

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF PEACE OFFICER STANDARDS AND TRAINING

In the Matter of the Peace Officer License
of Davin Reed Miller, License No. 01009

**AMENDED
FINDINGS OF FACT
CONCLUSIONS OF LAW AND
RECOMMENDATION**

The above-entitled matter came on for Prehearing Conference before Administrative Law Judge Allan W. Klein commencing at 1:30 p.m. on August 7, 2001, at 100 Washington Avenue South, Suite 1700, 100 Washington Square, Minneapolis, Minnesota.

Michelle M. Owen, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103-2106, appeared on behalf of the Minnesota Board of Peace Officer Standards and Training (POST) Complaint Investigation Committee. Davin Reed Miller, ("Respondent") did not appear at the hearing. The Record closed on August 7, 2001 upon the Respondent's failure to appear.

NOTICE

This Report is a recommendation, **not** a final decision. The POST Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Neil W. Melton, Executive Director, POST Board 200 Spruce Tree Center, 1600 University Avenue, St. Paul, MN 55104, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether or not disciplinary action should be taken against the Respondent for a violation of Minn. Rules pts. 6700.1600 and 6700.1610, subpt. 2.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 3, 2001, a Notice of and Order for Hearing and Prehearing Conference in this matter was mailed to the Respondent. The Notice of and Order for Hearing and Prehearing Conference scheduled the prehearing conference for August 7, 2001.

2. The Notice of and Order for Hearing and Prehearing Conference that was mailed to the Respondent contained the following statement in bold print:

If Respondent fails to appear at the prehearing conference or the hearing without the prior consent of the Administrative Law Judge, or if he fails to comply with any interlocutory order of the Administrative Law Judge, Respondent shall be deemed in default of this matter. Upon default, the allegations or issues set forth herein may be taken as true or deemed proved without further evidence and the Board may revoke, suspend, and/or take other action against Respondent's license to practice as a peace officer in the State of Minnesota

3. The Respondent did not appear at the August 7, 2001, Prehearing Conference. He did not file a Notice of Appearance. Respondent did contact the Administrative Law Judge to indicate that he would not be appearing. The Administrative Law judge advised him of the consequences of his failure to appear, and Respondent understood them. In a letter dated August 5, 2001 which was faxed to the Administrative Law Judge on the following day, respondent expressed his intention to not appear and his desire to "move on from this episode and resume a professional career in another field."

4. The allegations set forth in the Notice of and Order for Hearing and Prehearing Conference, are deemed proved and are incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The POST Board and the Administrative Law Judge have subject matter jurisdiction herein pursuant to Minn. Stat. §§ 214.10 and 14.50.

2. The Respondent was given timely and proper notice of the Prehearing Conference in this matter.

3. The POST Board has complied with all relevant substantive and procedural requirements of statute and rule.

4. Under Minn. Rule 1400.6000 the Respondent is in default as a result of his failure to appear at the scheduled Prehearing Conference.

5. Under Minn. Rule 1400.6000 when a party defaults, the allegations and the issues set out in the Notice of and Order for Hearing and Prehearing Conference may be taken as true and deemed proved. The Administrative Law Judge therefore takes those allegations and issues as true and deemed proved.

6. Based upon the facts set out in the Notice of and Order for Hearing and Prehearing Conference, the Respondent has violated Minn. Rules pts. 6700.1600 and 1610, and is subject to disciplinary action by the POST Board.

7. An order by the Board prescribing disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that disciplinary action be taken against the Peace Officer License of Davin Reed Miller.

Dated this 17th day of September, 2001.

ALLAN W. KLEIN
Administrative Law Judge

Reported: Default.

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

On August 28, 2001, the initial Findings of Fact, Conclusions of Law and Recommendation was issued in this matter. Approximately two weeks later, on September 10, Assistant Attorney General Michele M. Owen requested that two clerical errors in the initial document be corrected. Today's Amended Findings of Fact, Conclusions of Law and Recommendation is being issued to correct those errors.

