

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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Phone: (202) 267-1527
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16780

December 30, 2002

Mr. [REDACTED]
[REDACTED]
[REDACTED]

RE: MV01001320
Mr. [REDACTED]
Unnamed ([REDACTED])
\$500.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01001320, which includes your appeal as owner of the recreational vessel [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$500.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 USC 2302(c)	Operating a vessel while intoxicated.	\$500.00

The violation was observed on February 22, 2001, when Coast Guard boarding officers boarded your recreational vessel while it was underway in Matanzas Pass, near Ft. Myers Beach, Florida.

On appeal, you do not raise any specific issues. Instead, you assert that your case was closed, no penalties were charged for your safety violations and that, because you paid "prompt attention to this matter," Mr. [REDACTED], Supervisor of the 7th District's 4100 Processing Center, "decided not to pursue civil administrative penalty procedures." In the instance of fairness, I have thoroughly reviewed the record for substantial evidence to support the Hearing Officer's conclusion that a violation occurred. Your appeal is denied for the following reasons.

I will first address your contention that the violation was dismissed pursuant to Mr. [REDACTED]' letter of April 18, 2001. The record indicates that, at the time of the boarding, three violations were found: 1) you had no certificate of number on board your vessel (a violation of 33 CFR 173.21(A)(1)); 2) you operated your vessel after dark without operational lights (a violation of 33 USC 2020); and, 3) you operated your vessel while intoxicated (a violation of 46 USC 2302(c)). The record further evidences that, although the safety violations were dismissed by the District Commander, the intoxicated operation charge was forwarded to

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the Hearing Officer for further proceedings. Specifically, the Record of Boarding notes that “safety vios [violations] have compliance,” but that the “intox [intoxication] case [was] sent to HO [the Hearing Office].” Therefore, contrary to your assertion, the intoxicated operation charge in issue was not dismissed and was appropriately before the Hearing Officer.

I will now address the intoxication charge assessed against you. Under 33 CFR 95.030, “[a]cceptable evidence of intoxication includes, but is not limited to: (a) Personal observation of an individual’s manner, disposition, speech, muscular movement, general appearance, or behavior; or (b) A chemical test.” 33 CFR 95.020(c) further provides that an individual is considered intoxicated when “[t]he individual is operating any vessel and the effect of the intoxicant(s) consumed by the individual on the person’s manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.” The record clearly indicates that there is substantial evidence to support the Hearing Officer’s determination that you were intoxicated. The Boarding report shows that you had a “strong” odor of alcoholic beverage on your breath and that your speech was “slurred” and “confused.” The record further indicates that you performed poorly on all of the FST’s administered by the Coast Guard boarding officers. On the “Alphabet Test,” you missed letters, repeated letters, hesitated and could not complete the test beyond the letter “u.” On the “Backwards Count,” you missed numbers, repeated numbers, hesitated and could not complete the test beyond the number 13. On the “Finger Count,” you “miscounted” and improperly touched and counted your fingers. On the “Palm Pat,” you “miscounted” and improperly touched and counted your fingers. Furthermore, during the “Horizontal Gaze Nystagmus,” you showed a “lack of smooth pursuit in both eyes, distinct nystagmus at max [and] Deviation and Nystagmus onset before 45 degrees.” In the “Walk & Turn,” you could not keep your balance, missed heel-to-toe, stepped off the line and improperly turned. Finally, during the “One Leg Stand,” you swayed, used your arms to balance, put your foot down and subsequently refused the test. In addition to the FST results, the boarding officers also found eleven empty cans of beer aboard your vessel. While each of these factors, alone, might not have been sufficient cause for a conclusion of intoxication, taken together, I am persuaded that the results of the FST’s and the personal observations of the Coast Guard boarding officers regarding your manner, disposition, speech, muscular movement, and behavior constituted substantial evidence for the Hearing Officer to conclude that you were intoxicated.

Accordingly, I find that there is substantial evidence in the record 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. I find the penalty of \$500.00 rather than the \$5,000.00 maximum permitted by statute appropriate in light of the seriousness of the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$500.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

RE: CIVIL PENALTY MV01001320

16780

December 30, 2002

U.S. Coast Guard - Civil Penalties
P.O. Box 100160
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 3% accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

//S//

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

Copy: Commanding Officer, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center