U.S.C. § 7704(c) and related statutes with the express intent of removing those individuals using a dangerous drug from service on board United States merchant marine vessels. See House Rep. 338, 98th Cong., 1st Sess. 177 (1983); see also Appeal Decision 2634 (BARRETTA) (2002). Under 46 U.S.C. § 7704(c), revocation of a merchant mariner's credentials is required when it is shown on a motion or proceeding that the merchant mariner is a user of, or addicted to, a dangerous drug unless the mariner provides satisfactory evidence of cure of all dangerous drug use. See generally 46 C.F.R. § 5.569(b).

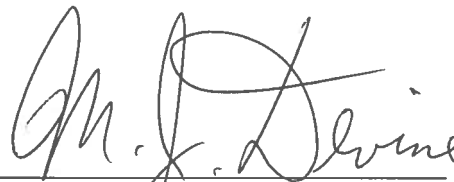
While revocation is a severe order, it is not necessarily permanent. The ALJ directs Respondent's attention to directed to 33 C.F.R. § 20.904(f), which allows a respondent within three (3) years or less after his Coast Guard issued license or document

is revoked, to file a written 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 of lives and property at sea. In cases such as this one, the revocation order may be modified upon a showing by Respondent that he: (1) has successfully completed a bona fide, acceptable drug abuse rehabilitation program; (2) has demonstrated complete non-association with dangerous drugs for a minimum of one year following completion of a drug rehabilitation program; and (3) is actively participating in a bona fide drug abuse monitoring or testing program. See generally 46 C.F.R. § 5.901(d). The drug abuse monitoring program must include random, unannounced testing during that year. Appeal Decision 2535 (SWEENEY).

IT IS FURTHER ORDERED, Respondent's Merchant Mariner's Credentials 000437453, are hereby **REVOKED**. If Respondent knowingly continues to use his Merchant Mariner credentials, he may be subject to further action including criminal prosecution. Respondent shall immediately deliver by mail or in person his merchant mariner's document and all other Coast Guard issued licenses, certificates or credentials to the Coast Guard at USCG Sector Delaware Bay, attention of the Investigating Officer, CWO Ryan D. Sinclair and LT Kristen R. Bradley, at USCG Sector Delaware Bay, 1 Washington Avenue, Philadelphia, PA 19147-4395, telephone number (215) 271-4972.

PLEASE TAKE NOTICE, under 33 C.F.R. § 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 findings with the ALJ Docketing Center, 40 S. Gay Street, Room 412, Baltimore, MD 21202, Facsimile (410) 962-1746.

PLEASE TAKE NOTICE, service of this Default Order upon you serves as notification of your right to appeal as set forth in 33 C.F.R. Subpart J notice of appeal rights (Attachment A). **A copy of the transcript of the hearing in this matter may be provided upon request of a party.**

A handwritten signature in black ink, appearing to read "Michael J. Devine", is written over a horizontal line. The signature is cursive and somewhat stylized.

Michael J. Devine
U.S. Coast Guard
Administrative Law Judge
Date: April 10, 2018