

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2703 Martin Luther King Jr. Ave. SE
STOP 7794
Washington, DC 20593-7794
Staff Symbol: CG-094C
Phone: (202) 795-6910
Fax: (202) 372-8321

16200

March 24, 2016

[REDACTED NAME]
[REDACTED ADDRESS]
[REDACTED CITY, STATE, ZIP]

RE: Activity No. 4705767
[REDACTED NAME]
[REDACTED VESSEL]
\$1,000.00

Dear Mr. [REDACTED NAME]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Activity No. 4705767, which includes your appeal as operator of the recreational vessel [REDACTED VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$1,000.00 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 under the influence of alcohol or a dangerous drug.	\$1,000.00

The violation was observed on July 7, 2015, when you were observed operating the vessel in the vicinity of Lockwoods Folly Inlet, NC.

On appeal, you pose questions related to the field sobriety and chemical tests administered on the date of the incident, but do not raise any issues concerning the finding that you operated your vessel while under the influence of alcohol. Your appeal is denied for the reasons discussed below.

As set forth in 33 CFR §95.020(a), an individual will be presumed to be under the influence of alcohol if he has a Blood Alcohol Concentration (BAC) level of .08 percent or more, by weight, in his blood.

The Coast Guard officer involved in this boarding stated that while conducting an administrative inspection, he smelled the odor of an alcoholic beverage emanating from your breath, and that your speech was slurred with periodic mumbling. These are legally accepted indicia of possible intoxication. Based upon these observations, the officer asked you to perform Underway Standardized Field Sobriety Tests. During these Field Sobriety Tests, you displayed several indicators of being under the influence of alcohol, showing 10 possible clues on the Finger to Nose tests and 3 clues on the Hand Coordination Test. These indicators, along with prior observations noted by the officers, provided reasonable cause for them to seek a chemical test from you, as well as providing some evidence that you were under the influence of alcohol. After being requested to submit to a chemical test, you agreed to submit to the test, rendering a BAC reading of .09. This chemical test and corresponding reading was witnessed by a member of the North Carolina Marine Patrol.

As part of these proceeding, you were allowed to present statements and evidence on your behalf, as presented in your response letter dated November 5, 2013. As set forth in the correspondence dated November 22, 2013, after a full review of the complete record, the Hearing Officer found by a preponderance of the evidence that you were operating a vessel while under the influence of alcohol, and found the violation alleged did occur.

Subsequent to this finding, you filed a second letter with the Hearing Officer dated December 30, 2013, presenting newly raised claims related to the field sobriety and chemical tests administered. In the letter dated January 24, 2014, these issues were fully addressed by the Hearing Officer and do not rise to the level of warranting reopening of the matter, and as such will not be addressed.

I have carefully considered the entire record. It is the Hearing Officer's responsibility to decide the reliability and credibility of the evidence presented and to resolve any conflicts in the evidence. After a full and exhaustive review of the record and evidence, as presented in his decision letter, the Hearing Officer concluded that while operating the vessel you were under the influence of alcohol. I do not see any error in his decision.

I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is affirmed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR Subpart 1.07, this decision constitutes final agency action.

Payment of **\$1,000.00** 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. Payment should be directed to:

U.S. Coast Guard - Civil Penalties
P.O. Box 531112
Atlanta, GA 30353-1112

Interest at the annual rate of 1% accrues from the date of this letter but will be waived if payment is 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,

L. I. McCLELLAND
Civil Penalty Appellate Authority
By direction of the Commandant

Copy: Coast Guard Hearing Office
Coast Guard Finance Center