

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

UNITED STATES COAST GUARD,

Complainant,

vs.

BREON DOMMINICK WILLIAMS,

Respondent,

**Docket Number 2023-0249
Enforcement Activity Number 7713445**

DEFAULT DECISION

Issued: January 10, 2024

By: George J. Jordan, Administrative Law Judge

Appearances:

**Shawn Merrick
USCG Civilian
For the Coast Guard**

**Breon Domminick Williams, *Pro se*
For the Respondent**

This matter comes before me based on the United States Coast Guard's (Coast Guard) Amended Complaint. As of the date of this order, Breon Dominick Williams (Respondent) has not responded to the Amended Complaint nor the previously denied Motion for Default. Upon review of the record and pertinent authority, the allegations in the Amended Complaint are **PROVED**.

On or about July 5, 2023, the Coast Guard issued a Complaint against Respondent seeking to revoke his Merchant Mariner Credential (MMC) for refusal to take a required drug test in violation of 46 U.S.C. § 7703(1)(B) and 46 C.F.R. § 5.27. Specifically, the Coast Guard alleges Respondent departed the testing facility prior to the completion of a direct observation collection.

The Coast Guard served the Complaint on Respondent. Respondent never filed an answer to the Complaint. On August 7, 2023, the Coast Guard then filed a Motion for Default serving Respondent. Since I found the allegations in the Complaint insufficient, I denied the Motion for Default and issued an order requiring the Coast Guard to amend the Complaint. [Order Denying Mot. for Default Order at 6].

The Coast Guard then amended the Complaint and included sufficient factual allegations to support the alleged offense of misconduct and served Respondent. 33 C.F.R. § 20.307(a)-(b); Appeal Decision 2708 (SOLOMON) (2015). Respondent's answer to the Amended Complaint was due no later than November 7, 2023. To date, more than twenty days have passed from service of the Amended Complaint and Respondent has neither filed an answer nor requested an extension of time to file an answer. 33 C.F.R. § 20.310(a); Appeal Decision 2700 (THOMAS) (2012).

As Respondent has not filed an answer nor asserted good cause for not filing an answer, I find Respondent in **DEFAULT**. A default constitutes an admission of all facts alleged in the Amended Complaint and waiver of the right to hearing on those facts. 33 C.F.R. § 20.310(c). Upon finding Respondent in default, I must now issue a decision. 33 C.F.R. § 20.310(d).

Upon review of the record, I find that the facts deemed admitted are sufficient to establish that Respondent committed misconduct as described in 46 U.S.C. § 7703(1)(b), 46 C.F.R. § 5.27, 49 C.F.R. § 40.191(a)(2), (a)(6), and as interpreted by Appeal Decisions 2690 (THOMAS) and 2685 (MATT) (2010). I find the Coast Guard **PROVED** the following allegations:

1. On 02/15/2023, Respondent took a required Pre-employment drug test pursuant to 46 C.F.R. Part 16.
2. Respondent reported to West Jefferson Industrial Medicine, L.L.C., where Deanna Greenberg initiated the collection process and collected initial specimen under Specimen ID# 2072493203, in accordance with 49 C.F.R. § 40.63.
3. Prior to the completion of the collection process, as described by 49 C.F.R. § 40.73(a)(7), Respondent was found in possession of urine substitute device and was ordered to take a direct observation drug test per 49 C.F.R. § 40.67(c)(2).
4. Respondent departed the testing facility prior to the completion of the direct observation collection. Respondent's failure to remain at the urine collection site is a refusal to take a required drug test pursuant to 46 C.F.R. Part 16, as described by 49 C.F.R. § 40.191(a)(2).
5. Refusal to take a required 46 CFR Part 16 drug test is Misconduct as described by 46 U.S.C. § 7703(1)(B) and defined by 46 C.F.R. § 5.27.

SANCTION

Having found Respondent in default and all of the allegations in the Amended Complaint proved, I now must determine the appropriate sanction. 33 C.F.R. §

20.902(a)(2). It is within the sole discretion of the Administrative Law Judge (ALJ) to determine the appropriate sanction at the conclusion of the case. Appeal Decision 2362 (ARNOLD) (1984). Title 49 C.F.R. § 5.569 contains the Table of Suggested Range of Appropriate Orders (Table) for various offenses. The purpose of this Table is to provide guidance to the ALJ and promote uniformity in orders rendered. Appeal Decision 2628 (VILAS) (2022), aff'd NTSB Docket ME-174. However, this Table is not binding on an ALJ and either aggravating or mitigating circumstances may support a sanction different from the Table. 46 C.F.R. § 5.569(b)(3).

The Coast Guard proved Respondent committed misconduct by refusing a drug test. The correlating sanction in the Table is outright suspension of 12-24 months. 46 C.F.R. § 5.569(d) tbl. 5.569. When selecting an appropriate sanction from the Table I can consider aggravating and mitigating factors.

Here, the Coast Guard is seeking a sanction of revocation. Since revocation is above the suggested sanction in the Table, I must determine if there are any aggravating facts admitted. When a sanction departs from the guidance set forth in the Table there must be “a clearly articulated explanation of aggravating factors.” Appeal Decision 2455 (WARDELL) (1987), aff'd, Commandant v. Wardell, NTSB Order EM-149 (1988); Appeal Decision 2702 (CARROLL) (2013) (quoting Commandant v. Moore, NTSB Order No. EM-201 (2005)).

A sanction of revocation can be appropriate in refusal-to-test cases. In a similar refusal-to-test case involving urine substitution the Vice Commandant upheld a sanction of revocation where the respondent’s provision of a substituted specimen was a deceptive

act meant to subvert the intent of the drug testing regulations. Appeal Decision 2694 (LANGLEY) (2010).

The Coast Guard provided in the Amended Complaint an aggravating factor that Respondent's possession of a urine substitute device was a deliberate attempt to frustrate the integrity of the drug testing program. I find this to be an aggravating factor. Based on the admitted factual allegations in this matter Respondent did not simply refuse a 46 C.F.R. Part 16 drug test, but during collection of the initial specimen Respondent was found in possession of a urine substitute device and then departed the collection facility prior to completion of the subsequent direct observation test. Like in Langley, these actions demonstrate Respondent's intention to subvert the drug testing scheme thereby increasing the risk of an impaired mariner serving in a safety sensitive position. Id. See Appeal Decision 2702 (CARROLL); Appeal Decision 2455 (WARDELL). This clearly goes against the purpose of suspension and revocation proceedings "to promote, foster, and maintain the safety of life and property at sea." See Appeal Decision 2708 (SOLOMON). Therefore, this aggravating factor supports a sanction exceeding the penalty range contained in the Table.

WHEREFORE

ORDER

IT IS HEREBY ORDERED, all of Respondent's Coast Guard issued credentials, including Respondent's MMC, are **REVOKED**.


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 21202-4022.

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).

IT IS SO ORDERED

Done and dated January 10, 2024,
Seattle, WA



HON. GEORGE J. JORDAN
ADMINISTRATIVE LAW JUDGE
UNITED STATES COAST GUARD