

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

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Complainant,

vs.

PHILIP ALLEN WOLFE,

Respondent.

Docket Number 2015-0286
Enforcement Activity No. 5149770

ORDER GRANTING MOTION FOR DEFAULT ORDER

Issued: November 10, 2015

By Chief Administrative Law Judge: Honorable Walter J. Brudzinski

Appearances:

**CWO Todd C. Mann
Sector Lower Mississippi
For the Coast Guard**

**PHILIP ALLEN WOLFE, *Pro se*
For the Respondent**

DEFAULT ORDER

On September 2, 2015, the United States Coast Guard Sector Lower Mississippi (Coast Guard) issued a Complaint against Respondent alleging violations of 46 U.S.C. § 7704(c) and 46 C.F.R. § 5.35 “Use of, or addiction to the use of dangerous drugs.” The Coast Guard alleges on October 13, 2014, Respondent took a serious marine incident drug test in which his urine specimen tested positive for amphetamine and methamphetamine metabolites. The Coast Guard proposes Revocation of Respondent’s Merchant Mariners Credential (Credential).

The Coast Guard filed its Return of Service for Complaint. The Return of Service for Complaint shows on September 17, 2015, a copy of the Complaint was delivered to Respondent’s residence by Express Courier Service and signed for by Respondent. The Complaint states Respondent must file an Answer within 20 days of receipt in accordance with 33 C.F.R. § 20.308. In this case, Respondent’s Answer was due no later than October 7, 2015.

To date, Respondent has not filed an Answer, nor has he requested an extension of time to file an Answer; therefore, on October 13, 2015, the Coast Guard filed its Motion for Default Order (“Motion”) requesting the Administrative Law Judge issue a Default Order against Respondent and impose the sanction asked for in the Complaint. The Coast Guard subsequently filed a Return of Service for Motion for Default Order. That document shows the Coast Guard sent a copy of the Motion for Default Order to Respondent at the same address where the Complaint was served by Express Courier Service, but Respondent failed to claim the package. The package was returned to the Coast Guard on October 20, 2015.

Title 33 C.F.R. § 20.304(h) provides “[i]f a person refuses to accept delivery of any document or fails to claim a properly addressed document other than a complaint sent under this subpart, the Coast Guard considers the document served anyway.”

In light of the fact that the package containing the Motion for Default Order was unclaimed by Respondent, I find that Respondent refused delivery and therefore, evaded service. Pursuant to 33 C.F.R. § 20.304(h), service of the Coast Guard's Motion for Default Order became valid on October 13, 2015, the date the package was mailed.

Further, I find the applicable provisions of 33 C.F.R. §§ 20.310 and 20.304(d) and (h) have been complied with and Respondent is in **DEFAULT**. Under 33 C.F.R. § 20.310(c) a default constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing.

Accordingly, I hereby **ORDER** that the violations alleged in the Complaint are **PROVED**. I have carefully reviewed the Complaint and the Motion for Default Order and find that the proposed sanction is appropriate under the provisions of 46 C.F.R. § 5.569.

SANCTION

IT IS HEREBY ORDERED that Respondent's Credential is **REVOKED**.

IT IS FURTHER ORDERED that Respondent must immediately surrender his Credential to the Investigating Officer at the United States Coast Guard Sector Lower Mississippi, 2 A.W. Willis Avenue, Memphis, TN 38105-1502. If Respondent knowingly continues to use his Credential, he may be subject to criminal prosecution.

PLEASE TAKE NOTICE that under 33 C.F.R. § 20.310(e), for good cause shown, an Administrative Law Judge may set aside this finding of Default. Respondent may file a Motion to set aside the finding with the ALJ Docketing Center, Baltimore, MD.

PLEASE TAKE FURTHER NOTICE that service of this Order upon Respondent serves to notify Respondent of his right to appeal as set forth in 33 C.F.R. §§ 20.1001 – 20.1004. (Attachment A).

Walter J. Brudzinski
Chief Administrative Law Judge
United States Coast Guard

Date: November 10, 2015