

SERVED: December 30, 2009

NTSB Order No. EA-5496

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 30th day of December, 2009

_____)	
J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18527
v.)	
)	
LINO RAMIRO ROJAS,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

The Administrator appeals the oral initial decision of Chief Administrative Law Judge William E. Fowler, Jr., following an evidentiary hearing held on July 15, 2009.¹ By that decision, the law judge granted respondent's appeal of the Administrator's

¹ A copy of the initial decision, an excerpt from the hearing transcript, is attached.

order of revocation of respondent's airline transport pilot (ATP) and first-class medical certificates, as well as any other certificate respondent holds, based on respondent's "refusal to submit" to a random drug test, pursuant to 14 C.F.R. part 121, App. I,² 49 C.F.R. § 40.191(a)(1),³ and 14 C.F.R. § 67.107(b)(2).⁴ We deny the Administrator's appeal.

The Administrator issued the emergency revocation order, which became the complaint in this case, on February 25, 2009.⁵ The complaint alleged that respondent refused to submit to a

² Title 14 C.F.R. part 121, App. I, § II, defines "refusal to submit" as follows: "*Refusal to submit* means that an employee engages in conduct including but not limited to that described in 49 C.F.R. 40.191."

³ Title 49 C.F.R. § 40.191(a)(1) provides as follows:

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

(a) As an employee, you have refused to take a drug test if you:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer.

⁴ Title 14 C.F.R. § 67.107(b)(2) precludes first-class medical certification to an airman with substance abuse within the preceding 2 years, defined to include a refusal to submit to a drug or alcohol test required by the United States Department of Transportation. The complaint also cites §§ 67.207(b)(2) and 67.307(b)(2), which provide the same requirements for second- and third-class medical certificates, respectively.

⁵ Respondent subsequently waived the expedited procedures normally applicable to emergency proceedings.

random drug test on October 30, 2008, at the Atlanta airport, when a fellow employee at Pinnacle Airlines requested that he submit to the test. As a result, the complaint states that respondent lacks the qualifications to hold his ATP and first-class medical certificates.

Respondent denied the allegations that he refused to submit to the test, and the law judge held a hearing, at which both parties provided evidence. At the hearing, the Administrator called Jennifer Gardner, a flight attendant and airline transportation supervisor at Pinnacle, to testify. Ms. Gardner stated that, on October 30, 2008, after landing, respondent taxied the aircraft to Gate B36 at 2:34 pm. Ms. Gardner stated that, after all passengers deplaned, she began cleaning the aircraft and preparing the cabins for the next flight. Ms. Gardner testified that she observed Janice Sloan, the clerk for Pinnacle who requested that respondent submit to the drug test at issue, approach respondent at the door of the aircraft. Ms. Gardner stated that Ms. Sloan had paperwork in her hands when she spoke with respondent, but that respondent did not take possession of or appear to review the paperwork she was carrying, and informed Ms. Sloan that they did not have sufficient time for a drug test. Tr. at 34. Ms. Gardner testified that Pinnacle was under scrutiny from Delta Airlines, with which Pinnacle had a contract, because Pinnacle had

recently experienced problems with timeliness. Ms. Gardner stated that pilots at Pinnacle were under tremendous pressure to avoid delays.⁶ Ms. Gardner also acknowledged that she did not hear the entire conversation between respondent and Ms. Sloan, and that she does not know the exact time that the conversation occurred.

The Administrator also called Marva Steed, who serves as the senior manager of People, Standards, and Compliance at Pinnacle. Ms. Steed identified training materials that Pinnacle distributes concerning random drug tests, and described the notification process concerning such tests. Ms. Steed testified that, after the October 30, 2008 event with respondent, Pinnacle polled several pilots to determine whether they understood the requirements for submitting to drug tests after receiving notification, and found that the pilots sufficiently understood what Pinnacle expected of them. Ms. Steed identified a record of security card swipes for Ms. Sloan, which lists the time that Ms. Sloan entered Gate B36 as 51 seconds after 2:36 pm. Exh. A-

⁶ We note that witnesses for both parties agreed that Pinnacle was under scrutiny for timeliness, and that pilots were under pressure to ensure that flights were not delayed. Tr. at 131-32 (Ms. Sloan's testimony that Pinnacle was emphasizing on-time performance), 165 (testimony of pilot Ryan French that timeliness was critical), 188-191 (testimony of First Officer Charles Busch, which included his statement that he assisted ramp agents with loading and unloading bags in order to ensure timeliness), 250-51 (respondent's testimony that he also assisted with baggage when necessary to ensure timeliness).

7; Tr. at 77. On cross-examination, Ms. Steed stated that Pinnacle had terminated Ms. Sloan's employment, Ms. Sloan's supervisor's employment, and respondent's employment, due to the October 30 incident. Tr. at 95-96.

The Administrator also called Ms. Sloan to testify. Ms. Sloan stated that she was only employed at Pinnacle for approximately 5 months, and that she did not receive training on how to notify pilots that they had been selected for drug tests, nor how to conduct the drug tests. Ms. Sloan stated that Pinnacle had only hired her to oversee the filing of manuals, and putting manuals in aircraft, and not to conduct drug tests. Ms. Sloan testified that, on October 30, 2008, she entered the jet bridge at Gate B36 after the passengers had deplaned, and informed respondent that he had been selected for a random drug test. Ms. Sloan did not recall the exact time she approached respondent. Ms. Sloan stated that respondent told her that they did not have enough time before his next flight to complete the test, and Ms. Sloan disagreed, and stated that she had checked his schedule and thought that he had enough time. Ms. Sloan testified that she noticed Charles Busch, the first officer, as well as one of the flight attendants, nearby. Ms. Sloan recalled that respondent was intimidating and "not friendly," and that, after she spoke with him, she sent an e-mail message to Ms. Atwood describing the situation. Tr. at 112, 115; Exh.

A-8 (e-mail message sent at 3:08 pm, stating that Ms. Sloan approached respondent after his flight arrived, and that respondent told her that he only had 1 hour and 20 minutes before his next flight). Ms. Sloan testified that she did not believe she gave respondent any reason to think he was excused from the drug test. On cross-examination, Ms. Sloan stated that she blames respondent for her termination at Pinnacle, and admitted that, on September 26, 2008, she approached respondent at the Atlanta airport and requested that he take a random drug test. After respondent told her that they did not have enough time,⁷ Ms. Sloan recalled that she told him she would simply reschedule the test. Ms. Sloan also recalled that she had made a mistake with another request for a random drug test, when she informed a person who was on leave that he needed to submit to a test.

The Administrator concluded the case-in-chief by calling Philip Herbert, an investigator in the Special Investigations Branch of the Drug Abatement Division at the FAA. Mr. Herbert stated that he investigated respondent's alleged refusal, and determined that respondent had indeed refused to submit to the October 30 random drug test after receiving proper notification.

⁷ The evidence indicates that the flight respondent conducted arrived at Gate B36 at 2:34 pm, and that the next leg was scheduled for takeoff at 4:12 pm. As such, the elapsed time between the two flights was 1 hour and 38 minutes.

Mr. Herbert also stated that potential flight delays are no excuse for refusing to take a drug test, and that he walked from Gate B36 to the drug testing site at the Atlanta airport and determined that it takes approximately 10 minutes and 15 seconds each way to complete the trip. Mr. Herbert acknowledged that he had reviewed the events of September 26, 2008, involving respondent and Ms. Sloan, and determined that the FAA should not take action based on the events of September 26, given Ms. Sloan's statement that she would reschedule the test.

In rebuttal, respondent called Ryan French, a pilot at Pinnacle, who stated that he was present on September 26, 2008, and observed Ms. Sloan excuse respondent from the drug test. Mr. French stated that, on September 26, Ms. Sloan approached respondent around 3:20 pm to 3:30 pm and requested that respondent complete the drug test, when the next flight was scheduled to take off at 4:15 pm. Mr. French testified that he heard Ms. Sloan say that she did not want the flight to be delayed, and saw Ms. Sloan turn around and walk away. Mr. French described respondent as professional.⁸

Respondent also called Charles Busch, who served as first officer on the October 30, 2008 flight, to testify. Mr. Busch

⁸ Respondent also called Alicia French, a flight attendant from another airline who is married to Mr. French, to testify. Ms. French stated that she observed the events of September 26, 2008, and corroborated Mr. French's testimony.

stated that the flight arrived between 2:30 and 2:35 pm, and that, after the passengers on the flight deplaned, he went with respondent to lunch in the Atlanta airport. After lunch, Mr. Busch smoked a cigarette and met respondent again on the way back to Gate B36. Mr. Busch stated that they entered the gate together, and Mr. Busch completed the pre-flight inspection of the aircraft, after which he saw Ms. Sloan walking down the jet bridge from the terminal area. Mr. Busch stated that he saw Ms. Sloan approximately 30 to 35 minutes prior to departure. Mr. Busch testified that he heard the conversation between respondent and Ms. Sloan, and heard them agree that they did not want to delay the flight. Mr. Busch stated that Ms. Sloan excused respondent from the test, and indicated that she would administer the test when respondent came back. Tr. at 201. Mr. Busch testified that the jetway access door was open when he saw Ms. Sloan enter, and that it is not unusual for gate agents to leave the door open and simply check crewmembers' identification badges when they enter, rather than requiring crewmembers to swipe their badges. Mr. Busch described respondent as willing to take the drug test.

Respondent also called Ginny Atwood to testify. Ms. Atwood stated that she was Ms. Sloan's supervisor, and did not receive any training on administering drug tests or providing notification of such tests; Ms. Atwood opined that she was not

knowledgeable enough to supervise or instruct anyone on drug and alcohol testing procedures. Ms. Atwood verified that, if respondent had taken the drug test on October 30, 2008, when Ms. Sloan requested the test, the flight would have been delayed. Ms. Atwood also stated that she experienced computer problems during fall 2008 that caused her computer to remain on Central time, which explains the reason Ms. Sloan's e-mail message to her describing the occurrence listed the time as 3:08 pm. Tr. at 227, Exh. A-8. Ms. Atwood opined that Ms. Sloan did not properly notify respondent of the test, and that Ms. Sloan was upset and hostile when Ms. Atwood questioned her about the situation.

Respondent called Scott Ericson, a captain at Pinnacle and chairman of the pilots union at Pinnacle, to testify. Mr. Ericson stated that respondent has an excellent reputation at Pinnacle and was being considered for a check pilot position.

Respondent concluded his case by testifying on his own behalf. Respondent stated that, in his career, he had submitted to over 20 drug tests and had always tested negative. Respondent also stated that he had no reason to avoid a drug test on October 30, 2008; that he submitted to a test on November 10, 2008, after receiving an indication from Pinnacle that the October 30 events were under investigation; and that the November 2008 test also was negative. Tr. at 268; Exh. R-

21. Respondent testified that, when he arrived at the Atlanta airport on October 30, 2008, Ms. Sloan was not at the gate. Respondent stated that he and Mr. Busch ate lunch together in the airport between flights on that date, after which Mr. Busch went to smoke a cigarette and respondent went to Starbucks; respondent provided a receipt from Starbucks from October 30 at 3:14 pm. Exh. R-20. Respondent stated that, when Ms. Sloan approached him, he informed her that passengers for the next flight would begin boarding in 10 minutes. Respondent testified that he told Ms. Sloan that he would complete the test, but that they would be delayed, to which Ms. Sloan stated she did not want to delay the flight. Tr. at 264. Respondent stated that he did not refuse the drug test. On cross-examination, respondent opined that submitting to drug tests was more important than timeliness, and that, if a situation like this one occurred again, he would grab the paperwork and demand to take the test.

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he determined that, although respondent did not take the drug test, he did not lack the qualifications to hold an ATP or first-class medical certificate. The law judge found that Ms. Sloan was not trained in how to provide notifications and conduct drug tests, and that the testimony of respondent and Mr. Busch was credible. The law

judge noted respondent's compliant attitude and respectable reputation in the aviation community, and stated that, while respondent appeared to refuse to take the drug test, he does not lack the qualifications to hold an ATP or first-class medical certificate. Initial Decision at 308-309.

On appeal, the Administrator contends that the law judge's credibility findings were contrary to the weight of the evidence, and that the law judge's conclusions of law were erroneous. In particular, the Administrator asserts that this is a refusal case, and that the rationale of Administrator v. Wright, NTSB Order No. EA-4895 (2001), is worthy of consideration in analyzing the case at issue. In Wright, we quoted the law judge's decision wherein he stated, "[m]ental intent has nothing to do with the taking of this drug test. You either take it or you don't. If you don't take it, that constitutes a refusal." Id. at 5 (footnote omitted). The Administrator argues that Ms. Sloan did not excuse respondent from taking the test, and that his refusal constitutes a lack of qualification to hold ATP and first-class medical certificates. The Administrator contends that respondent's attitude of compliance is irrelevant. Respondent disputes each of the Administrator's arguments, and urges us to affirm the law judge's decision.

Much of the law judge's decision in this case is based upon

his credibility determinations. It is well-established Board precedent that resolution of a credibility determination, unless made in an arbitrary or capricious manner or unless clearly erroneous, is within the exclusive province of the law judge.⁹ On occasion, the Board has rejected testimony, accepted by the law judge, which is found to be inherently incredible or inconsistent with the overwhelming weight of the evidence.¹⁰ Nevertheless, the Board will not withhold deference to a law judge's credibility findings simply because other evidence in the record could have been given greater weight.¹¹

In this case, the law judge credited respondent's and Mr. Busch's testimony, and we disagree with the Administrator that evidence exists to overturn the law judge's credibility assessments. Ms. Sloan had indisputably excused respondent from a drug test on September 26, 2008, and acknowledged that she lacked training with regard to how she must provide notification of drug tests to crewmembers. Witnesses who observed either the September 26 or October 30 events testified that Ms. Sloan

⁹ Administrator v. Schwandt, NTSB Order No. EA-5226 at 5 (2006) (citing Administrator v. Smith, 5 NTSB 1560, 1563 (1986)).

¹⁰ See, e.g., Administrator v. Windwalker, NTSB Order No. EA-4638 (1998); Administrator v. Blossom, 7 NTSB 76 (1990); Administrator v. Chirino, 849 F.2d 1525 (1988).

¹¹ Administrator v. Swaters, NTSB Order No. EA-5400 at n.8 (2008) (citing Administrator v. Crocker, NTSB Order No. EA-4565 at 6 (1997)); see also Administrator v. Klock, 6 NTSB 1530, 1531 (1989).

withdrew her request for a drug test, and did not notify respondent that she would consider his statement concerning the lack of sufficient time to complete the test to be a refusal. The Administrator's attempts to show that Ms. Sloan approached respondent shortly after the aircraft landed are not persuasive, because neither the security card swipe record (Exh. A-7) nor the e-mail message Ms. Sloan sent to Ms. Atwood (Exh. A-8) are dispositive; testimony from respondent, Mr. Busch, and Ms. Atwood, in addition to the receipt for a Starbucks purchase, contravene the Administrator's contention that Ms. Sloan entered the jet bridge shortly after the aircraft landed. Moreover, both Ms. Sloan and Ms. Gardner testified that all passengers had deplaned before Ms. Sloan arrived, and that neither of them knew what time she arrived. Overall, the law judge resolved these issues by determining that respondent's and Mr. Busch's testimony concerning the events of October 30, 2008, was credible. The Administrator has not provided reason for us to depart from our precedent of deferring to such a credibility finding, given Ms. Sloan's and Ms. Atwood's admitted lack of training with regard to administering drug tests and the evidence indicating that Ms. Sloan told respondent that she would conduct the test later.

We view refusals to take drug tests seriously. In such cases, we have consistently held that a refusal demonstrates a

lack of qualification to hold an airman certificate.¹²

Therefore, we appreciate the Administrator's contention that the law judge's conclusion that respondent refused to take the drug test, yet did not lack the qualification to hold a certificate, appears inapposite. Based on the evidence of this case, however, we decline to find that respondent's actions on October 30, 2008, constitute a refusal. The evidence in this record indicates that Ms. Sloan excused respondent from taking the test, as she had done on September 26, 2008. We note that this conclusion is not contrary to our decision in Administrator v. Heyl, NTSB Order No. EA-5420 (2008), where we held that the drug testing facility had not excused the respondent from providing a urine sample when the respondent did not initially provide an adequate sample. In Heyl, the respondent argued that a receptionist at the facility told him that he could leave. We determined, however, that the evidence in the record contradicted this alleged instruction, and concluded that the respondent had refused the test. In this regard, we note that cases concerning refusals to submit to drug tests involve fact-specific inquiries. On the facts of the case at hand, we conclude that the law judge's credibility determinations are not

¹² Administrator v. Pittman, NTSB Order No. EA-4678 at 5 (1998); see also Administrator v. King, NTSB Order No. EA-4997 at 8 (2002) (citing Administrator v. Krumpster, NTSB Order No. EA-4724 (1998)).

arbitrary, capricious, or contrary to the weight of the evidence.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied;
2. The law judge's initial decision is affirmed; and
3. The Administrator's emergency order of revocation is reversed.

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

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

* * * * *
In the matter of: *
*
J. RANDOLPH BABBIT, *
ADMINISTRATOR, *
Federal Aviation Administration, *
*
Complainant, *
v. *
LINO RAMIRO ROJAS, *
*
Respondent. *
* * * * *

Docket No. : SE-18527
JUDGE FOWLER

429 L'Enfant Plaza
Washington, D.C.

Wednesday
July 15, 2009

The above-entitled matter came on for hearing,
pursuant to notice at 10:00 a.m.

BEFORE: WILLIAM E. FOWLER
Chief Administrative Law Judge

On behalf of the Administrator:

LAURA JENNINGS, ESQUIRE
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On behalf of the Respondent:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE FOWLER: This has been a proceeding before the National Transportation Safety Board, held pursuant to the provisions of the Federal Aviation Act of 1958, as that Act was subsequently amended, on the Appeal of Lino Romero Rojas, from an Emergency Order of Revocation dated February 25, 2009, which seeks to revoke Respondent Rojas' Airline Transport Pilot Certificate Number (omitted), as well as Respondent Rojas' first-class medical certificate.

1 20 exhibits; the Administrator had 16 exhibits, all of which were
2 admitted in the record of this proceeding, as it's presently
3 constituted. The Administrator had four witnesses; the Respondent
4 had six.

5 I have reviewed the testimony and the evidence in this
6 case and I might say it's a bit of a strange case because here we
7 have two parties, two individuals, I should say, on a second
8 encounter, the Respondent, Captain Rojas, and Ms. Janice Sloan;
9 both incidents, the first one on September 26th, 2008, and the
10 incident we're concerned with here, which occurred on
11 October 30th, 2008. This case involves the alleged refusal of
12 Captain Rojas to submit to a drug test.

13 Now on the September 26th, 2008 occasion, as the
14 testimony and a couple of the documentary exhibits will bear out,
15 in effect, Ms. Janice Sloan, after a discussion with
16 Captain Rojas, in effect withdrew the request for the drug test.
17 What I have to decide here is, on October 30th, 2008, were there
18 similarities on that date, concerning the drug test, to what
19 occurred on the earlier encounter between these two people on
20 September 26th, 2008?

21 It's obvious, from the testimony and the evidence here,
22 and I'm trying to be succinct and concise because of the time
23 issue, that there was notification to Captain Rojas by Ms. Sloan,
24 that he had been selected for a random drug test.

25 There was conversation between Ms. Sloan and

1 Captain Rojas on the jet bridge of this flight approximately an
2 hour or so after they had landed and been there, and I think
3 Respondent's Exhibit R-14, which is the testimony of the First
4 Officer, Charles Anthony Busch, sheds some interesting light and
5 evidentiary sense on what occurred here on October 30th, when
6 Janice Sloan approached Captain Rojas.

7 According to the testimony from Respondent's Exhibit R-
8 14, of First Officer Busch, he said that she informed Captain
9 Rojas that he had been selected for a drug test. Captain Rojas
10 then expressed his concern regarding the test, by informing "her
11 that we were approximately 30 to 35 minutes prior to departure and
12 it might delay the flight."

13 The Captain also made the point, and First Officer Busch
14 testified, they'd been on the ground for an hour and a half. And
15 this document and his testimony, of First Officer Busch, goes on
16 to say "that at no time did he hear Captain Rojas refuse to submit
17 to the drug test." In fact, he appeared at all times willing to
18 submit to the test and only seemed to be pointing out to
19 Janice Sloan that the time of the test would likely cause a delay
20 of the flight.

21 They discussed the operation of the flight, according to
22 First Officer Busch, and they came to arrangement to take care of
23 the test at another time. By the end of the discussion, Captain
24 Rojas was excused from the drug test by Janice Sloan and was under
25 no obligation at that time to take the test. This is opinion of

1 First Officer Busch. Once the conversation had been completed,
2 Janice Sloan walked up the jet bridge and Captain Rojas and I
3 continued our preparation for the flight to Huntington [sic],
4 which they did.

5 Now, I see a parallel here between this situation of
6 October 30th, 2008 and the situation I previously alluded to that
7 took place on September 26th, 2008. The evidence is quite
8 compelling and persuasive, if not overwhelming. We had a clerk
9 here, Ms. Sloan, who, to say she was not properly trained or
10 under-trained, would be the understatement. She admitted this
11 herself, as did the other witnesses of the Administrator. There
12 was no paperwork given to Captain Rojas.

13 There was a similarity that occurred here on October
14 30th, 2008, as to what occurred on September 26th.
15 Ms. Sloan, because of the lack of training, was a bit overwhelmed
16 and confused and in effect said she didn't want to delay the
17 flight and told Captain Rojas to go on, which he did. The
18 parallel, central, and overriding issue is, does this constitute a
19 failure to submit to a drug test on the part of Captain Rojas?

20 We know that by the apropos FAA rules and regulations,
21 the requirement to submit to a drug test is mandatory. Here we
22 have a pilot that's been flying for more than 20 years, has
23 submitted to over 21 previous drug tests, all of which he has
24 passed, and his testimony is that Ms. Sloan said, "No, I don't
25 want to delay the flight. Don't worry about it, I will get you

1 the next time."

2 Captain Rojas' testimony and his statement, which is in
3 Administrator's Exhibit A-13, said at all times First Officer
4 Charles Busch witnessed this conversation, and I have alluded to
5 that, and so forth.

6 We have an exhibit here of Respondent Captain Rojas
7 taking a drug test a week so, subsequent to the date of
8 October 30th, 2008, which we're concerned with here, and which he
9 passed, which strictly, legally speaking, is not relevant.

10 However, to me it is relevant in the sense of what is
11 the compliance attitude of the Respondent here. He has submitted,
12 as I mentioned earlier, to a number of drug tests, passed them
13 all, in my determination, because Ms. Sloan didn't know really any
14 better, in effect, withdrew the request and told him she didn't
15 want to delay the flight and she'd get him at another time.

16 In response to my question during the conclusion of this
17 case, when Respondent was testifying under oath, I asked him point
18 blank, confronted with the same situation again, what would he do?
19 He said he would take the drug test immediately, regardless of the
20 flight being delayed. To me, this indicates a great attitude of
21 compliance of a pilot who possesses the requisite qualities that
22 an ATP pilot must have, of care, judgment, and responsibility.

23 With a deal of reluctance, because of what I have
24 determined to be a good attitude of compliance on the part of
25 Captain Rojas, I am, in effect, going to give him the benefit of

1 the doubt here; although, there may be overwhelming disagreement
2 with it.

3 So, ladies and gentlemen, based on my review of the
4 testimony of the witnesses, coupled with the documentary exhibits
5 that had been admitted during the course of this proceeding, I
6 will make the following specific findings of fact and conclusions
7 of law:

8 (1) The Respondent, Lino Romero Rojas, admits he was and
9 is the holder of Airline Transport Pilot Certificate Number
10 (omitted) issued under 14 C.F.R. Part 61, and a first-class
11 medical certificate issued on April 7th, 2008, October 24th, 2007,
12 and April 11th, 2007, under Part 67 of the Federal Aviation
13 Regulations.

14 (2) The Respondent admits and it is found that during
15 the events identified in this document, referring to the Emergency
16 Order of Revocation, you were employed, the Respondent, that is,
17 as a pilot to perform flight crew member duties for Pinnacle
18 Airlines, Incorporated, which was authorized to conduct operations
19 under the business names Delta Connection and Northwest Airlink.

20 (3) It is found that, as a pilot for Pinnacle, you were
21 at all times, mentioned in this document, subject to random drug
22 and alcohol testing under Pinnacle's FAA-mandated anti-drug and
23 alcohol misuse prevention programs, pursuant to 14 C.F.R.
24 Part 121, Appendix I and J, and 49 C.F.R. Part 50.

25 (4) It is found that on or about October 30th, 2008, and

1 I'm incorporating by reference, pursuant to the answer previously
2 filed on behalf of the Respondent, through counsel, Paragraph A,
3 which he has admitted, Paragraph B, which Respondent has admitted,
4 and Paragraph C. It is found that after Respondents arrival in
5 Atlanta on Flight 2001, Respondent was notified by Pinnacle
6 Administrator Clerk Janice Sloan that you had to go for a random
7 drug test; and D, the location of the collection site, I'm
8 incorporating that by reference, which was Atlanta; and E,
9 incorporating that, the Respondent did not report for the random
10 drug test in Atlanta.

11 (5) It is found that a refusal to submit to a drug test,
12 under the apropos parts, 14 C.F.R. Part 21, means that covered
13 employee engages in a conduct specified, and 14 C.F.R. 40.191.

14 (6) It is found, at all times mentioned in this
15 document, and I'm incorporating Paragraph 6 by reference,
16 incorporating it by reference, as to what it says, as well as
17 Paragraph 7.

18 (7) My finding is, with Paragraph 7, by reason of the
19 foregoing, you appeared to refuse to take a drug test required
20 under the apropos 14 C.F.R. Part 121, Appendix I.

21 (8) I'm incorporating by reference the finding that the
22 section, 61.14(b), constitutes as a refusal, and incorporating
23 that by reference.

24 And (9), it is my final determination and finding that
25 by Captain Rojas' actions, he has not demonstrated that he

1 presently lacks the qualifications to hold an airline transport
2 pilot certificate.

3 And (10), it is found that Respondent does not lack the
4 qualifications to hold any class airman medical certificate under
5 the apropos mental standards. I'm incorporating by reference what
6 is spelled out in Paragraphs A, B and C under Paragraph 10.

7 As a result, this judge finds that Respondent,
8 Captain Rojas, does not lack the necessary qualifications to hold
9 any pilot certificate and any class airman medical certificate
10 under the aforesaid Federal Aviation Regulations.

11 This judge finds that safety in air commerce or air
12 transportation and the public interest does not require the
13 affirmation of the Administrator's Order of Revocation dated
14 February 25th, 2009, in view of the Respondent's non-violation of
15 the aforesaid regulations, and this did not constitute a willful
16 refusal to take the mandatory drug test, in view of the totality
17 of all of the evidence adduced during the course of this
18 proceeding.

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ORDER

IT IS ORDERED AND ADJUDGED THAT the Administrator's Order of Revocation dated February 25th, 2009, be and the same, is hereby reversed and dismissed.

This Order was issued by William E. Fowler, Jr., United States Administrative Law Judge.

Edited on
August 4, 2009

WILLIAM E. FOWLER, JR.
Administrative Law Judge