



Suggesting a History of Similar Violations Without Evidence Is Not Helpful

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In the Preliminary Assessment Letter (PAL) sent to the charged party there is a sentence that is often overlooked which simply states that, “Whatever you want me to consider should be supported by evidence, or else it might not be very persuasive.” The same advice could be given to a Coast Guard unit that is initiating a case for an alleged offense. If you want the Hearing Officer to consider in aggravation a history of similar violations, then documentation should be provided showing that the charged party does in fact have a violation history.

During the preliminary review of the case file, the Hearing Officer takes a serious look at any evidence of previous similar violations to assist in the assessment of an appropriate preliminary civil penalty amount. Most often, the larger the number of similar past violations, the greater the preliminary penalty amount will be, because the Hearing Office’s goal is to gain compliance and ensure deterrence. It follows that if a violation is repeated, then the previous penalty amount was not an effective deterrent, and a greater penalty amount is necessary to prevent future similar violations.

It is important to understand that the only information and evidence that the Hearing Officer may consider is that which is in the case file, and has been shared with the charged party. The Hearing Officer and the charged party do not have access to the Marine Information for Safety and Law Enforcement (MISLE) database. Typically, the Enforcement Summary section titled “Past Violation(s) History” is the only information provided in the case file concerning a charged party’s repeat offense(s). This section of the Enforcement Summary only provides: the law or regulation and its description, the violation date and activity number, the finding (proved or dismissed), and the penalty amount. This information tends to leave the Hearing Officer with more questions than answers about the details of previous offenses. In some cases,

amplifying evidence that explains how the previous violation(s) relate to the current alleged violations may make for a more persuasive case.

Timely submission of case files is important because a case that is still being adjudicated cannot be considered “history;” it hasn’t been finally “proved” yet. Giving a verbal warning to an alleged violator usually is not recorded as part of their violation history. Generally speaking, if there is no evidence of a past proved violation in the case file, then the Hearing Officer will assume that there is no violation history, and the alleged offense is the first for the charged party.