

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

UNITED STATES COAST GUARD

Complainant

vs.

DANIEL T. LOKERSON

Respondent

Docket Number 2018-0251
Enforcement Activity No. 5754308

DEFAULT ORDER

Issued: April 17, 2019

By Administrative Law Judge: Honorable Michael J. Devine

Appearances:

**MS. SARAH K. SAVAGE
Marine Safety Detachment Panama City**

and

**JENNIFER A. MEHAFFEY, ESQ.
USCG National Center of Expertise**

For the Coast Guard

Daniel T. Lokerson, *Pro se*

For the Respondent

On August 6, 2018, the Coast Guard served its Complaint against Respondent, seeking revocation of his MMC. The jurisdictional allegations of the Complaint state that Respondent is the holder of MMC #000210394 and 000360217. The factual allegations of the Complaint state:

Charge 1 (Conviction under National Driver Register Act, 46 U.S.C. § 7703(3))

1. On December 16, 2016, Respondent was convicted of violating Florida Statute 316.193(1), driving under the influence, by the 14th Judicial Circuit Court in Bay County, Florida, for an arrest on December 4, 2016.
2. Florida Statute 316.193(1) is an offense described or comparable to those in 49 U.S.C. § 30304(a)(3)(A), as identified by 46 U.S.C. § 7703(3).

Charge 2 (Conviction under National Driver Register Act, 46 U.S.C. § 7703(3))

1. On December 16, 2016, Respondent was convicted of violating Florida Statute 316.193(1), driving under the influence, by the 14th Judicial Circuit in Bay County, Florida, for an arrest on December 13, 2016.
2. Florida Statute 316.193(1) is an offense described or comparable to those in 49 U.S.C. § 30304(a)(3)(A), as identified by 46 U.S.C. § 7703(3).

In aggravation:

1. On April 30, 2009, Respondent was convicted of violating Florida Statute 316.193(2)(a), by the 1st Judicial Circuit Court in Escambia County, Florida.
2. On April 23, 2009, Respondent tested positive for alcohol during a Reasonable Suspicion Test administered by Galliano Marine Service, LLC, and served a two (2) month outright suspension and twelve (12) months of probation pursuant to a Coast Guard suspension and revocation personnel action. (Enforcement Activity Number 3513464).

By this Court's February 26, 2019 Order Denying Complainant's Motion for Default Order and Partially Granting Complainant's Motion for Summary Decision (Order Partially Granting Summary Decision), the undersigned Administrative Law Judge (ALJ) found proved the factual allegations of Charges 1 and 2 but denied the Coast Guard's motion to find Respondent in default, and set a hearing date of March 7, 2019 to determine the appropriate sanction. The Order Partially Granting Summary Decision gives a detailed procedural history of this case.

On March 7, 2019 at 9:30 AM, the Coast Guard Investigating Officer, Sarah K. Savage, and Jennifer A. Mehaffey, Esq., appeared at the hearing on behalf of the Coast Guard. The undersigned ALJ was also in attendance and witnesses were standing by ready to start the hearing. Respondent failed to appear. After having the parties stand by for a reasonable time, in excess of 45 minutes, the ALJ noted Respondent's absence on the record. The Coast Guard Counsel indicated that a person identifying themselves as Respondent had sent an email at approximately 9:42 AM to Coast Guard counsel, the ALJ Docketing Center, and the ALJ's Attorney Advisor, stating that Respondent had a last minute transportation problem and would not be able to attend the hearing. The Coast Guard made an oral motion to find the Respondent in default for failure to appear at the in-person hearing. The ALJ did not grant the Coast Guard's motion because the regulations require providing Respondent thirty (30) days to show "good cause" as to why he did not appear at the in-person hearing. See 33 C.F.R. § 20.705.

On March 8, 2019, the Coast Guard filed a written Motion for Default pursuant to 33 C.F.R. § 20.310, seeking revocation of Respondent's merchant mariner credentials. March 12, 2019, the undersigned ALJ issued an Order to Show Cause giving Respondent thirty (30) days (until April 11, 2019) to submit a response in writing showing good cause why he failed to appear at his Suspension and Revocation hearing set for March 7, 2019. The Order to Show Cause also provided specific notice to Respondent that if he failed to show good cause, the undersigned ALJ may find him in default and issue an Order revoking his merchant mariner credentials.

To date, Respondent has not filed any response to the Order to Show Cause. The record shows that the Coast Guard properly served its Motion for Default Order in accordance with 33 C.F.R. § 20.304(d), and that more than thirty (30) days have passed since service of the Order to Show Cause, in keeping with 33 C.F.R. § 20.705. Respondent has failed to show good cause for his failure to appear at the March 7, 2019 hearing. Accordingly, the undersigned ALJ finds

Respondent 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. The undersigned ALJ has carefully considered the Motion for Default Order, and the record as a whole, and finds that the proposed sanction of revocation is appropriate under 46 C.F.R. § 5.569.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED, Respondent is in **DEFAULT**.

IT IS FURTHER ORDERED, the factual allegations of Charge 1 of the Complaint, to wit, conviction under the National Driver Register Act, 46 U.S.C. § 7703(3), are **PROVED**.

IT IS FURTHER ORDERED, the factual allegations of Charge 2 of the Complaint, to wit, conviction under the National Driver Register Act, 46 U.S.C. § 7703(3), are **PROVED**.

IT IS FURTHER ORDERED that Respondent's merchant mariner credentials are **REVOKED**. Respondent must immediately surrender his credentials to the Coast Guard. If Respondent knowingly continues to use his credentials, he may be subject to criminal prosecution.

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. Respondent may file a motion to set aside the default with the ALJ Docketing Center, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202; further, the parties have the right to appeal as set forth in 33 C.F.R. Subpart J (Attachment A).

_____/s/_____ Michael J. Devine Administrative Law Judge United States Coast Guard Date: <input type="text" value="April 17, 2019"/>

Attachment A

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.