

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD**

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**UNITED STATES COAST GUARD,**

Complainant,

vs.

**SCOTT FERGASON,**

Respondent.

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Docket Number 2023-0002  
Enforcement Activity No. 7542637

**DEFAULT ORDER**

**Issued: May 1, 2023**

**By Administrative Law Judge: Honorable Timothy G. Stueve**

**Appearances:**

**Eric Bauer  
USCG S&R National Center of Expertise**

**For the Coast Guard**

**Scott Ferguson, pro se**

**For Respondent**

### **Background**

On January 5, 2023, the Coast Guard filed a Complaint against Scott Ferguson (Respondent). The Amended Return of Service for Complaint filed by the Coast Guard<sup>1</sup> indicates the Complaint was delivered to Respondent's residence by Express Courier Service and signed for by a person of suitable age and discretion residing at the residence on January 27, 2023 (Attachment A).

On February 23, 2023, the Coast Guard filed a Motion for Default Order (Motion), explaining Respondent failed to file an Answer, and the response time has passed. See 33 C.F.R. § 20.308. The Return of Service for Motion for Default states the Motion was delivered to Respondent's residence by Federal Express and signed for by a person of suitable age and discretion residing at the residence on March 16, 2023 (Attachment B). The Chief Administrative Law Judge assigned the matter to me on April 17, 2023.

### **Discussion**

The applicable regulations require a respondent to "file a written answer to the complaint 20 days or less after service of the complaint." 33 C.F.R. § 20.308(a). An administrative law judge (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).

The Complaint filed by the Coast Guard and properly served on Respondent contained instructions that clearly stated "YOU MUST RESPOND TO THIS COMPLAINT WITHIN 20

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<sup>1</sup> I note that in their filings the Coast Guard repeatedly indicates that Respondent's address is on Flower Street. However, it appears that this is a typographical error and that it should read as Fowler Street, matching the delivery locations listed on the Federal Express receipts.

DAYS” and provided the applicable regulatory provision, 33 C.F.R. § 20.308. The instructions also informed Respondent an extension of time could be requested “within 20 days” of receipt. Respondent failed to respond to the Complaint or the Motion for Default Order.

Accordingly, I find Respondent in default pursuant to 33 C.F.R. § 20.310(a). Default constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. 33 C.F.R. § 20.310(c). See Appeal Decision 2682 (REEVES) (2008).

Turning to the allegations in the Complaint, the Coast Guard alleges on June 20, 2022, the Transportation Security Administration (TSA) determined Respondent does not meet the security threat assessment standards described in 49 C.F.R. § 1572.5, poses an imminent security threat in accordance with 49 C.F.R. § 1572.21(d)(3), and revoked Respondent’s TWIC in accordance with 49 C.F.R. § 1572.5(b). As a result of TSA’s actions, the Coast Guard asserts Respondent is a security risk as described by 46 U.S.C. § 7703(5).

Having concluded Respondent admitted TSA revoked his TWIC, and all other facts in the Complaint, I agree TSA’s determination that Respondent is not eligible to hold a TWIC is proof that a mariner is not eligible to hold an MMC. See 46 C.F.R. §§ 10.235(h) and 10.235(i). Based on these admissions, I find these facts as admitted are legally sufficient to find the single charge that Respondent is a security risk as described in 46 U.S.C. § 7703(5) **PROVED**. Id.

I find the facts alleged in the Complaint sufficient to warrant the suggested sanction of **REVOCATION**. See 46 C.F.R. §§ 10.235(h) and 10.235(i).

**WHEREFORE,**

**ORDER**

Upon consideration of the record, I find Respondent in **DEFAULT**.

**IT IS HEREBY ORDERED**, in accordance with 33 C.F.R. § 20.310, I find the allegations set forth in the Complaint **PROVED**.

**IT IS FURTHER ORDERED**, all of Respondent's Coast Guard issued credentials, including Respondent's Merchant Mariner Credential (MMC), are **REVOKED**.

**IT IS FURTHER ORDERED**, Respondent shall immediately deliver all Coast Guard issued credentials, licenses, certificates, or documents, including the MMC, by mail, courier service, or in person to: 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 the Coast Guard issued MMC, 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 the 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 C).

**SO ORDERED.**



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Timothy G. Stueve  
Administrative Law Judge  
U.S. Coast Guard

Done and dated May 1, 2023, at  
Alameda, California