



16200
June 12, 2023

[PARTY]
[PARTY ADDRESS]

RE: Activity No. 5810913
[PARTY]
[VESSEL]
\$400.00

Dear [PARTY]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Activity No. 5810913, which includes your appeal as operator of the recreational vessel [VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$400.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 U.S.C. § 2302(c)	Operating a vessel under the influence of alcohol or a dangerous drug.	\$400.00

The alleged violation took place on the morning of September 4, 2022, when Coast Guard personnel observed you operating the vessel in the Choctawhatchee Bay, near Destin, Florida. On appeal, you contest the finding that you were under the influence of alcohol. Your appeal is denied, for the reasons given below.

The Hearing Officer concluded that you were under the influence of alcohol based upon your refusal to submit to a chemical test, which established a presumption under federal regulation that you were under the influence.

33 CFR § 95.040 provides, "If an individual refuses to submit to or cooperate in the administration of a timely chemical test when directed by a law enforcement officer based on reasonable cause, evidence of the refusal is admissible in evidence in any administrative proceeding and the individual will be presumed to be under the influence of alcohol or a dangerous drug."

As the Hearing Officer noted, you failed four Field Sobriety Tests (FSTs): the Horizontal Gaze Nystagmus Test, the Finger to Nose Test, the Palm Pat Test, and the Hand Coordination Test. Based on your performance of the FSTs, there was reasonable cause for you to be directed to submit to a chemical test. Since you refused to submit to a chemical test, according to 33 CFR

§ 95.040, your refusal established the presumption that you were under the influence. Earlier observations did not refute but were entirely consistent with the conclusion, and the moderate odor of alcoholic beverage on your breath supported the conclusion, that you were under the influence of alcohol. The “new perspective of details” you urge in your appeal letter does nothing to undermine the Hearing Officer’s conclusion.

The Hearing Officer considered the State proceedings and your payment of the associated fines and completion of a boating safety course as mitigation, and reduced the penalty.

I find substantial evidence in the record to support the Hearing Officer’s conclusion that you were operating the vessel on September 4, 2022 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 \$400.00, 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 3% 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