

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

UNITED STATES COAST GUARD,

Complainant,

vs.

RAY CLIFTON JORDAN, JR.,

Respondent,

**Docket Number 2024-0244
Enforcement Activity Number 7871817**

DEFAULT DECISION

Issued: August 27, 2024

By: George J. Jordan, Administrative Law Judge

Appearances:

**Paul S. Taylor
Investigating Officer
Sector San Francisco
For the Coast Guard**

**Ray Clifton Jordan Jr., *Pro se*
For the Respondent**

This matter comes before me based on the United States Coast Guard's (Coast Guard) Motion for Default Order (Motion for Default). As of the date of this order, Ray Clifton Jordan Jr., (Respondent) has not replied to the Complaint nor the Motion for Default. Upon review of the record and pertinent authority, the allegations in the Complaint are **PROVED**.

On May 1, 2024, the Coast Guard issued a Complaint against Respondent seeking six (6) months outright suspension of his Merchant Mariner Credential (MMC), for having committed sexual harassment, prohibited by 46 U.S.C. § 7704a(a) and defined in 46 U.S.C. § 2101(46)(C). On May 7, 2024, the Coast Guard served the Complaint on Respondent via express courier. Respondent never answered the Complaint. On June 5, 2024, the Coast Guard then filed a Motion for Default serving Respondent by express courier on June 26, 2024. To date, more than twenty days, Respondent has neither filed an answer nor requested an extension of time to file an answer. 33 C.F.R. § 20.308(a).

As Respondent has neither filed an answer nor asserted good cause for failing to do so, I find Respondent in **DEFAULT**. 33 C.F.R. § 20.310(a); Appeal Decision 2700 (THOMAS) (2012). A default constitutes an admission of all facts alleged in the Complaint and waiver of the right to hearing on those facts. 33 C.F.R. § 20.310(c). I find the following factual allegations in the Complaint **ADMITTED**:

1. On January 2, 2024, Respondent was employed by State of Alaska, Department of Transportation, Alaska Highway System and assigned as an Oiler to a U.S. Flagged inspected passenger vessel KENNICOTT (1063644).
2. On January 2, 2024, while on watch in the Engine Control Room aboard the KENNICOTT (1063644) Respondent said to the 2nd Assistant Engineer, "I just want you to know that I would fuck the shit out of you."
3. On January 2, 2024, Respondent's comment towards the 2nd Assistant Engineer was and intentional unwelcome comment of a sexual nature directed toward another credentialed mariner aboard a vessel.

I do not find the fourth factual allegation in the Complaint admitted. This results from my conclusion that the Coast Guard cannot make the required ‘official finding’ that sexual harassment occurred necessary for 46 U.S.C. § 7704a(a) to act as the basis for suspension and revocation. 46 U.S.C. § 7704a(c)(1)(B). Nothing in the regulations concerning Coast Guard investigations require either affording respondents “appropriate due process rights” during the investigation nor concluding the evidence uncovered during that investigation supports a finding of sexual harassment “by a preponderance of the evidence”. Id.; 46 C.F.R. Part 5. Therefore, I cannot find Respondent violated 46 U.S.C. § 7704a(a) in this case.

Even so, I may make findings that lead to the suspension or revocation of an MMC not limited to the contents of the complaint as long as the respondent has notice and opportunity to litigate these findings. Kuhn v. Civ. Aeronautics Bd., 183 F.2d 839, 841 (D.C. Cir. 1950); Appeal Decision 2613 (SLACK) (1999); Appeal Decision 2209 (SIEGELMAN) (1980). The Commandant permits such findings even in default cases if the finding made by the Administrative Law Judge (ALJ) has commonalty with the allegations contained in the Complaint. Appeal Decision 2142 (MALCOLM) (1978).

In this matter I find sufficient commonalty between the basis for suspension or revocation of sexual harassment in 46 U.S.C. § 7704a(a) and misconduct in 46 U.S.C. § 7703(1)(B). An act of misconduct under 46 U.S.C. § 7703(1)(B) is behavior violating “some formal, duly established rule.” 46 C.F.R. § 5.27. Duly established rules can be statutes, regulations, or originating in the common law, maritime law, shipping articles, a ship’s regulation or order, orders of the master, orders of ship officers’, and shipping company policies. Id.; Appeal Decision 1857 (POUTER) (1971); Appeal Decision 1567 (CASTRO) (1966). The U.S. Code and the Code of Federal Regulations prohibit sexual harassment. 42 U.S.C. Ch. 164; 29 C.F.R. § 1604.11(a). What constitutes sexual harassment as specifically applicable to the merchant

marine industry is found at 46 U.S.C. § 2101(46). Thereby, an individual acting under the authority of a Coast Guard issued MMC commits misconduct under 46 U.S.C. § 7704(1)(B) by performing any of the conduct outlined in 46 U.S.C. § 2101(46).

Thus, in this case Respondent's conduct in the three admitted allegations need only fit within what is outlined in 46 U.S.C. § 2101(46) as sexual harassment for it to violate 42 U.S.C. Ch. 164 and 29 C.F.R. § 1604.11(a), two duly established rules. The only modifications of the Complaint needed are the removal of 46 U.S.C. § 7704a(a) and the insertion of 42 U.S.C. Ch. 164 and 29 C.F.R. § 1604.11(a) all in factual allegation four while also adding a new allegation referencing misconduct described in 46 U.S.C. § 7703(1)(b). Respondent's alleged and admitted conduct remains the same as well as what constitutes sexual harassment with the only change being the substitution of the statute of violation and adding misconduct as the basis for suspension or revocation. Therefore, sufficient commonalty exists between what was alleged in the Complaint and the new findings not in the Complaint, thereby not raising an issue of notice and opportunity to litigate the new findings. Consequently, I find **ADMITTED**:

4. Respondent's comment toward the 2nd Assistant Engineer, is an act of sexual harassment as defined in 46 U.S.C. § 2101(46)(C) in violation of 42 U.S.C. Ch. 164 and 29 C.F.R. § 1604.11(a).
5. Violation of 42 U.S.C. Ch. 164 or 29 C.F.R. § 1604.11(a) is misconduct as described by 46 U.S.C. § 7703(1)(B) and defined by 46 C.F.R. § 5.27.

Upon finding Respondent in default, I must now issue a decision against him. 33 C.F.R. § 20.310(d). In reviewing the record, I find that the facts deemed admitted are sufficient to establish that Respondent committed sexual harassment as defined by 46 U.S.C. § 2101(46)(C) in violation of 42 U.S.C. Ch. 164 and 29 C.F.R. § 1604.11(a) constituting misconduct under 46 U.S.C. § 7704(1)(B).

SANCTION

Having found Respondent in default and all allegations in the 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 ALJ to determine the appropriate sanction at the conclusion of a case. Appeal Decision 2362 (ARNOLD) (1984). The Table of Suggested Range of Appropriate Orders (Table) provides sanction ranges for various offenses. 46 C.F.R. § 5.569 tbl. 5.569. 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 Order No. ME-174. A sanction ordered within the range specified in the Table is not excessive. 46 C.F.R. § 5.569(d).

However, this Table is not binding on an ALJ and both 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 violating a statute or regulation. The sanction range in the Table for violations of U.S. laws or regulations under misconduct is 1-3 months outright suspension. 46 C.F.R. § 5.569 tbl. 5.569.

In this case, the Coast Guard is seeking a sanction of six months outright suspension. In order to assess a sanction greater than the sanction range in the table a clearly articulated explanation of the aggravating factors must support it. Appeal Decision 2702 (CARROLL) (2013) (quoting Commandant v. Moore, NTSB Order No. EM-201 (2005)); Appeal Decision 2455 (WARDELL) (1987), aff'd, NTSB Order No. EM-149 (1988).

In this case I find Respondent's complete lack of engagement in these proceedings aggravating. Despite physically receiving both the Complaint and Motion for Default Order Respondent has not made one responsive filing in this matter. Return of Service for Compl., 2, May 8, 2024; Return of Service for Mot. for Default Order, 2, Jul. 2, 2024 (both filings appear to have been signed for by Respondent). Additionally, the intentional and rather vulgar nature of

the comment toward the 2nd Assistant Engineer, a ship officer, warrants aggravation of the sanction as well. Accordingly, I find these two factors appropriately aggravating to merit a sanction of six months outright suspension.

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 **SUSPENDED OUTRIGHT FOR SIX (6) MONTHS**.


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: Paul Taylor, Investigating Officer, United States Coast Guard, Sector San Francisco, Yerba Buena Road Bldg. 26, San Francisco, CA 94130-1527. 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 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).

SO ORDERED.

Done and dated, August 27, 2024,
Seattle, Washington

A handwritten signature in blue ink, appearing to read "George J. Jordan", is written over a solid black horizontal line.

George J. Jordan
Administrative Law Judge
United States Coast Guard