



NEGLIGENT OPERATIONS - PROVING VIOLATIONS INVOLVING THE REASONABLE AND PRUDENT STANDARD OF CARE

Written by

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This article provides additional guidance to a previous Coast Guard Hearing Office article on establishing the standard of care in negligent operations cases.¹

In a recent Appeal Decision (#5765674) involving a charge of negligent operation under 46 U.S.C. § 2302(a), the Appeal Authority wrote: “The Hearing Officer found that the [jet-ski] operator was observed operating at a high rate of speed through a boat anchorage and within close proximity to kayakers after sunset with no navigation lights.”

In deciding the issue of whether the operator had operated his vessel in a negligent manner, the Appeal Authority wrote: “As used in 46 U.S.C. § 2302(a), negligence is the failure to use the care that a reasonable person would exercise. In this case, there is no evidence of a standard of care, that is, what a reasonable person would or would not do in the circumstances. As the Hearing Officer did not consider what standard of care was breached, the charge cannot stand.”

This article will briefly revisit the elements of 46 U.S.C. § 2302(a) and illustrate the importance of providing objective facts for the purpose of establishing that an operator failed to use the care that a reasonable person would use under the same circumstances.

46 U.S.C. § 2302(a) provides that a person operating a vessel in a negligent manner so as to endanger the life, limb, or property of a person is liable to the U.S. Government for a civil penalty. In order to prove a violation of negligent operation, there must be evidence to show that the charged party: 1) operated a vessel; 2) in a negligent manner; and, in doing so, 3) endangered the life, limb or property of a person.

Proving a violation of “Neg Ops” can be challenging because it typically involves a judgment call on the part of the Coast Guard boarding officer in determining whether a vessel operator failed to use such care as a reasonable and prudent person would use under the same circumstances.² In this way, Neg Ops is different from regulations that do not involve a judgment

¹ The previous article can be viewed [HERE](#).

² Although negligence is not defined in statute, it is defined in a Coast Guard regulation. 46 CFR § 5.29 defines negligence as “the commission of an act which a reasonable and prudent person of the same station, under the same

call. Safety equipment violations provide a good example of regulations that do not require a judgment call because the standard is clearly set in regulation. For example, the requirement to have a PFD for every person aboard a recreational boat does not involve a judgment call. If there are four adults aboard a vessel, the vessel must have four adult-sized PFDs. The regulation sets a clearly defined standard.

As we have seen in many Neg Ops cases, a violation of the “reasonable and prudent” standard is not as clear-cut as Neg Ops cases that do not involve a subjective “reasonable and prudent” standard.³ Generally, in order to prove negligent operations under the “reasonable and prudent standard,” there must be sufficient, objective facts to support the Coast Guard’s determination that the vessel operator failed to use such care that a reasonable and prudent person would use under the same circumstances.

In reviewing the most recent Appeal Decision, the following contrasting examples may help demonstrate the importance of including factual observations to support a determination that a vessel operator did not act in a way in which a reasonable and prudent person of the same station and under the same circumstances would act.

Example 1: Coast Guard boarding officers observed vessel X operating at a high rate of speed through a boat anchorage and within close proximity to kayakers.

Example 2: Coast Guard boarding officers observed vessel X operating at a rate of speed that was unsafe given the close proximity of [INSERT NUMBER OF KAYAKERS/VESSELS] and [INSERT ESTIMATED DISTANCE THAT VESSEL X CAME WITHIN THE KAYAKERS/VESSELS]. Vessel X was observed by Coast Guard boarding officers from a distance of [INSERT ESTIMATED DISTANCE THAT CG BOARDING OFFICERS OBSERVED THE CONDUCT]. Based on the [INSERT ESTIMATED DISTANCE THE VESSEL TRAVELED] during the Boarding Officer’s observation and based on this Boarding Officer’s [INSERT YEARS/MONTHS] experience as a Boarding Officer, the vessel’s speed was estimated to be [INSERT ESTIMATED SPEED – BETWEEN Y to Z MPH]. In addition, Coast Guard boarding officers observed the wake of vessel X cause an unsafe and immediate rocking effect upon several kayakers in the anchorage as vessel X operated at high speed within [INSERT FEET/YARDS] from the kayakers. Based on this boarding officer’s observation of other vessels that, under the same circumstances and location as vessel X, were operated in a prudent and reasonable manner by transiting [INSERT DESCRIPTION OF OBSERVED

circumstances, would not commit, or the failure to perform an act which a reasonable and prudent person, of the same station, under the same circumstances, would not fail to perform.”

³ The aforementioned CGHO article entitled “Negligent Operations – Establishing the Standard of Care” gives examples of objective ways in which to establish the standard of care. An example includes referring to existing laws or regulations such as the Navigation Rules, or navigation safety regulations which require specific actions under specific conditions. For example, the standard of care may require adherence to posted “No Wake” zones. A vessel operator that is observed creating a wake with his vessel inside a marked “No Wake” zone has breached the standard of care, making it unnecessary to further address the standard of care. Another example of establishing negligent operations using an objective standard is a vessel grounding because, under common law, a vessel grounding creates a presumption of negligence. This presumption makes it unnecessary to further address the standard of care.

OPERATIONS OF OTHER VESSELS], it is this Boarding Officer's opinion that the operator of vessel X was not operating his vessel in a manner that demonstrated reasonable and prudent care.

While both examples describe the same event, Example 1 results in more questions than answers. For example, what is a high rate of speed? What is close proximity? How far away was the boarding officer from the vessel at the time the alleged negligent operation was observed? How would a reasonable and prudent person have operated his vessel in that situation and location?

Finally, these examples are simply for the purpose of illustrating the importance of including pertinent factual observations on the part of the Boarding Officer when establishing that a vessel operator did not act in a manner that demonstrates reasonable care under the particular circumstances. While every case will have its own facts and circumstances, it is important to understand that cases involving a charge of negligent operation are very fact-dependent on the issue of whether the operator failed to act in a way in which a reasonable and prudent person of the same station and under the same circumstances would act.

If questions arise concerning what evidence to collect to establish that an operator acted in a negligent manner, please contact your local IO shop or servicing legal office.

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