



## WHERE'S THE EVIDENCE?

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Those of you that have been around for a while might remember the popular TV commercials that aired a while back for one of the big fast food chains. The ads featured an elderly woman who was so shocked by the small size of a competitor's hamburgers that she would exclaim "where's the beef?" I'm sometimes reminded of those ads when I review violation cases that are forwarded to the Coast Guard Hearing Office for adjudication. The "small size" of the evidence forces one to wonder "where's the evidence?"; the "beef" if you will.

A common reason for certain violations or even entire cases being dismissed by a Hearing Officer is the lack of evidence in the case file to support a violation. Without sufficient evidence to support each element of a violation as alleged, Hearing Officers cannot proceed with the adjudication of the violation. To proceed, the Hearing Officer must find a "prima facie case."

A prima facie case is found when the Hearing Officer determines that there is good and sufficient evidence in the case file to support each element of a violation. Absent evidence to the contrary, the violation can be found "proved" based on the evidence in the case file. Evidence to the contrary is typically provided to the Hearing Officer by the charged party.

Remember the Enforcement Summary is simply a summary of the violation case. The "evidence" is in the details found in the Activity Summary Report (ASR) and / or case exhibits and enclosures. These are documents, photographs, and statements of boarding team members, investigators, witnesses, etc. It is this evidence that a Hearing Officer relies on when determining if there is a prima facie case to proceed with adjudication. It is also this evidence that the

charged party relies on in order to have a meaningful opportunity to comment and provide evidence in defense, extenuation, and mitigation.

For example, according 46 U.S.C. 2302(a), a person operating a vessel in a negligent manner or interfering with the safe operation of a vessel, so as to endanger the life, limb, or property of a person is liable to the U.S. Government for a civil penalty. For violations of this statutory provision, a brief narrative that simply states: “Subject operated too fast in a No-Wake Zone” with no other details might be insufficient to support a violation for negligent operations. Details are important to understanding a violation. In this example, details might include how the operator was negligent and how the operator’s actions, or inactions endangered life, limb, or property. Details also might include how the boarding officer identified the operator, a description of weather conditions, visibility, traffic density, hazards in the water (ie, swimmers, paddlers), speed of vessel, etc.

For PFD serviceability violations, simply stating “Vessel’s PFDs were found unserviceable” might be insufficient to support all elements of the violation. 33 CFR 175.23 sets forth the serviceability requirements for PFDs and describes some conditions in which PFDs are found to be unserviceable. For these types of violations, a description as to the specific discrepancies that caused the boarding team to determine that the PFDs were unserviceable would be helpful to understanding the violation. For example, where and how big was the rip or tear; where and how long were the open seams in the fabric or coating of the PFD, and the location, size, and degree of any finding of the PFD being water logged, oil-soaked, etc.

Similarly, a case file that included a narrative statement on the ASR that says “vessel’s navigation lights were inoperable” could be better explained by including the time the vessel was boarded and the time of sunset/sunrise on the day of the boarding.

A clear understanding of the regulation that was violated is helpful when determining the details necessary to be documented to constitute “good and sufficient” evidence in support of each element of the violation. “Good and sufficient” evidence provides the charged

party with a clear understanding of the alleged violation and a basis upon which to make informed decisions regarding their response to the Hearing Officer.