

SERVED: May 25, 1999

NTSB Order No. EA-4770

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 21st day of May, 1999

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JANE GARVEY,		)	
Administrator,		)	
Federal Aviation Administration,		)	
		)	
Complainant,		)	
		)	Docket SE-15169
v.		)	
		)	
MARK J. GUSEK,		)	
		)	
Respondent.		)	
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**ORDER DENYING PETITION FOR RECONSIDERATION**

Respondent has petitioned for reconsideration of our order, EA-4745, served February 10, 1999. The Administrator has replied in opposition. We deny the petition.

In our prior order, we affirmed orders of the Administrator revoking all airman certificates held by respondent, as well as air carrier certificates held by the company, Erie Airways, Inc., for which he was president. Among other things, Mr. Gusek was charged with intentionally falsifying load manifests to misdescribe what were, in fact, for-hire charter services performed by pilots without the requisite ratings and flight checks. On petition, Mr. Gusek, now appearing pro se, alleges that, in a January 1999 meeting he had with FAA staff, Susan Caron (manager for appellate practice in the Enforcement Division of the FAA's Office of the Chief Counsel) stated her belief that he had not intended to violate the regulations. He further claims that it is now clear that he does not lack qualifications, that he is being held to an unfair standard, and makes various other allegations directed towards undermining the reliability of

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the facts alleged by the FAA in this case.

For the most part, respondent's petition reiterates issues raised and addressed by us in our earlier decision, and fails to give us reason to change our prior conclusions. Respondent's suggestion that the FAA rejected "new" evidence presented to it at the January meeting is not a reason for us to reverse our prior findings or reopen the record. Indeed, the FAA challenges respondent's recitation of the events of the January meeting. And, to the extent that respondent's extensive (but unsupported) listing of errors raises new factual claims, respondent has twice had the opportunity to present any and all evidence he considered probative. He may not for the first time raise such issues on petition for reconsideration without, among other things, proof that they could not have been discovered by the exercise of due diligence prior to the date the case was submitted to the Board. 49 CFR 821.57(d).

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's appeal is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.