

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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16731
June 22, 2001

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00001954
[REDACTED]
F/V [REDACTED]
Warning

Dear [REDACTED]:

The Hearing Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00001954, which includes your appeal as owner of the F/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$400.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR §28.135	Failure to properly mark lifesaving equipment as required.	\$50.00
46 CFR §28.150	Failure to have the required EPIRB on board.	\$250.00
46 CFR §25.25-5(a)	Person flotation device lights not provided for each exposure suit, life preserver, marine buoyant device, and buoyant vest.	\$50.00
33 CFR §173.21(a)(1)	Use of a vessel without a valid certificate of Number or temporary certificate on board.	\$50.00

The violations were observed on March 23, 2000 when Coast Guard boarding officers boarded the F/V [REDACTED] while it was inside a state exemption area in the Gulf of Maine.

On appeal, you do not deny the violations, but do provide clarifying information regarding your response to the Hearing Officer's initial correspondence. Even though you admit the violations, I have reviewed the entire record to ensure that there is substantial evidence to support the Hearing Officer's determination that the violations did, in fact, occur. Based upon that review, I find them proved. However, for the reasons stated below, your appeal is granted, in part, and denied, in part.

The Coast Guard's primary purpose in enforcing its regulations is to ensure maritime safety and to protect the environmental quality of the navigable waters of the United States. Compliance with Coast Guard regulations helps prevent environmental damage, loss of life, personal injury and property damage. The Coast Guard's regulation of fishing vessels like the F/V [REDACTED] is particularly important because of the inherent dangers associated with the commercial fishing industry. Your failure to comply with 46 CFR §§ 28.135, 28.150 and 25.25-5(a) could have led to disastrous results for your vessel, your crew and yourself.

The record indicates, however, that you took sufficient steps to bring the vessel into compliance. The pictures that you submitted clearly indicate that you have now properly marked the vessel's lifesaving equipment, purchased the requisite EPIRB and personal flotation devices and ensured that the necessary registration information is on board the vessel. You indicate that you were "unable to reach a hearing officer on the phone in regard to the Oct. letter" and that in July Commander [REDACTED] instructed you to send pictures to show your compliance and "end the case." You assert that you "did as instructed" but that the Coast Guard failed to receive copies of the pictures. You seem to believe that the first set of pictures was "lost in the shuffle of closing Boston [Hearing Office] and shipping to Virginia." You indicate that you did submit your response to the Hearing Officer in a timely manner and that you "assumed that the case was closed." The record evidences that you were issued a Coast Guard preliminary letter of assessment on June 23, 2000 and that on October 20, 2000, a final letter of assessment was sent to you. That letter indicated that you had called the Coast Guard Hearing Office with information that you had corrected the noted discrepancies. At that time, the Coast Guard afforded you time to provide proof of the corrections. The Coast Guard did not receive that proof until November 3, 2000. You contend that you had great difficulty in contacting the Hearing Officer. The record indicates that this difficulty may have been due to two factors: first, the Hearing Officer, Commander [REDACTED], with whom you were dealing, retired; and second, the Boston Area Hearing Office which initially handled your case, moved to Virginia.

Based upon my review of the entire record, I find that there is substantial evidence to support the Hearing Officer's determination that the violation occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. However, I will accept your explanation that you provided Commander [REDACTED] with evidence of compliance in a timely fashion that may have been misplaced in the move from Boston to Arlington, Virginia. Therefore, in the interest of fairness, I will mitigate all penalties to warnings. I do not want my action to be construed as indicating these violations are minor in nature. I regard the EPIRB violation as especially serious. I am only

reducing the penalties because I believe the Hearing Officer would have done the same had it not been for the apparent problem caused by Commander [REDACTED]'s retirement and the transfer of functions to Arlington, Virginia.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action.

Sincerely,

//S//

DAVID J. KANTOR
Deputy Chief,
Office of Maritime and International Law
By direction of the Commandant

Copy: Commanding Officer, U.S. Coast Guard Hearing Office
Commander, Finance Center