

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

UNITED STATES COAST GUARD,
Complainant,

v.

JAIRO JACOB ROCHEZ,
Respondent.

DOCKET NO: 2025-0038
MISLE ACTIVITY ID. 8063345

HONORABLE GEORGE J. JORDAN
ADMINISTRATIVE LAW JUDGE

DEFAULT ORDER

This matter comes before me on the United States Coast Guard's (Coast Guard) Motion for Default Order (Motion for Default). As of the date of this order, Jairo Jacob Rochez (Respondent) has not replied to the Complaint nor the Motion for Default. Upon review of the record and pertinent authority, the Coast Guard's Motion for Default is **GRANTED**.

On January 23, 2025, the Coast Guard filed a Complaint alleging Respondent committed misconduct under 46 U.S.C. § 7703(1)(B). The jurisdictional allegations in the Complaint provide Respondent is the holder of Merchant Mariner Credential (MMC) [REDACTED]. The evidence of delivery filed by the Coast Guard with the Return of Service for the Complaint, provides FedEx delivered the Complaint to Respondent's residence by express courier service and signed for by Respondent on January 30, 2025.

Then on March 18, 2025, the Coast Guard filed a Motion for Default Order, as Respondent failed to timely file an Answer. The Return of Service for the Motion for Default Order provides FedEx delivered the motion to Respondent's residence and Respondent signed for it on March 18, 2025.

Discussion

The 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...” 33 C.F.R. § 20.310(a). Default constitutes an admission of all facts alleged in a complaint and a waiver of a respondent’s right to a hearing on those facts. 33 C.F.R. § 20.310(c). See Appeal Decision 2682 (REEVES) (2008). Moreover, 33 C.F.R. § 20.310 also provides “the respondent alleged to be in default shall file a reply to the motion [for default] 20 days or less after service of the motion.”

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 he could request an extension of time “within 20 days” of receipt. Respondent failed to file an answer to the Complaint or request an extension of time. Additionally, Respondent failed to respond to the properly served Motion for Default.

Accordingly, I find Respondent is 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 on those issues. 33 C.F.R. § 20.310(d). As a result, the following allegations are

ADMITTED:

1. On September 7, 2024, Respondent was employed by Maersk Line, Limited and subject to Maersk Line, Limited’s policies.
2. On September 7, 2024, Maersk Line, Limited had a policy prohibiting employees from having a blood alcohol concentration (BAC) greater than 0.04, while onboard a company vessel.

3. On September 7, 2024, Respondent had a BAC greater than 0.04 while onboard a company vessel, in violation of section 2.d of Maersk Line, Limited's Drug and Alcohol Policy.
4. Respondent's violation of Maersk Line, Limited's Drug and Alcohol Policy is misconduct, as described by 46 U.S.C. § 7703(1)(B) and defined by 46 C.F.R. § 5.27.
5. In aggravation, the test produced a BAC of .242.

Upon review of the record, I find that the deemed admitted facts sufficient to establish Respondent committed misconduct as described by 46 U.S.C. § 7703(1)(B). Accordingly, I find the allegations set forth in the Complaint **PROVED**.

Sanction

An ALJ has exclusive discretion and authority to select a sanction. Appeal Decision 2362 (ARNOLD) (1984). Even so, the Suggested Range of an Appropriate Order Table (Table) can guide an ALJ and encourages uniformity of orders. 46 C.F.R. § 5.569(d). Selection of a sanction range enumerated in the Table prevents finding a sanction excessive. 46 C.F.R. § 5.569(d). If a sanction departs from the Table a clearly articulated explanation of aggravating or mitigating factors is required. Appeal Decision 2455 (WARDELL) (1987), *aff'd*, NTSB Order No. EM-149 (1988); Appeal Decision 2702 (CARROLL) (2013) (quoting Moore, NTSB Order No. EM-201).

The Table does not specify a sanction for the violation of a company policy such as the Maersk Line Limited policy in this case. 46 C.F.R. § 5.569 tbl. 5.569. However, violations of company policy have been analogized to a lawful order of a master in some cases. Appeal Decision 2723 (BOUDREAUX) (2019); Appeal Decision 1567 (CASTRO) (1966). Therefore, the most applicable sanction range in the Table for violation of a company policy, such as the Maersk Line Limited's policy in this case, is "Failure to obey [a] master's/ship officer's order."

46 C.F.R. § 5.569 tbl. 5.569. This specifies a sanction range of one to three months outright suspension. Id.

Based on Respondent's exceedingly high BAC when he contravened the Company policy, I levy a four-month outright suspension. Respondent's BAC of 0.242 was six times the limit of Maersk's company policy and three times the limit for finding a person under the influence while driving. *Alcohol Impaired Driving*, GOVERNORS HIGHWAY SAFETY ASS'N, <https://www.ghsa.org/state-laws-issues/alcohol-impaired-driving#:~:text=All%20states%20but%20Utah%20define,substantially%20from%20state%20to%20state>. (Mar. 2024) (all states but Utah define driving with a BAC at or above 0.08 as a crime). This warrants a sanction beyond the range in the Table associated with violations of company policy.

Moreover, the Motion for Default requested revocation. However, the Complaint only sought a four-month outright suspension. I am considering the sanction requested in the motion to be a scrivener's error and believe the Coast Guard was seeking a four-month suspension. Considering Respondent's excessive intoxication, his failure to participate in these proceedings, I find the Coast Guard's initial sanction request appropriate and accordingly, I order a sanction of **FOUR (4) 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 FOUR (4) 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: CWO4 Kimberly Mclean, United States Sector Houston/Galveston, 13411 Hillard Street, Houston, TX 77034. 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, May 14, 2025,
Seattle, Washington



GEORGE J. JORDAN
UNITED STATES COAST GUARD
ADMINISTRATIVE LAW JUDGE