



Civil Penalty Appeals

Written By LCDR Michele Bouziane

By direction of the Commandant, the Chief Judge of the Coast Guard Court of Criminal Appeals is also the Coast Guard Civil Penalty Appellate Authority.

As of this writing, 49 cases are pending review by the Coast Guard Civil Penalty Authority, down from approximately 100 on average in previous years, according to appellate staff. The bulk of the appeals cases are Boating Under the Influence cases.

Most filers of civil penalty appeals hope that the Civil Penalty Appellate Authority will overturn the findings, and hence, the civil penalties, handed down by the Hearing Officer in their cases.

The Civil Penalty Appellate Authority reviews the Hearing Officer's decision to see if the findings of fact are based on substantial evidence. A good explanation of the term "substantial evidence" can be found in the below excerpt from 2009 Civil Penalty Appeal Decision No. 2405585, posted on the Hearing Office website:

Pursuant to our procedural rules at 33 CFR 1.07, the Hearing Officer's decision must be "based upon substantial evidence in the record." *See* 33 CFR 1.07-65(a). The Supreme Court defined substantial evidence, both affirmatively and negatively, in *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197 (1938). The affirmative definition makes clear that "substantial evidence" "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 229. In the negative, the Court stated that "[m]ere uncorroborated hearsay or rumor does not constitute substantial evidence." *Id.* at 230. Later court decisions have clarified the definition, stating that "substantial evidence" is the quantum and quality of relevant evidence that is more than a scintilla but *less than* a preponderance and that "a reasoning mind would accept as sufficient to support a particular conclusion." (Emphasis added) *See LeFebvre v. Westinghouse Elec. Corp.*, 747 F.2d 197, 208 (4th Cir. 1984) (overruled on other grounds); *see also United Seniors Ass'n v. Social Sec. Admin.*, 423 F.3d 397, 404 (4th Cir. 2005).

Appellate staff would like to remind charged parties that the civil penalty hearing and appellate processes are informal. The charged party's due process rights in these proceedings are not the same as an accused person's rights in a criminal proceeding.

According to appellate staff, typed appeal letters are preferable to hand-written ones, preferably proof-read and spell-checked. See 33 CFR §§ 1.07-70 and 1.07-75 for more information on the appeal process.