

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

UNITED STATES COAST GUARD,
Complainant,

v.

DERRICK DEMARCUS JORDAN
Respondent.

DOCKET NO: 2024-0258
MISLE ACTIVITY ID. 7897120

HONORABLE GEORGE J. JORDAN
ADMINISTRATIVE LAW JUDGE

RECONSIDERED ORDER ON THE MOTION FOR DEFAULT ORDER

This matter comes before me on reconsideration of the United States Coast Guard’s (Coast Guard) Motion for Default Order (Motion for Default). I previously denied the Motion for Default. However, after considering the entire record, including evidence in the record brought to light by the Coast Guard at the May 22, 2025, status conference, I **VACATE** the prior order on the Coast Guard’s Motion for Default. Instead, I **GRANT** Coast Guard’s motion based on the reasons set forth below.

I. PROCEDURAL HISTORY

On May 15, 2024, the Coast Guard filed a Complaint against Respondent seeking to revoke his Merchant Mariner Credential (MMC) for misconduct in violation of 46 U.S.C. § 7703(1)(B), as defined by 46 C.F.R. 5.27. Specifically, Respondent was found in possession of a prosthetic or other device during the collection process of a pre-employment drug test. The Coast Guard filed the return of service for the Complaint on July 29, 2024, indicating it served a copy of the Complaint upon the Respondent at his residence by express courier service signed for by the Respondent.

On August 14, 2024, the Coast Guard then filed a Motion for Default. While the November 19, 2024, Return of Service for Motion for Default states a copy of the motion was

served upon the Respondent by express courier on November 8, 2024, the attached proof of delivery details indicate it was delivered to and signed for by “S. Silko” in Mobile, Alabama. Whereas Respondent’s residential address in the record is in Prichard, Alabama.

Subsequently, the Coast Guard filed an Amended Return of Service for the Motion for Default (Amended Return of Service) on December 18, 2024, showing the Coast Guard attempted to serve the Respondent with a copy of the Motion for Default at his place of residence via express courier service, FedEx in this case, on October 17, 2024, and October 18, 2024.

The Amended Return of Service also shows “Adult Signature Required” as the signature service for this delivery. This particular signature service requires a signature by a person of the age of majority in order to deliver the shipment. *FedEx signature requirements and delivery options*, FEDEX, <https://www.fedex.com/en-us/delivery-options/signature-services.html> (last visited Jun. 27, 2025). If no adults are present to sign for the shipment FedEx will not deliver it. Id. Instead, they will re-attempt delivery at another time. Id. But, before departing FedEx will affix a door tag notifying the intended recipient of FedEx’s inability to deliver the shipment and instructions on if and when FedEx will re-attempt delivery. Id.; *I got a FedEx door tag, now what?*, FEDEX, <https://www.fedex.com/en-us/delivery-manager/door-tag.html> (last visited Jun. 27, 2025). The door tag also contains information on how a recipient can contact FedEx for information on the delivery. Id. FedEx will then attempt to re-deliver the shipment or hold it at a nearby facility for the recipient to claim. *FedEx signature requirements and delivery options*, supra.

In this case, since neither Respondent nor a person of suitable age and discretion residing at his residence was present to accept and sign for the deliveries, the package was returned to the

FedEx facility. The Motion for Default was then returned to Coast Guard Sector Mobile on October 22, 2024.

On March 11, 2025, I denied the Motion for Default finding the Coast Guard failed to complete service of the motion. After the denial and with no action taken by the Coast Guard to rectify the incomplete service I called a status conference for May 22, 2025, to discuss the service of documents in this matter.¹ At the status conference the Coast Guard noted the signature service on the delivery of the Motion for Default as well as the standard procedures corresponding to it noted above. Respondent failed to appear at the conference.

II. RECONSIDERATION OF THE MOTION FOR DEFAULT

In light of the updated understanding of FedEx's standard procedures associated with Adult Signature Required signature service and based on the whole record I reconsider the Motion for Default. *Sua sponte* reconsideration is permitted in suspension and revocation cases. Appeal Decision 2172 (CHAPMAN) (1979); Appeal Decision 2626 (DRESSER) (2001) (implicitly condoning *sua sponte* reconsideration in the adjudication of whether the Administrative Law Judge (ALJ) should have *sua sponte* reconsidered respondent's motion to disqualify him for bias when the Commandant only considered whether the ALJ was in fact biased).

III. SERVICE OF THE MOTION FOR DEFAULT

One of the approved methods of service in suspension and revocation cases is by express courier service. 33 C.F.R. § 20.304(d)-tbl. 1 to § 20.304(d). When the Coast Guard uses express courier service, as it did in this case, to serve a motion for default service of the motion is completed when either: (1) delivered to the respondent's residence and signed for by a person of

¹ Respondent expressly assented to the time and date of the status conference in an e-mail to my staff and notice of this conference was subsequently served on Respondent. Status Conference Scheduling Order, May 19, 2025.

suitable age and discretion residing therein, or (2) delivered to the respondent's office during business hours and signed for by a person of suitable age and discretion. 33 C.F.R. § 20.304(g)-tbl. 1 to § 20.304(g). In the event the express courier cannot complete service of a motion for default by delivering it to the respondent's residence or office the Coast Guard can still demonstrate completion of service by showing respondent either refused to accept delivery or failed to accept a properly addressed document. 33 C.F.R. § 20.304(h).

In this matter the record shows the Coast Guard completed service of the Motion for Default. First, FedEx attempted delivery of the motion at Respondent's residence, but no person of suitable age and discretion was present to sign for it. When no adult was present, due to the signature service of the shipment, FedEx's policy required leaving a door tag specifying the time and date of a future delivery attempt or the location of the FedEx facility the Respondent could claim the shipment at. *FedEx signature requirements and delivery options, I got a FedEx door tag, now what?*, supra. Additionally, the door tag contains information Respondent could have used to contact FedEx in order to claim the Motion for Default. *I got a FedEx door tag, now what?*, supra. As Respondent both failed to claim the Motion of Default at the FedEx facility nor contact FedEx in an attempt to obtain it, I find Respondent failed to claim the motion under 33 C.F.R. § 20.304(h). Therefore, the Coast Guard completed service of the Motion for Default.

IV. DEFAULT

To date, more than twenty days have passed from the service of the Motion for Default, and Respondent has neither filed an answer nor requested an extension of time to file an answer. 33 C.F.R. § 20.308(a). Since 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

a waiver of the right to a hearing on those facts. 33 C.F.R. § 20.310(c). Therefore, I find the following factual allegations in the Complaint **ADMITTED**:

1. On December 8, 2023, Respondent took a required pre-employment drug test in accordance with Civilian Marine Personnel Instruction 792, pursuant to Executive Order 12564 and Public Law 100-71.
2. Respondent reported to the Occupational Health Center, Mobile, Alabama, where Chad Nelson initiated the collection process by completing step 1 of the Federal Drug Testing Custody and Control Form for Specimen ID #7940149897 in accordance with Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs (DHHS Mandatory Guidelines).
3. Prior to completion of the collection process, as described by 49 C.F.R. § 40.79(a)(7), Respondent was found in possession of a prosthetic or other device that could be used to interfere with the collection process.
4. Respondent's possession of a prosthetic or other device that could be used to interfere with the collection process is a refusal to take a required drug test pursuant to DHHS Mandatory Guidelines Section 1.7(a)(12).
5. Refusal to take a required drug test is misconduct as described by 46 U.S.C. § 7703(1)(B) and defined in 46 C.F.R. § 5.27.
6. In aggravation, Respondent's possession of a prosthetic device was an intentional act to circumvent the drug testing process and undermine safety at sea.

Upon finding the 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 Respondent committed misconduct under 46 U.S.C. § 7703(1)(B) by refusing a drug test. Appeal Decision 2556 (LINTON) (1994); Appeal Decision 2633 (MERRILL) (2002); Appeal Decision 2704 (FRANKS) (2014); 49 C.F.R. § 40.191(a)(10); 46 C.F.R. § 5.27.

V. SANCTION

Having found Respondent in default and all the allegations in the Complaint proved, I must now determine the appropriate sanction. 33 C.F.R. § 20.902(a)(2). It is within the sole discretion of the Administrative Law Judge to determine the appropriate sanction at the

conclusion of a case. Appeal Decision 2362 (ARNOLD) (1984). Even so, 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 the 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).

Moreover, an ALJ can consider aggravating or mitigating circumstances to support a sanction different from the Table. 46 C.F.R. § 5.569(b)(3). To assess a sanction greater than the sanction range 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). Additionally, acts or offenses outlined in 46 C.F.R. § 5.61 may warrant revocation. In particular, when they indicate the respondent presents a threat to the safety of life or property, or detrimental to good discipline. 46 C.F.R. § 5.61(b).

In this case, the Coast Guard proved Respondent committed misconduct by refusing a drug test. The Table provides a sanction range of 12 to 24 months outright suspension for this. 46 C.F.R. § 5.569 tbl. 5.569. Additionally, I find it aggravating Respondent attempted to circumvent the drug testing requirements through the use of a prosthetic. These drug testing requirements aim to prevent drug use at sea. Thus, subversion of them constitutes a threat to the safety of life at sea. Thus, I find the admitted allegations sufficiently aggravating to merit the sanction of revocation.

WHEREFORE,

ORDER

Upon consideration of the record, I **VACATE** my Order on the Coast Guard's **Motion for Default** dated **March 11, 2025**.

IT IS HEREBY ORDERED, I find Respondent in **DEFAULT**.

IT IS FURTHER 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, license, certificates, or documents, including MMC [REDACTED], by mail, courier service, or in person to: LT Dean Epps, Investigating Officer, United States Coast Guard, Sector Mobile, 1500 15th Street, Mobile, AL 36615. 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.**

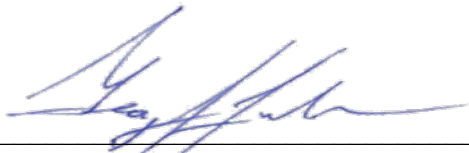
IT IS FURTHER ORDERED, pursuant to 33 C.F.R. § 20.310(e), for good cause shown, an ALJ may set aside a finding of default. A motion to set aside a finding of default may be filed with the ALJ Docketing Center in Baltimore. The motion may be sent to the U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21202-4022.

PLEASE TAKE NOTICE, within three (3) years or less, Respondent may file a motion to reopen this matter and seek modification of the order of revocation upon a showing that the order of revocation is no longer valid, and the issuance of a new license, certificate, or document

is compatible with the requirement of good discipline and safety at sea. See generally 33 C.F.R. § 20.904.

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).

Done and dated, July 2, 2025,
Seattle, Washington

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

GEORGE J. JORDAN
UNITED STATES COAST GUARD
ADMINISTRATIVE LAW JUDGE