

Office of Adjudications

IN THE MATTER OF : ***SUSPENSION OF
BOATING PRIVILEGES
DEEP BUI # 22-006***

BRADLEY WARNER : ***SEPTEMBER 15, 2022***

FINAL DECISION

A probable cause hearing was held on September 14, 2022, via Zoom regarding the suspension of the boating privilege of Bradley Warner. General Statutes §15-140q. Participating in the Zoom hearing were: Bradley Warner, Operator, representing himself; Officer William Ogradowicz of the City of Groton Police Department, and Timothy Delgado of the DEEP Boating Division. Officer Ogradowicz and Bradley Warner provided testimony. DEEP-1 was admitted as an exhibit, which includes the Notice of Rights, Form B-44, Incident Report Narrative, BUI 24 Hour License Revocation and Interim Certificate and Miranda Rights Advisement and Waiver. Mr. Warner did not submit exhibits in this matter.

PROCEDURAL HISTORY

Bradley Warner was arrested for boating while intoxicated on August 8, 2022. General Statutes §15-140q. A Notice of Suspension was mailed to him dated August 19, 2022; a timely request for hearing followed. On August 31, 2022, a continuance was issued to allow time for Mr. Warner to seek legal counsel and due to scheduling conflicts on behalf of DEEP.

FACTUAL FINDINGS

General Statutes §15-140q(g)(2) limits this hearing to the following four factors for my consideration: (1) whether the peace officer had probable cause to arrest Mr. Warner for operating a vessel while under the influence of intoxicating liquor or drugs, or both, or while he had an elevated blood alcohol content; (2) whether Mr. Warner was placed under arrest; (3) Whether Mr. Warner (i) refused to submit to such test or nontestimonial portion of a drug influence evaluation, or (ii) submitted to such test and the results of such test indicated that at the time of the alleged offense that he had an elevated blood alcohol content; and, (4) whether Mr. Warner was operating the vessel. If I find all four factors in the affirmative, §15-140q(h) requires that I affirm the recommended period of suspension.

The four factors of General Statute 15-140q(g)(2) are undisputed in this matter. Notwithstanding that fact, I note the following for the record of this matter.

Officer Ogradowicz testified, and the police report documents, that he initially observed Warner and his vessel on a sand bar. Upon observing Warner operate the boat from the sand bar, Officer Ogradowicz saw a beer can in the front console of the boat. Mr. Warner was asked to pull the boat over, and upon exiting the boat Officer Ogradowicz observed additional beer cans and an empty nip bottle in the boat. He then further took note that

Warner's breath smelled of alcohol, he was unsteady on his feet and had blood shot eyes. (DEEP-1). After a fifteen-minute waiting period, the officer conducted Standard Field Sobriety Tests (SFST). Mr. Warner was not able to follow the directions to count backwards from the number 79 to 54, stopping at 62 and asking what number he was supposed to count to. He advised the officer he did not remember the instructions given. Officer Ogrodowicz noted that Warner did not complete the Horizontal Gaze Nystagmus to standard and he observed a lack of smooth pursuit in both eyes, as well as observed Warner swaying back and forth while the exam was being conducted. Further, Mr. Warner did not complete the Walk and Turn, or the One Leg Stand to standard. During the Walk and Turn Warner did not take heel to toe steps as instructed, while raising his arms over six inches for balance. Upon the completion of these tests and based on the interactions which occurred, Officer Ogrodowicz placed Warner under arrest for operating a vessel while under the influence of intoxicating liquor, or drugs, or both or while having an elevated blood alcohol content. (DEEP-1, Tr. Ogrodowicz, 9/14/22).

After he was arrested and transported to the police station, Mr. Warner refused to submit to a test or comply with the nontestimonial portion of a drug influence evaluation, as he verbally refused to take a breathalyzer and such refusal was documented through the B-44 form. (DEEP-1, Tr. Ogrodowicz, 9/14/22).

It is further undisputed that Mr. Warner was operating his vessel on the day he was arrested. Officer Ogrodowicz testified to observing Mr. Warner as the operator of the vessel. Further at the hearing, Mr. Warner admitted to operating the vehicle. He testified he was driving the vessel back from the Elks Club and pulled over into a sand bar because "he was not feeling good." He explained he had four to five drinks and realized he should not be driving the vessel and pulled into the sand bar to "nap." Warner testified he had been at the sand bar for approximately twenty minutes when he was approached by the Fire Department. After this interaction, he again operated the vessel to drive the boat to Pine Island, the location of his boat dock. It was after leaving the sand bar that he was asked to pull over by the Police. (Tr. Ogrodowicz, Warner, 9/14/22)

At the time of being pulled over and arrested, Mr. Warner did not have a valid boating license. (DEEP-1, Tr. Warner, 9/14/22).

CONCLUSIONS

The primary purpose of this administrative proceeding on this suspension of a boating certificate is to promote public safety by removing those operators who have demonstrated disregard for the safety of others by operating their vessel while intoxicated. E.g. *State v. Hickam*, 235 Conn. 614 (1995), cert. denied, 517 U.S. 1221 (1996). Section 15-140q of the General Statutes implements this intent by establishing standards under which a boater operating a vessel under the influence can be removed from the waters by suspending a boating certificate for periods of time set out in that statute. Four factors are listed in §15-140q(g)(2); DEEP has the burden of proving each by a preponderance of the evidence in order for this suspension to be affirmed.

A "preponderance of the evidence" means that there is substantial evidence in the hearing record that provides a decision-maker with a substantial basis of fact from which a fact in issue can be reasonably inferred. *Tompkins v. Comm'r of Motor Vehicles*, 60 Conn. App. 830, 833-34 (2000). A "preponderance of the evidence" only requires a certainty greater than 50 percent, or, that a party must prove the facts by "the greater

weight of the evidence." To put it another way, the party with the burden of proof must satisfy the trier of fact that the evidence shows that what the party claims to be true is more probably true than not.¹

I have reviewed the record in this matter, including the testimony of the parties and the arrest report and supporting documents. Given all the events described and shown, and for the reasons that follow, I find that the DEEP has met its burden to prove by a preponderance of the evidence each of the four factors of §15-140q(g)(2).

The first and second element of General Statute §15-140q(g)(2) evaluate the probable cause for the arrest and if the individual was placed under arrest. Mr. Warner did not contest the issue of probable cause to arrest him, or the arrest itself for operating a vessel while under the influence of intoxicating liquor or drugs, or both, or while he had an elevated blood alcohol content. See General Statute §15-140q(g)(2)(A) and (B). Although these factors were not contested, as I have found above, the record demonstrates that the peace officer had probable cause to arrest Warner for operating a vessel while under the influence of intoxicating liquor, or drugs, or both, or while he had an elevated blood alcohol content. DEEP also proved that Mr. Warner refused a breathalyzer test after he was arrested and taken to the police station, as documented by the police report. General Statute §15-140q(g)(2)(C)(i).

Lastly, DEEP provided appropriate evidence to prove that Warner was operating the vehicle on the date in question. Officer Ogradowicz testified that he observed Warner operating the vessel at the time of the arrest. In light of these uncontested factors, I affirm the suspension contained in the suspension notice. General Statutes §15-140q(h) provides that if I find in the affirmative on the factors for the suspension, I must affirm the suspension contained in the suspension notice for the appropriate period specified in subsection (i) of §15-140q. Section 15-144q(i) provides for a suspension of Warner's safe boating certificate for six months. Given that Mr. Warner did not have a valid Safe Boating Certificate at the time of his arrest, I suspend Mr. Warner's privilege to operate a vessel as ordered below.

ORDER

It is hereby ORDERED that Mr. Warner's right to operate a vessel that requires a safe boating certificate for operation is suspended for a period of six months, effective September 15, 2022 through March 15, 2023. General Statutes §15-140q(h). This period of suspension includes any Connecticut Safe Boating Certificate obtained by Mr. Warner during this period.

Entered as a final order of the Commissioner of Energy and Environmental Protection by:



Kathleen W. Reiser, Esq., Hearing Officer

¹ This is unlike the greater legal burden of "beyond a reasonable doubt," which is the higher legal burden of proof required to affirm a conviction in a criminal case.

SERVICE LIST
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