

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

UNITED STATES OF AMERICA	:	DECISION OF THE
	:	
UNITED STATES COAST GUARD	:	COMMANDANT
	:	
vs.	:	ON APPEAL
	:	
MERCHANT MARINER DOCUMENT	:	NO. 2682
	:	
	:	
	:	
<u>Issued to: ARLAN T. REEVES</u>	:	

This appeal is taken in accordance with 46 U.S.C. § 7701 *et seq.*, 46 C.F.R. Part 5, and the procedures set forth in 33 C.F.R. Part 20.

By an “Order Granting Coast Guard’s Motion for Default and Order of Revocation” (hereinafter “Default Order”) dated April 5, 2007, Coast Guard Administrative Law Judge (hereinafter “ALJ”) Anthony B. Canorro, revoked the Merchant Mariner Document (hereinafter “MMD”) of Mr. Arlan T. Reeves (hereinafter “Respondent”) upon a finding of default in a proceeding that alleged use of or addiction to the use of dangerous drugs. The Complaint from which the Default Order resulted alleged that on October 19, 2006, Respondent submitted to a post accident drug test and provided a urine sample that tested positive for the presence of cocaine metabolites.

PROCEDURAL HISTORY

Because this case stems from a Default Order, it is beneficial to specifically address the procedural progression of the case. To that end, the record shows that the case progressed as follows:

- December 13, 2006—the Coast Guard filed a Complaint against Respondent's MMD alleging, due to a positive test result, that Respondent was a user of, or was addicted to the use of, dangerous drugs [Complaint at 2]
- December 13, 2006—Complaint was personally served on Respondent at his address of record by Coast Guard personnel
- January 4, 2007<sup>1</sup>—Respondent's Answer due (no Answer was received)
- February 27, 2007—the Coast Guard filed a Motion for Default Order [Default Order at 1; Motion for Default Order at 1-2]
- April 5, 2007—Default Order issued by ALJ
- May 3, 2007—Respondent files a timely “Notice of Appeal” with the Coast Guard’s ALJ Docketing Center [Respondent's Notice of Appeal at 1]
- May 7, 2007—Coast Guard ALJ issues letter to Respondent informing him that his Notice of Appeal was received and informing him that he would have to submit his Appeal Brief by June 5, 2007
- May 23, 2007—ALJ Docketing Center receives a letter from Respondent stating that he wanted to “retract” his appeal so that he could seek “reconsideration” of the ALJ’s decision to issue a Default Order in the case and ultimately be afforded a hearing
- May 27, 2007—ALJ issues “Order to Show Cause” allowing Respondent to provide an explanation as to why he failed to properly respond to the Complaint
- May 30, 2007—Respondent files “Answer” to “Order to Show Cause”
- June 1, 2007—Coast Guard files Response to Respondent’s “Answer” to the “Order to Show Cause”
- June 26, 2007—ALJ issues “Order Denying Respondent’s Request to Set Aside Default Order Revoking Respondent’s MMD”
- July 26, 2007—Respondent files letter seeking an appeal of the ALJ’s Default Order (and asserting the basis thereof) with the ALJ Docketing Center

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<sup>1</sup> For the purposes of this decision, the filing deadline was determined in accordance with 33 C.F.R. § 20.306.

- September 17, 2007—Coast Guard files timely Reply Brief

Coast Guard regulations require that an individual applying for an appeal submit both a Notice of Appeal and an Appeal brief. 33 C.F.R. § 20.1001; 33 C.F.R. § 20.1003.

Although Respondent failed to file a separate document labeled as an Appellate Brief in this case, due to the extensive nature of Respondent's Notice of Appeal, it will be treated as both the required Notice of Appeal and Appeal Brief. Therefore, this appeal is properly before me.

APPEARANCE: Respondent appears *pro se*. The Coast Guard was represented by LTJG Otis A. Barrett of U.S. Coast Guard Sector Delaware Bay, Philadelphia, Pennsylvania.

#### FACTS

At all times relevant herein, Respondent was the holder of the Coast Guard issued MMD at issue in this proceeding.

Because a hearing never occurred in the matter, the factual allegations supporting the case were developed solely via the Coast Guard Complaint. In that regard, the Complaint alleges as follows:

On 10/19/2006 Respondent took a Post Accident drug test. A urine specimen was collected by Hyo Huang of K-Sea Transportation. The Respondent signed a Federal Drug Testing Custody and Control Form. The Urine Specimen was analyzed by Quest Diagnostics using procedures approved by the Department of Transportation. That specimen subsequently tested positive for Cocaine Metabolites, as determined by the Medical Review Officer, Khella Hani.

### BASES OF APPEAL

This appeal has been taken from the order of the ALJ finding Respondent to be in default in a proceeding that alleged use of or addiction to the use of dangerous drugs. Respondent's main contention on appeal may best be characterized as an assertion that the ALJ erred in finding that Respondent had not shown good cause to support the setting aside of the Default Order.

### OPINION

The key question presented is whether the record supports Respondent's contention that the ALJ's Default Order should be set aside. Pursuant to 33 C.F.R. § 20.310(a), "[t]he ALJ may find a respondent in default upon failure to file a timely answer to the complaint or, after motion, upon failure to appear at a conference or hearing without good cause shown."

As I noted above, the record shows that the Coast Guard filed a Complaint against Respondent's merchant mariner document on December 13, 2006. Pursuant to 33 C.F.R. § 20.308(a), Respondent was required to "file a written answer to the complaint 20 days or less after service of the complaint." The record shows that the Complaint was personally served on Respondent at his address of record on the very same day. Therefore, to comply with the requirements set forth at 33 C.F.R. § 20.308, Respondent was required to file a written answer to the complaint on or before January 4, 2007<sup>2</sup>. Respondent did not file an Answer to the Coast Guard's Complaint and, as a result, the Coast Guard filed a Motion for Default Order. Pursuant to 33 C.F.R. § 20.310(b), Respondent was required to file a reply to the Coast Guard's Motion for Default Order

“20 days or less after service of the motion.” Respondent did not file a timely reply to the Coast Guard’s “Motion for Default Order” and, as a result, on April 5, 2007, the ALJ issued the “Default Order” at issue in the instant proceeding. Thereafter, due to the fact that Respondent asserted a desire to have a hearing in the case, the ALJ issued an “Order to Show Cause” and, therein, instructed Respondent that the Default Order would only be set aside if Respondent could provide “good cause” to support such an action.

The record shows that Respondent does not now, nor has he ever, asserted that he did not receive the Coast Guard’s Complaint or was unaware that he was required to respond to it. Instead, both now on appeal and while the matter was pending before the ALJ, Respondent asserted what amounts to a medical explanation for his failure to respond, ultimately that he was too injured to respond to the Coast Guard’s pleadings.

The record shows that in his “Order Denying Respondent’s Request to Set Aside Default Order Revoking Respondent’s MMD,” the ALJ addressed Respondent’s assertions, in this regard, as follows:

Mr. Reeves was personally served with the Complaint on December 13, 2006. The Complaint clearly states that Respondent must file an Answer to the allegations within 20 days, and it lists rules and options available to the Respondent. Mr. Reeves did not file an Answer nor did he request an extension of time to file an Answer with the ALJ within the 20 day period. The 20 day period ended well before the date the Coast Guard filed its Motion for Default Order on February 27, 2007. The Respondent’s reasons for not filing a timely Answer are not persuasive.

Mr. Reeves stated that he had ankle surgery on January 9, 2007 and a damaged disk in his back so that he could not ask for a hearing due to the inability to move around. The Respondent’s descriptions of surgery and limitations on his mobility are unsubstantiated. They are also inconsistent with the observations of the Respondent’s physical condition by LTJG Barrett when he served the Complaint on Mr. Reeves on December 13, 2006. It also is unclear why limitations on physical mobility would prevent Mr. Reeves from filing an Answer or from requesting an extension

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<sup>2</sup> See *supra* note 1.

of time to file an Answer. Mr. Reeves said that he had surgery on January 8, 2007. Thus, the surgery was after the date by which he should have filed an Answer to the Complaint. If the Respondent was physically able to come to the door to speak with the Coast Guard representatives on December 13, 2006, it is difficult to believe that he could not have completed and mailed the Answer or made a request for an extension of time to file an Answer. The Coast Guard was unsuccessful in attempting to communicate with Mr. Reeves by telephone prior to filing the Motion for Default Order. Mr. Reeves did not satisfactorily explain why he did not attempt to discuss the status of the case with the Coast Guard during this period. Furthermore, Mr. Reeves does not dispute his actual notice of the Motion for Default Order. He visited Sector Delaware Bay on March 19, 2007 in order to discuss the motion, and he signed an Affidavit of Lost License or Document. Nonetheless, Mr. Reeves did not file a response to the Motion for Default Order prior to the issuance of the Order granting the motion on April 5, 2007.

[“Order Denying Respondent’s Request to Set Aside Default Order Revoking Respondent’s MMD” at 4-6]

It has long been held that in these proceedings, the decision of the ALJ will only be overturned if his findings are arbitrary, capricious, clearly erroneous, or based on inherently incredible evidence. *See e.g.*, Appeal Decisions 2645 (MIRGEAUX), 2642 (RIZZO), 2641 (JONES), 2640 (PASSARO), 2584 (SHAKESPEARE), 2570 (HARRIS), aff’ NTSB Order No. EM-182 (1996), 2390 (PURSER), 2363 (MANN), 2344 (KOHAJDA), 2333 (AYALA), 2581 (DRIGGERS), and 2474 (CARMENKE). In this case, the record shows that the ALJ carefully considered Respondent’s arguments of “good cause” and found them to be unpersuasive. After a thorough review of the record, I do not find the ALJ’s conclusions, in this regard, to be in error and I agree with the ALJ that Respondent failed to provide a plausible explanation for his failure to provide a timely response to the Coast Guard’s pleadings.

CONCLUSION

The findings of the ALJ had a legally sufficient basis. The ALJ's decision to issue a Default Order was not arbitrary, capricious, or clearly erroneous. Because competent, substantial, reliable, and probative evidence existed to support the ALJ's decision to grant a Default Order, I find Respondent's basis of appeal to be without merit.

ORDER

The order of the ALJ, dated April 5, 2007, at Seattle, Washington, is AFFIRMED.

V. S. CREA  
Vice Admiral, U. S. Coast Guard  
Vice Commandant

Signed at Washington, D.C. this 5<sup>th</sup> day of May, 2008.

CONCLUSION

The findings of the ALJ had a legally sufficient basis. The ALJ's decision to issue a Default Order was not arbitrary, capricious, or clearly erroneous. Because competent, substantial, reliable, and probative evidence existed to support the ALJ's decision to grant a Default Order, I find Respondent's basis of appeal to be without merit.

ORDER

The order of the ALJ, dated April 5, 2007, at Seattle, Washington, is AFFIRMED.



**V. S. CREA**  
Vice Admiral, U.S. Coast Guard  
Vice Commandant

Signed at Washington, D.C. this 5<sup>th</sup> day of May, 2008.