

SERVED: September 15, 2009

NTSB Order No. EA-5478

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 15<sup>th</sup> day of September, 2009

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J. RANDOLPH BABBITT,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket No. SE-18277
v.	)	
	)	
LEONARD J. JABLON,	)	
	)	
Respondent.	)	
	)	

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**ORDER DENYING PETITION FOR RECONSIDERATION**

Respondent seeks reconsideration of our decision in this proceeding, NTSB Order No. EA-5460, served June 25, 2009. In that decision, we affirmed the Administrator's order and the law judge's initial decision, finding that respondent violated 14 C.F.R. §§ 91.119(a) and 91.13(a) when he operated a McDonnell Douglas 600N helicopter in Chicago, Illinois. The complaint alleged that respondent allowed the helicopter to descend to less than 500 feet over persons and property on the surface, and that such operation did not allow for an emergency landing without causing undue hazard to persons or property in the event of a power unit failure.

In the decision below, the law judge denied respondent's appeal of the Administrator's order, principally based on his finding that the evidence established that respondent would not have been able to land in the case of an engine failure without harming someone. The law judge consequently determined that respondent violated § 91.119(a), and, as a result of that violation, also violated § 91.13(a). The law judge concluded that a 180-day suspension was appropriate, based on the circumstances of the case and respondent's history of a previous violation. Respondent appealed the law judge's decision, and we denied the appeal, on the basis that the Administrator's interpretation of the term "undue hazard" in § 91.119(a) was not arbitrary and capricious, and our rejection of respondent's argument that § 91.119(a) is unenforceable under the Administrative Procedure Act because it is ambiguous. We also rejected the arguments that the law judge inappropriately admitted evidence, and that the sanction was excessive. We affirmed the law judge's initial decision and the order suspending respondent's commercial pilot certificate, with rotorcraft-helicopter ratings, for a period of 180 days.

Respondent has now filed a petition for reconsideration. Title 49 C.F.R. § 821.50(c) requires that such petitions "state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon." Section 821.50 also provides for the submission of arguments based on new matter, when the petitioner sets forth the new matter in "affidavits, prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable," and directs the petitioner to "explain why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed." Section 821.50(d) provides that the Board will not consider, and will summarily dismiss, repetitious petitions for reconsideration.

We deny respondent's petition. First, he has not presented any new matter; in fact, he acknowledges such, but states that "a number of significant miscalculations exist" in our opinion and order. Pet. at 2. Respondent's arguments concerning our assessment of the facts in the underlying case and our conclusion that he operated the helicopter at a very low altitude over part of the city are not appropriate for re-analysis under § 821.50. Respondent merely attempts to reargue points that he made in the underlying case, and contends that our analysis in that decision was incorrect. We note that our

decision on the merits of this case fully addressed the weight of the expert witness opinion that respondent violated § 91.119(a), whether the law judge inappropriately admitted evidence, whether the fact that respondent violated § 91.119(a) also indicated that he violated § 91.13(a), and whether the Administrator proved each element of § 91.119(a). None of these arguments are appropriate for reconsideration under the standard set forth in 49 C.F.R. § 821.50. Respondent had the opportunity at the hearing to argue whether the Administrator fulfilled the burden of establishing violations of §§ 91.119(a) and 91.13(a). Subsequently, on appeal, respondent had the opportunity to raise issues concerning the admission of certain evidence and the law judge's weighing of the evidence, particularly concerning the expert opinions. Respondent's failure below to convince the Board that the Administrator did not fulfill the elements of proof for the § 91.119(a) charge does not provide a reason to reconsider the opinion under our Rules of Practice.

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's petition for reconsideration is denied.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, Member of the Board, concurred in the above order.