

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD
Complainant,

VS

STEVEN A MIRGEAUX
Respondent.

Docket Number CG S&R 02-0371
CG Case No. PA 1629828

DECISION AND ORDER UPON DEFAULT FOR FAILURE TO APPEAR

Issued: December 30, 2002

Issued by: Edwin M. Bladen, Administrative Law Judge

Respondent Mirgeaux was charged in a Coast Guard complaint on June 12, 2002 with having tested positive for Amphetamine/Methamphetamine as part of a random drug screen conducted on April 2, 2002. The Coast Guard has requested Respondent's licenses as an Operator of Uninspected Towing Vessels upon the Inland Waters of the United States excepting Waters Subject to the International Regulations for Preventing Collisions at Sea, 1972; and as a Radar Observer-Rivers, be revoked.

Respondent had failed to answer the complaint and the Coast Guard requested on July 17, 2002, the issuance a default judgment order granting the revocation. Respondent answered this request on August 2, 2002 contending, *among other reasons*, that the original complaint was not served upon him due to an incorrect address. The Chief Administrative Law Judge evaluated this response and granted on August 5, 2002 an extension to answer the complaint to August 19, 2002. Respondent then timely answered the complaint requesting a hearing and denying the allegations of drug use contending there was improper procedures used by the collector and testing laboratory suggesting a mix up in specimens.

The Chief Judge then assigned this matter to this Judge on August 23, 2002.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

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Decision and Order Upon Default
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To: <u>MSO Paulson</u>	From: <u>Seattle</u>
Dept./Agency: <u>CGO Baker</u>	Phone #
Fax #	Fax #

A hearing was originally scheduled for December 18, 2002 but was subsequently changed upon this Judge's order to December 20, 2002.

The first Scheduling Order was served on Respondent at what was represented by him to be his home address in Cape Girardeau, MO. The Amended Scheduling Order was also sent to this Cape Girardeau, MO address by Federal Express but was returned to the ALJ office in Seattle as undeliverable.

A copy of the Amended Scheduling Order was then taken by an IO to the Cape Girardeau address and tacked to the entry door.

The tacking of the Amended Scheduling Order to the door worked because on December 6, 2002 by Priority United States Mail we received an extensive handwritten letter together with a photocopy of the Amended Scheduling Order.

In that letter Respondent requested the December 20, 2002 hearing be adjourned. After consideration of the reasons given and the Coast Guard's objection to the adjournment, I denied the requested adjournment and directed Respondent to appear at the hearing scheduled for December 20, 2002 at 1:00 PM CST. See, *Decision on Respondent's Motion to Continue Hearing*, December 16, 2002. This order was served upon Respondent by Express United States Mail on December 18, 2002. See, *United States Post Office, Track and Confirm Delivery Status*.

The hearing was called to order at 1:30 PM CST on December 20, 2002 at the Marine Safety Office, Paducah, KY but Respondent failed to appear and answer the call.

The Investigating Officer then requested that this judge enter an order of default as provided in 33 CFR § 20.705 and 33 CFR § 20.310.

Having considered the Respondent's earlier request for adjournment lacking in good cause to so adjourn, the failure of Respondent to appear as ordered is therefore found to be without good cause. I therefore, find the Respondent in default.

Upon finding of Respondent in Default for failure to appear at the scheduling hearing without good cause, a Decision and Order as authorized by 33 CFR § 20.310(d) is hereby issued.

The default of Respondent constitutes an admission of all facts as alleged in this complaint.

Respondent is licensed as an Operator of Uninspected Towing Vessels upon the Inland Waters of the United States excepting Waters Subject to the International Regulations for Preventing Collisions at Sea, 1972; and as a Radar Observer-Rivers. While serving under that license, Respondent provided on April 2, 2002 a urine specimen for a random drug screening. The urine specimen was collected by Sheila Edmonds of Roche Bio Medical, Cape Girardeau, Missouri. The Respondent signed a Federal Drug

Testing Custody and Control Form which acknowledged his giving of the specimen and his specimen was sealed in tamper proof bottles and the information provided on the form were true and accurate. The specimen was tested by Laboratory Corporation of America in both an initial immunoassay test and confirmed in a Gas Chromatography and Mass Spectrometry (GC/MS) as positive for amphetamine/methamphetamine. The positive test results were confirmed by a Medical Review Officer, who ordered further differentiation testing for purposes of determining whether the results were due to consumption of a Vicks Inhaler which contains L isomers of the parent drug. The further testing determined that the Respondent's specimen contained 94% D isomer and 6% L isomer therefore confirming the illegal drug amphetamine/methamphetamine.

I find that the admission of these facts by default prove the Respondent is a user of dangerous drugs.

Therefore, as required by 46 USC § 7704(c) Respondent license is revoked.

Service of this Decision upon the parties serves to notify you of your right to appeal as set forth in 33 CFR Subpart J, §20.1001. (Attachment A)

Dated: December 30, 2002.



Edwin M Bladen
Administrative Law Judge