

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

UNITED STATES COAST GUARD,

Complainant,

vs.

FRED ANTHONY LEON GUERRERO GUZMAN,

Respondent,

**Docket Number 2024-0022
Enforcement Activity Number 7832978**

DEFAULT ORDER

Issued: March 14, 2025

By: George J. Jordan, Administrative Law Judge

Appearances:

**Jennifer Thomas
Investigating Officer
USCG Forces Micronesia/Sector Guam
For the Coast Guard**

**Fred Anthony Leon Guerrero Guzman, *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, Fred Anthony Leon Guerrero Guzman, (Respondent) has not replied to the Complaint. Upon review of the record and pertinent authority, I find Respondent in **DEFAULT** and the allegations in the Complaint are **PROVED**.

I. Procedural History

On January 18, 2024, the Coast Guard issued a Complaint against Respondent seeking revocation of his Merchant Mariner Credential (MMC), for being a user of a dangerous drug in violation of 46 U.S.C. § 7704(b) and 46 C.F.R. § 5.35. Specifically, alleging Respondent tested positive for methamphetamines as the result of a random drug test, taken pursuant to 46 C.F.R. Part 16. The same day the Coast Guard issued the Complaint it e-mailed it to Respondent. Respondent confirmed receipt of the Complaint via email on January 24, 2024. Return of Service for Compl., 2, Jan. 16, 2025. Respondent never answered the Complaint.

On January 16, 2025, the Coast Guard then filed a Motion for Default e-mailing Respondent a copy on January 21, 2025. Respondent confirmed receipt of the Motion for Default in an e-mail on January 23, 2025. Return of Service of Default Mot., 2, Jan. 21, 2025.¹ To date, more than twenty days, Respondent has neither filed an answer nor requested an extension of time to file an answer.

II. Service of the Complaint and Motion for Default

In order to find a respondent in default they must have not timely answered the Complaint and failed to show good cause for doing so. 33 C.F.R. § 20.310(a) & (e). To determine if a respondent timely answered the complaint the Coast Guard must complete service of it. 33 C.F.R. § 20.304. Permissible methods of service for the complaints and default motions

¹ While this filing is dated January 21, 2025. In actuality it was not filed until January 23, 2025.

are limited to certain forms of United States Postal Service mail, personal delivery, and express courier service with receipt capability. 33 C.F.R. § 20.304 tbl. 1 to § 20.304(d). Electronic service, such as e-mail, is not permitted for complaints and default motions. Id.

Service of the Complaint, and other filings, by any of the permitted means effectuates notice and the opportunity of the respondent to be heard on the matter. Appeal Decision 2604 (BARTHOLOMEW) (1998); Appeal Decision 1882 (BROWN) (1972). Notice and the opportunity to be heard is a required element of due process in administrative proceedings such as these. Appeal Decision 1736 (CASTILLO) (1968). Yet, strict compliance with the rules of service in 33 C.F.R. § 20.304 is not necessary for the fulfillment of due process requirements. Appeal Decision 2647 (BROWN) (2004) (citing Day v. J. Brendan Wynne Inc., 702 F.2d 10, 11 (1st Cir. 1983) & Stateside Mach. Co. v. Alperin, 591 F.2d 234, 241 (3d Cir. 1973)).

Based on the aforementioned authorities, the Coast Guard adequately served the Complaint and the Motion for Default on Respondent. While the regulations do not permit electronic means of service of the Complaint nor Motion for Default. In this case the Coast Guard effectuated service of these filings more analogous to personal delivery than electronic means. The Coast Guard e-mailed both filings to Respondent and included e-mails from Respondent stating unequivocally he received the filings. This affirmative² receipt from Respondent is the same as would be received if Coast Guard personnel physically handed the filings to Respondent. Therefore, Respondent has been afforded notice and an opportunity to be heard on this matter. As a result, I find Coast Guard sufficiently served the Complaint and the Motion for Default on Respondent.

² Simply e-mailing filings and assuming delivery is a passive means of communication because it lacks certainty of receipt by the receiving party.

III. Default

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 September 14, 2023, Respondent took a required Random drug test pursuant to 46 C.F.R. Part 16.
2. A urine specimen was collected from Respondent by Josiah Pacala of Reliance Testing, San Jose, Saipan, in accordance with 49 C.F.R. Part 40.
3. Respondent signed a Federal Drug Testing and Control Form for providing urine specimen ID No. 1610659.
4. Urine specimen ID No. 1610659 was received by and subsequently analyzed pursuant to 49 C.F.R. Part 40 by LabOne, Inc., d/b/a Quest Diagnostics, Lenexa, KS, a SAMHSA certified laboratory.
5. On September 21, 2023, urine specimen ID No. 1610659 tested positive for Methamphetamines as reported by LabOne, Inc., d/b/a Quest Diagnostics.
6. On September 26, 2023, Dr. Brian Heinen, the Medical Review Officer, determined Respondent failed a chemical test for dangerous drugs, raising the presumption of use established by 46 C.F.R. § 16.201(b).
7. Respondent has been the user of a dangerous drug as described by 46 U.S.C. § 7704(b).

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 is a user of a dangerous drug as outlined in 46 U.S.C. § 7704(b), 46 C.F.R. § 16.201(b), Appeal Decision 2556 (LINTON) (1994), Appeal Decision 2603 (HACKSTAFF) (1998), and Appeal Decision 2704 (FRANKS) (2014). Accordingly, I find Respondent is a user of a dangerous drug.

IV. 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). While it is within the sole discretion of the Administrative Law Judge (ALJ) to determine the appropriate sanction at the conclusion of a case. Appeal Decision 2362 (ARNOLD) (1984). A proved allegation that a mariner is a user of a dangerous drug carries a mandatory sanction of revocation of their MMC unless they can prove cure. 46 U.S.C. § 7704(b). The Coast Guard proved Respondent is a user of dangerous drug, thus the only sanction to levy is revocation.

WHEREFORE,

ORDERS

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 **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: Jennifer Thomas, Investigating Officer, United States Coast Guard Forces Micronesia/Sector Guam, PSC 455 Box 176, FPO, AP 9654. 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).

Done and dated, March 14, 2025,
Seattle, Washington


George J. Jordan
Administrative Law Judge