



16200
DEC 07, 2020

[PARTY]
[ADDRESS]

RE: Activity No. 5765657
[PARTY]
[VESSEL]
\$750.00

Dear [PARTY]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Activity No. 5765657, which includes your appeal as operator of the recreational [VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$750.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR § 175.15(b)	Operating a recreational vessel 16 feet or more in length without a throwable personal flotation device (PFD) onboard.	WARNING
46 U.S.C. § 2302(c)	Operating a vessel under the influence of alcohol or a dangerous drug.	\$750.00
33 CFR § 173.151(a)(2)	Failure to display vessel number.	WARNING

The alleged violations took place on the morning of March 25, 2019, when Coast Guard personnel observed you operating the vessel on the Willamette River, near Portland, Oregon. On appeal, you contest the finding that you were under the influence of alcohol at the time. Your appeal is denied, for the reasons given below.

The Hearing Officer concluded that you were under the influence of alcohol based upon the recorded behaviors observed by the Coast Guard boarding team and your performance on field sobriety tests (FSTs) administered by the boarding team.

According to 33 CFR § 95.030, “[a]cceptable evidence of when a vessel operator is under the influence of alcohol ... includes, but is not limited to: (a) Personal observation of an individual’s manner, disposition, speech, muscular movement, general appearance, or behavior; or (b) A chemical test.” 33 CFR § 95.020(c) further provides that an individual is considered to be operating under the influence when “[t]he individual is operating any vessel and the effect of the intoxicant(s) consumed by the individual on the person’s manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.”

In the absence of chemical test results, the Hearing Officer considered the evidence to assess whether it established that you were under the influence of alcohol on the morning of March 25, 2019.

The record evidence includes Coast Guard boarding team observations that you had a “very strong” odor of alcohol on your breath, that your speech was slurred and confused, that you displayed a combative attitude and excessive movement, that you avoided eye contact, that you fumbled, were unsteady, and supported yourself against objects. You admitted to drinking that day.

The record reflects that FSTs were administered. As the Hearing Officer noted, you “failed” (exhibited clues) during the Horizontal Gaze Nystagmus Test, the Finger to Nose Test, the Palm Pat Test, and the Hand Coordination Test. The Walk and Turn and One-Leg Stand Tests were also administered, but you stated that you were unable to complete them because of your disabilities. The Hearing Officer did not consider the results of the partially-completed tests, but at the least, they do not contradict the other FSTs.

In your appeal, you contend that your attitude was combative because this was the second Coast Guard boarding of your vessel in three days. You call attention to your disabilities and past injuries and surgeries, including neck and back injuries and surgeries to shoulders, right elbow and wrist, knees, ankles, and right foot. There is nothing to indicate that your conditions would have likely affected your performance of the FSTs the Hearing Officer considered.

The record shows that the Hearing Officer considered your disabilities and the other matters you submitted, along with all the other evidence in the record. He found by a preponderance of the evidence that you were, on March 25, 2019, operating your vessel under the influence of alcohol, under the standard set forth in 33 CFR § 95.030(a).

I find substantial evidence in the record to support the Hearing Officer’s conclusion that you were operating the vessel on March 25, 2019 while under the influence of alcohol. The penalty is within the amount authorized. The decision of the Hearing Officer 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 \$750.00, 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. Send your payment to:

U.S. Coast Guard - Civil Penalties
P.O. Box 979123
St. Louis, MO 63197-9000

Interest at the annual rate of 2% 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