

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

UNITED STATES COAST GUARD,

Complainant,

vs.

WESLEY MORRIS THOMPSON,

Respondent.

Docket Number 2023-0361
Enforcement Activity No. 7796621

DEFAULT ORDER

Issued: January 3, 2024

By Administrative Law Judge: Honorable Timothy G. Stueve

Appearances:

**CWO Wayne Bush
USCG Sector Key West**

For the Coast Guard

Wesley Morris Thompson, pro se

For Respondent

Background

On or about October 24, 2023, the Coast Guard filed a Complaint against Wesley Morris Thompson (Respondent) alleging one count of use of, or addiction to the use of dangerous drugs. The Return of Service for Complaint filed by the Coast Guard indicates the Complaint was delivered to Respondent's residence by Federal Express and signed for by a person of suitable age and discretion residing at that residence, on October 26, 2023 (Attachment A)¹.

On November 20, 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 indicates the Motion was delivered to Respondent's residence by Federal Express and signed for by Respondent on December 1, 2023 (Attachment B)². The Chief Administrative Law Judge assigned the matter to the undersigned on December 28, 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).

¹ The Coast Guard's Return of Service for the Complaint does not indicate the person that signed for receipt of the document. However, the Fedex proof of service attached to the Return of Service for the Complaint shows that "C. Frankovich" signed for the document.

² The Fedex Proof of Service attached to the Return of Service for the Motion for Default Order indicates that "W. Wesley" signed for the document.

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 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, the undersigned finds 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).

As to the charge of use of, or addiction to the use of dangerous drugs, the Complaint alleges on August 28, 2023, Respondent took a required pre-employment drug test pursuant to 46 C.F.R. Part 16, and tested positive for cocaine metabolites. See 46 U.S.C. § 7704(b).

The factual allegations in the pleadings are legally sufficient to find the charge of use of, or addiction to the use of dangerous drugs **PROVED**. Id.

The undersigned finds the facts alleged in the Complaint sufficient to warrant the suggested sanction of **REVOCATION**. See 46 C.F.R. § 5.569.

WHEREFORE,

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 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: U.S. Coast Guard Sector Key West, 100 Trumbo Point Road, Key West, FL 33040. 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.



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

Done and dated January 3, 2024, at
Alameda, California

ATTACHMENT C

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.