

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

UNITED STATES COAST GUARD
Complainant

vs.

MICHAEL CHASE BUNDY
Respondent

Docket Number 2019-0105
Enforcement Activity No. 5762985

DEFAULT ORDER

Issued: November 04, 2019

By Administrative Law Judge: Honorable Dean C. Metry

Appearances:

**LT Mathew T. Schirle
&
Lineka N. Quijano, Esq.
Suspension & Revocation National Center of Expertise**

For the Coast Guard

MICHAEL CHASE BUNDY, *Pro se*

For the Respondent

Background

On March 28, 2019, the Coast Guard filed a Complaint against Michael Chase Bundy (Respondent) alleging one count of use of, or addiction to the use of dangerous drugs; three counts of misconduct; and one count of incompetence. During a May 22, 2019 pre-hearing telephone conference, Respondent was represented by Keith B. Letourneau, Esq., and Zachary J. Wyatte, Esq., and the parties agreed to a September 10-12, 2019 hearing date.

On July 1, 2019, an extension to extend the deadline to exchange witness and exhibits was granted because Respondent's counsel had just recently established communication with Respondent. An August 30, 2019 pre-hearing telephone conference was held at the request of the parties because Respondent declined a settlement agreement and wished to be represented by different counsel. A Notice of Withdrawal as Counsel was filed on September 4, 2019.

During a September 6, 2019 pre-hearing telephone conference, Respondent's counsel were officially released. The Coast Guard moved for a Motion for Default Order because of Respondent's failure to appear at the pre-hearing conference. The undersigned Administrative Law Judge (ALJ) rejected the motion and stated the parties should be prepared to begin the hearing on Tuesday, September 10, 2019. A Scheduling Order was served on Respondent by email, Federal Express, and first class mail, on September 6, 2019, setting the hearing for September 10, 2019, at 10:00 a.m. Central Time, at the U.S. Courthouse, 601 25th Street, 5th Floor Courtroom, Galveston, Texas 77550. On September 6, 2019, the Coast Guard filed a written Motion for Default Order for Respondent's failure to appear at the pre-hearing conference call.

On September 10, 2019, Respondent sent an email to the undersigned's staff stating he was served the hearing notice on September 9, 2019, and explaining his opinion of the events leading up to the dismissal of his counsel.

On September 10, 2019, at 10:00 a.m. CDT, the Coast Guard was present and prepared to proceed with the hearing; however, Respondent was not present. To allow time for Respondent to arrive, the undersigned set the hearing to reconvene at 1:00 p.m. CDT.

At 1:00 p.m. CDT, on September 10, 2019, the Coast Guard was again present and ready to proceed with the hearing; however, Respondent was not present. The Coast Guard moved for a Motion for Default pursuant to 33 C.F.R. § 20.310 and 33 C.F.R. § 20.705. 33 C.F.R. § 20.310(a) states “[t]he 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.” Additionally, 33 C.F.R. § 20.705 states, in pertinent part, “[t]he ALJ may enter a default under § 20.310 against a respondent threatening to fail, or having failed, to appear at a hearing unless . . . 30 days or less after an order to show good cause, the respondent shows good cause for his or her failure to appear.”

At the hearing, the undersigned carefully explained the above cited regulations do not appear to provide an ALJ with the authority to immediately enter a default for a respondent’s failure to appear at a hearing. Rather, 33 C.F.R § 20.705 permits an ALJ to issue a Show Cause Order allowing the respondent not less than 30 days from the issuance of the Show Cause Order to demonstrate good cause as to why a default should not be issued. Good cause is not defined in the regulations, but it is a flexible term, dependent upon the circumstances of an individual case, and lies directly within the sound discretion of the ALJ to decide. See, e.g., Appeal Decision 2700 THOMAS (2012); Appeal Decision 2696 CORSE (2011); Wray v. Folsom, 166 F. Supp. 390 (W.D. Ark. 1958). However, the burden is upon Respondent to establish good cause for his failure to appear. 33 C.F.R. § 20.705.

On September 10, 2019, the Coast Guard filed a written Motion for Default Order for Respondent’s failure to appear at the September 10, 2019 hearing. A Return of Service was also filed indicating the two written motions for default order were served on Respondent personally.

On September 17, 2019, the undersigned issued a Show Cause Order, directing respondent to show good cause by October 17, 2019, explaining why he failed to appear at the pre-hearing conference and the hearing.

After issuing the September 17, 2019 Show Cause Order, Respondent contacted the undersigned's staff through email, but never submitted a proper filing pursuant to the regulations. See 33 C.F.R. § 20.301.

As of the date of this Order, Respondent has not filed a response to the Coast Guard's motions, nor to the undersigned's September 17, 2019 Show Cause Order.

An 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).

Because Respondent failed to show good cause for his failure to appear at the pre-hearing conference and the hearing, I find he is in **DEFAULT** and, pursuant to 33 C.F.R. § 20.308, admits all the allegations in the Complaint.

As to the charges, the Complaint alleges one count of use of, or addiction to the use of dangerous drugs; three counts of misconduct; and one count of incompetence. The factual allegations in the pleadings are legally sufficient to find all charges in the Complaint **PROVED**.

Accordingly, the undersigned finds the Complaint sufficient to warrant the suggested sanction of **REVOCAATION**. See 46 C.F.R. § 5.569.

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 his Merchant Mariner Credentials, are **REVOKED**.

IT IS FURTHER ORDERED, Respondent shall immediately deliver by mail, courier service, or in person, his Merchant Mariner Credentials and any other Coast Guard issued credentials, licenses, certificates, or documents to: Detachment Chief, USCG 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 his Coast Guard issued Merchant Mariner Credentials, 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 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 A).

SO ORDERED.


Dean C. Metry
U.S. Coast Guard Administrative Law Judge
Date: November 04, 2019

ATTACHMENT A

33 C.F.R. § 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.

33 C.F.R. § 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.

33 C.F.R. § 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.

33 C.F.R. § 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.